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12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION

16 ANTHONY DITIRRO, KATYA
BRESLER, AND MICHELLE
17 SHUMATE, individually and on behalf of
others similarly situated,

18 Plaintiffs,

19 v.

20 FACEBOOK, INC., a Delaware
21 corporation,

22 Defendant.
23
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25
26
27
28

Case No. 5:14-cv-00132-PJH

**DEFENDANT FACEBOOK, INC.'S NOTICE OF
MOTION AND MOTION TO DISMISS FIRST
AMENDED COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: June 11, 2014
Time: 9:00 a.m.
Courtroom: 3
Judge: Hon. Phyllis J. Hamilton
Trial Date: None Set

TABLE OF CONTENTS

	Page
NOTICE OF MOTION AND MOTION TO DISMISS	1
STATEMENT OF RELIEF SOUGHT	1
STATEMENT OF ISSUES TO BE DECIDED	1
MEMORANDUM OF POINTS AND AUTHORITIES	2
I. INTRODUCTION	2
II. STATEMENT OF FACTS	4
III. LEGAL STANDARD	6
IV. ARGUMENT	7
A. Plaintiffs fail to state a claim for false-light invasion of privacy (Claim Three).....	7
1. The alleged false light is not “highly offensive” to a reasonable person.	7
2. Plaintiffs fail to comply with Civil Code section 45a.	9
B. Plaintiffs fail to state claims under the UCL and FAL (Claims Four and Five)... ..	11
1. Plaintiffs lack standing under the UCL and FAL.....	11
2. Plaintiffs fail to allege particular misrepresentations and reliance.	13
C. Plaintiffs fail to state a claim under the CLRA (Claim Six).	14
D. Plaintiffs fail to state a claim for negligence (Claim Seven).	16
E. Plaintiffs fail to state a claim for breach of contract (Claim Eight).	19
1. Plaintiffs fail to identify the contract term(s) allegedly breached.....	20
2. Plaintiffs allege no appreciable damage from the alleged breach.....	20
3. Plaintiffs’ implied-contract claim fails for additional reasons.	21
F. Plaintiffs fail to state a claim for breach of the implied covenant of good faith and fair dealing (Claim Nine).	23
G. Plaintiffs fail to state a claim for unjust enrichment (Claim Ten).....	24
H. Plaintiffs’ claims should be dismissed with prejudice.	25
V. CONCLUSION.....	25

TABLE OF AUTHORITIES

	Page
CASES	
<i>Aas v. Superior Court</i> , 24 Cal. 4th 627 (2000)	17, 18, 19
<i>Allen v. Hylands, Inc.</i> , No. 12-cv-1150, 2012 WL 1656750 (C.D. Cal. May 2, 2012)	25
<i>AmeriFirst Bank v. TJX Cos.</i> , 564 F.3d 489 (1st Cir. 2009)	18
<i>Artiglio v. Corning Inc.</i> , 18 Cal. 4th 604 (1998)	16
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009)	6, 19
<i>Baltazar v. Apple, Inc.</i> , CV 10-3231-JF, 2011 U.S. Dist. LEXIS 13187 (N.D. Cal. Feb. 10, 2011)	14
<i>Barrier Specialty Roofing & Coatings, Inc. v. Ici Paints North America, Inc.</i> , No. CV 07-1614 LJO TAG, 2008 U.S. Dist. LEXIS 104963 (E.D. Cal. May 6, 2008)	18
<i>Be In, Inc. v. Google Inc.</i> , No. 12-CV-03373-LHK, 2013 U.S. Dist. LEXIS 147047 (N.D. Cal. Oct. 9, 2013)	22
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544 (2007)	6, 12, 19
<i>Berkley v. Dowds</i> , 152 Cal. App. 4th 518 (2007)	16
<i>Bilodeau v. McAfee, Inc.</i> , No. 12-CV-04589-LHK, 2013 U.S. Dist. LEXIS 89226 (N.D. Cal. June 24, 2013)	20
<i>Brahmana v. Lembo</i> , No. C-09-00106 RMW, 2010 U.S. Dist. LEXIS 24784 (N.D. Cal. Mar. 17, 2010)	7
<i>Branch v. Homefed Bank</i> , 6 Cal. App. 4th 793 (1992)	19
<i>California State Automobile Association Inter-Insurance Bureau v. Policy Management System Corp.</i> , No. C 93-4232 CW, 1996 U.S. Dist. LEXIS 21823 (N.D. Cal. Jan. 9, 1996)	16

TABLE OF AUTHORITIES
CONTINUED

	Page
<i>Careau & Co. v. Security Pacific Business Credit, Inc.</i> , 222 Cal. App. 3d 1371 (1990).....	23
<i>Carillo v. Nationwide Mutual Fire Insurance Co.</i> , No. C 07-1979 JF, 2007 U.S. Dist. LEXIS 47919 (N.D. Cal. June 25, 2007).....	17
<i>Code Rebel, LLC v. Aqua Connect, Inc.</i> , No. 13-4539 RSWL, 2013 U.S. Dist. LEXIS 137937 (C.D. Cal. Sept. 24, 2013)	11
<i>Core-Vent Corp. v. Nobel Industries Sweden. A.B.</i> , No. 97-552494, 1998 U.S. App. LEXIS 22175 (9th Cir. Sept. 9, 1998)	11
<i>Coyotzi v. Countrywide Financial Corp.</i> , No. CV F 09-1036 LJO, 2009 U.S. Dist. LEXIS 91084 (E.D. Cal. Sept. 15, 2009)	20
<i>Cumis Insurance Society, Inc. v. BJ's Wholesale Club, Inc.</i> , 918 N.E.2d 36 (Mass. 2009)	18
<i>Datalex (Ireland) Ltd. v. PSA, Inc.</i> , No. CV 01-06482 DDP, 2003 U.S. Dist. LEXIS 27563 (C.D. Cal. Jan. 30, 2003).....	10
<i>Dean v. Guard Publishing Co.</i> , 744 P.2d 1296 (Ore. App. 1987)	8
<i>Division of Labor Law Enforcement v. Transpacific Transportation Co.</i> , 69 Cal. App. 3d 268 (1977).....	19, 20
<i>Donohue v. Apple, Inc.</i> , 871 F. Supp. 2d 913 (N.D. Cal. 2012)	14, 20
<i>Downing v. Abercrombie & Fitch</i> , 265 F.3d 994 (9th Cir. 2001).....	9, 10
<i>Duarte v. Freeland</i> , No. C05-02780 MJJ, 2007 U.S. Dist. LEXIS 73750 (N.D. Cal. Sept. 24, 2007)	22
<i>Durell v. Sharp Healthcare</i> , 183 Cal. App. 4th 1350 (2010).....	16, 24
<i>Edwards v. Marin Park, Inc.</i> , 356 F.3d 1058 (9th Cir. 2003).....	14
<i>In re Facebook Privacy Litigation</i> , 791 F. Supp. 2d 705 (N.D. Cal. 2011)	12, 15

TABLE OF AUTHORITIES
CONTINUED

	Page
<i>Fellows v. National Enquirer, Inc.</i> , 42 Cal. 3d 234 (1986)	7, 8, 9
<i>Ferrington v. McAfee, Inc.</i> , No. 10-CV-01455-LHK, 2010 WL 3910169 (N.D. Cal. Oct. 5, 2010)	15
<i>First Commercial Mortgage Co. v. Reece</i> , 89 Cal. App. 4th 731 (2001)	20
<i>Folgelstrom v. Lamps Plus, Inc.</i> , 195 Cal. App. 4th 986 (2011)	13
<i>Fraley v. Facebook, Inc.</i> , 830 F. Supp. 2d 785 (N.D. Cal. 2011)	24
<i>Gautier v. General Telephone Co.</i> , 234 Cal. App. 2d 302 (1965)	19
<i>In re Google Inc. Cookie Placement Consumer Privacy Litigation</i> , --- F. Supp. 2d ---, No. 12-2358-SLR, 2013 WL 5582866 (D. Del. Oct. 9, 2013)	12, 15
<i>In re Google Inc. Street View Electronic Communications Litigation</i> , 794 F. Supp. 2d 1067 (N.D. Cal. 2011)	12
<i>Gould v. Maryland Sound Industries, Inc.</i> , 31 Cal. App. 4th 1137 (1995)	22
<i>Hill v. Roll International Corp.</i> , 195 Cal. App. 4th 1295 (2011)	24
<i>Hunley v. Orbital Sciences Corp.</i> , No. CV-05-1879-PHX-DGC, 2007 U.S. Dist. LEXIS 24101 (D. Ariz. Mar. 27, 2007)	8
<i>In re iPhone Application Litigation</i> , 844 F. Supp. 2d 1040 (N.D. Cal. 2012)	17
<i>In re iPhone Application Litigation</i> , No. 11-MD-02250-LHK, 2011 WL 4403963 (N.D. Cal. Sept. 20, 2011)	15, 17, 21
<i>In re iPhone Application Litigation</i> , No. 11-MD-02250-LHK, 2013 WL 6212591 (N.D. Cal. Nov. 25, 2013)	15
<i>Isuzu Motors Ltd. v. Consumers Union of United States, Inc.</i> , 12 F. Supp. 2d 1035 (C.D. Cal. 1998)	10

TABLE OF AUTHORITIES
CONTINUED

	Page
<i>In re Jetblue Airways Corp. Privacy Litigation</i> , 379 F. Supp. 2d 299 (E.D.N.Y. 2005)	21
<i>Kaing v. Pulte Homes, Inc.</i> , No. 09-5057 SC, 2010 U.S. Dist. LEXIS 21320 (N.D. Cal. Feb. 18, 2010)	15, 16
<i>Kalitta Air, LLC v. Century Texas Airborne Systems, Inc.</i> , 315 F. App'x 603 (9th Cir. 2008)	17
<i>Kapellas v. Kofman</i> , 1 Cal. 3d 20 (1969)	9
<i>Kearns v. Ford Motor Co.</i> , 567 F. 3d 1120 (9th Cir. 2009).....	13
<i>KEMA, Inc. v. Koperwhats</i> , No. C 09-1587 MMC, 2010 U.S. Dist. LEXIS 90803 (N.D. Cal. Sept. 1, 2010).....	11
<i>Kennedy v. Bank of Am., N.A.</i> , No.: 12-CV-952 YGR, 2012 U.S. Dist. LEXIS 58636 (N.D. Cal. Apr. 26, 2012).....	19
<i>Klein v. Chevron U.S.A., Inc.</i> , 202 Cal. App. 4th 1342 (2012).....	24
<i>Kwikset Corp. v. Superior Court</i> , 51 Cal. 4th 310 (2011)	12, 13, 14
<i>LaCourt v. Specific Media, Inc.</i> , No. 10-cv-1256 GW, 2011 WL 1661532 (C.D. Cal. Apr. 28, 2011).....	21
<i>Lamke v. Sunstate Equipment Co.</i> , 387 F. Supp. 2d 1044 (N.D. Cal. 2004)	23, 24
<i>Levine v. Blue Shield of California</i> , 189 Cal. App. 4th 1117 (2010).....	24, 25
<i>Low v. LinkedIn Corp.</i> , 900 F. Supp. 2d 1010 (N.D. Cal. 2012)	21
<i>Low v. LinkedIn Corp.</i> , No. 11-cv-01468-LHK, 2011 WL 5509848 (N.D. Cal. Nov. 11, 2011).....	13
<i>Lyons v. Coxcom, Inc.</i> , 718 F. Supp. 2d 1232 (S.D. Cal. 2009).....	23

TABLE OF AUTHORITIES
CONTINUED

	Page
<i>M.G. v. Time Warner, Inc.</i> , 89 Cal. App. 4th 623 (2001).....	8
<i>McAfee v. Francis</i> , No. 5:11-CV-00821-LHK, 2011 U.S. Dist. LEXIS 83878 (N.D. Cal. Aug. 1, 2011).....	20
<i>McKinney v. Google, Inc.</i> , No. 5:10-CV 01177 EJD, 2011 U.S. Dist. LEXIS 97958 (N.D. Cal. Aug. 30, 2011).....	17, 18
<i>Melchior v. New Line Products, Inc.</i> , 106 Cal. App. 4th 779 (2003).....	24
<i>Missud v. Oakland Coliseum Joint Venture</i> , No. 12-02967 JCS, 2013 U.S. Dist. LEXIS 91528 (N.D. Cal. June 27, 2013).....	16
<i>Navarro v. Block</i> , 250 F.3d 729 (9th Cir. 2001).....	6
<i>Newcombe v. Adolf Coors Co.</i> , 157 F.3d 686 (9th Cir. 1998).....	7, 8, 9, 11
<i>Nucal Foods, Inc. v. Quality Egg LLC</i> , 918 F. Supp. 2d 1023 (E.D. Cal. 2013).....	18
<i>O'Connor v. Uber Technologies, Inc.</i> , No. C-13-3826 EMC, 2013 U.S. Dist. LEXIS 171813 (N.D. Cal. Dec. 5, 2013)	22
<i>Pennsylvania State Employees Credit Union v. Fifth Third Bank</i> , 398 F. Supp. 2d 317 (M.D. Pa. 2005)	18
<i>Pacini v. Wells Fargo Bank, N.A.</i> , No. 12-04605 RS, 2012 U.S. Dist. LEXIS 183151 (N.D. Cal. Dec. 26, 2012).....	8
<i>Perez v. Wells Fargo Bank, N.A.</i> , No. C-11-02279 JCS, 2011 U.S. Dist. LEXIS 96706 (N.D. Cal. Aug. 29, 2011).....	23
<i>Plastino v. Wells Fargo Bank</i> , 873 F. Supp. 2d 1179 (N.D. Cal. 2012)	23
<i>Racine & Laramie, Ltd. v. Department of Parks & Recreation</i> , 11 Cal. App. 4th 1026 (1992).....	23
<i>Robinson Helicopter Co. v. Dana Corp.</i> , 34 Cal. 4th 979 (2004)	17

TABLE OF AUTHORITIES
CONTINUED

		Page
1		
2		
3	<i>Robinson v. HSBC Bank USA,</i>	
4	732 F. Supp. 2d 976 (N.D. Cal. 2010)	12
5	<i>Rodriguez v. Bank of New York Mellon,</i>	
6	No. 13-CV-1830-GPC-BLM, 2014 U.S. Dist. LEXIS 6501 (S.D. Cal. Jan. 17, 2014).....	16
7	<i>Roling v. E*Trade Securities, LLC,</i>	
8	756 F. Supp. 2d 1179 (N.D. Cal. 2010)	22
9	<i>Ruiz v. Gap, Inc.,</i>	
10	622 F. Supp. 2d 908 (N.D. Cal. 2009)	20
11	<i>Schauer v. Mandarin Gems of California, Inc.,</i>	
12	125 Cal. App. 4th 949 (2005).....	15
13	<i>Selleck v. Globe International, Inc.,</i>	
14	166 Cal. App. 3d 1123 (1985).....	9
15	<i>Shook v. Pearson,</i>	
16	99 Cal. App. 2d 348 (1950).....	10
17	<i>Silva v. Hearst Corp.,</i>	
18	No. CV 97-4142 DDP, 1997 U.S. Dist. LEXIS 22653 (C.D. Cal. Aug. 21, 1997)	8
19	<i>In re Sony Gaming Networks & Customer Data Security Breach Litigation,</i>	
20	903 F. Supp. 2d 942 (S.D. Cal. 2012)	12, 17, 18
21	<i>Steckman v. Hart Brewing, Inc.,</i>	
22	143 F.3d 1293 (9th Cir. 1998).....	25
23	<i>Sweet v. Bridge Base Inc.,</i>	
24	No. CV F 08-1034 AWI, 2009 U.S. Dist. LEXIS 44712 (E.D. Cal. May 28, 2009).....	20
25	<i>Thompson v. Home Depot, Inc.,</i>	
26	No. 07-cv-1058 IEG, 2007 WL 2746603 (S.D. Cal. Sept. 18, 2007)	12
27	<i>In re Tobacco II,</i>	
28	46 Cal. 4th 298 (2009)	13
	<i>Tollefson v. Price,</i>	
	430 P.2d 990 (Ore. 1967).....	8
	<i>Vess v. Ciba-Geigy Corp. USA,</i>	
	317 F.3d 1097 (9th Cir. 2003).....	13, 14, 16

TABLE OF AUTHORITIES
CONTINUED

	Page
<i>Vicuña v. Alexia Foods, Inc.</i> , No. 11-cv-6119, 2012 U.S. Dist. LEXIS 59408 (N.D. Cal. Apr. 27, 2012)	24
<i>Yari v. Producers Guild of America, Inc.</i> , 161 Cal. App. 4th 172 (2008).....	19, 22
<i>Youngman v. Nevada Irrigation District</i> , 70 Cal. 2d 240 (1969)	22
<i>Yu v. Signet Bank/Virginia</i> , 69 Cal. App. 4th 1377 (1999).....	18
<i>Yunker v. Pandora Media, Inc.</i> , No. 11-3113 JSW, 2013 WL 1282980 (N.D. Cal. Mar. 26, 2013)	15
<i>In re Zynga Privacy Litigation</i> , Order, No. 10-cv-04680 (N.D. Cal. Nov. 22, 2011)	23
 STATUTES	
California Business & Professions Code	
§ 17200	1
§ 17204	12
§ 17500	1
§ 17535	12
California Civil Code	
§ 44	9
§ 45	9
§ 45a	1, 7, 9
§ 48a	10, 11
§ 1750	1
 RULES	
Federal Rules of Civil Procedure	
Rule 9(b).....	13, 14, 16
Rule 9(g).....	10, 11
Rule 12(b)(6).....	1, 6
 OTHER AUTHORITIES	
Restatement 2d of Torts	7

1 **NOTICE OF MOTION AND MOTION TO DISMISS**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on June 11, 2014 at 9:00 a.m. or as soon thereafter as this
 4 motion may be heard in the above-entitled Court, located at 1301 Clay Street, Oakland,
 5 California, in Courtroom 3, Third Floor, Defendant Facebook, Inc. ("Facebook") will move to
 6 dismiss Plaintiffs' First Amended Complaint ("FAC"). Facebook's motion is made pursuant to
 7 Federal Rule of Civil Procedure 12(b)(6) and is based on this Notice of Motion and Motion to
 8 Dismiss, the Memorandum of Points and Authorities herein, the concurrently filed Declaration of
 9 Sandeep N. Solanki ("Solanki Decl.") and the exhibits thereto, the concurrently filed Request for
 10 Consideration of Documents Incorporated into the First Amended Complaint, all pleadings and
 11 papers on file, and on such other matters as may be properly before the Court.

12 **STATEMENT OF RELIEF SOUGHT**

13 Facebook respectfully seeks dismissal of Counts Three through Ten of the FAC, with
 14 prejudice, for failure to state a claim.

15 **STATEMENT OF ISSUES TO BE DECIDED**

16 1. Whether Plaintiffs' claim for false light invasion of privacy should be dismissed
 17 with prejudice because the allegedly false statements are not "highly offensive" to a reasonable
 18 person, and because Plaintiffs have failed to comply with California Civil Code section 45a.

19 2. Whether Plaintiffs' claim for violation of California's Unfair Competition Law
 20 ("UCL"), Cal. Bus. & Prof. Code §§ 17200 *et seq.*, and False Advertising Law ("FAL"), Cal.
 21 Bus. & Prof. Code §§ 17500 *et seq.*, should be dismissed with prejudice because Plaintiffs allege
 22 no loss of money or property, as required to confer standing, and allege no facts to support either
 23 the alleged misrepresentations by Facebook or their reliance thereon.

24 3. Whether Plaintiffs' claim for violation of California's Consumers Legal Remedies
 25 Act ("CLRA"), Cal. Civil Code §§ 1750 *et seq.*, should be dismissed with prejudice because
 26 Plaintiffs are not "consumers" and Facebook does not offer a "good or service" within the
 27 meaning of the statute, because Plaintiffs have failed to allege a CLRA injury, and because
 28 Plaintiffs' fraud-based allegations are insufficiently pleaded.

1 in learning that their friends may have seen that they liked, respectively, USA Today, Kohl's, and
 2 Duracell. While Plaintiffs "ha[ve] nothing negative to say about" these businesses (which
 3 Plaintiffs can also "Unlike" at any time), they nevertheless claim "irreparable harm" and "cruel
 4 and unjust hardship and humiliation." Plaintiffs seek money damages, *inter alia*, because they
 5 "did not receive the benefit of the bargain for which they contracted and . . . paid valuable
 6 consideration" when they joined Facebook's free service. They also seek punitive damages.

7 Plaintiffs' claims are baseless. All but two should be dismissed immediately, and the
 8 remainder will fail early in the litigation (and cannot support class-wide allegations, in any case).
 9 Plaintiffs' claim for false-light invasion of privacy (Count 3) is insupportable, because Plaintiffs
 10 did not and cannot allege that the disputed Likes are "highly offensive," and have not pleaded the
 11 statutorily required "special damages" required for such a claim. Plaintiffs' unfair-competition
 12 and false-advertising claims (Counts 4 and 5) fail because Plaintiffs allege no cognizable "loss of
 13 money or property" from their use of Facebook's free service, and because they fail to adequately
 14 allege the misrepresentations or the required reliance. Plaintiffs' claim under the Consumers
 15 Legal Remedies Act (Count 6) is, likewise, untenable both because Plaintiffs are not
 16 "consumers," and Facebook's free website is not a "good or service," under the CLRA.

17 Plaintiffs' inapt negligence and contract claims (Counts 7, 8, and 9) fare no better. As to
 18 negligence, Plaintiffs allege no viable source of a duty owed by Facebook, and bring claims that
 19 are barred by the economic-loss doctrine. Similarly, Plaintiffs' contract claim identifies no term
 20 that Facebook breached and fails to allege cognizable damages. Plaintiffs' claim under the
 21 implied covenant of good faith also fails because it specifies no term of the contract that was
 22 frustrated, alleges no cognizable damages, and impermissibly duplicates their breach-of-contract
 23 claim. Finally, Plaintiffs' unjust-enrichment claim (Count 10) cannot go forward because there is
 24 no such standalone claim.

25 For all these reasons, this case should never have been brought. The bulk of it should now
 26 be dismissed with prejudice, with the remainder to be disposed of after targeted, individualized
 27 discovery regarding Plaintiffs' Facebook accounts and activities.

28

1 **II. STATEMENT OF FACTS**

2 Facebook is the world’s largest social networking service, with more than one billion
3 users worldwide. (FAC ¶ 9.) It is, and always has been, free to use. To join Facebook, a person
4 must register for the service (FAC ¶ 10), and agree to Facebook’s terms of use (known as the
5 “Statement of Rights and Responsibilities” or “SRR”) (*see* FAC ¶¶ 18, 96, 98). Each person has
6 a personal profile page (or “Timeline”), which he or she can populate with photographs, interests,
7 and other information. (FAC ¶¶ 11, 16.) A person may also connect with others as “Friends”
8 (FAC ¶ 10), and may elect to share certain content with them (*see* FAC ¶¶ 10, 11, 22).

9 A “very popular feature” on Facebook’s website is the “Like Button,” which “allow[s]
10 users to express their appreciation of content such as other [users’] Facebook status, comments,
11 and posted photos.” (FAC ¶ 13.) People can also “Like” Facebook Pages, which are maintained
12 by companies, charitable organizations, and others. (FAC ¶¶ 12, 14-15, Ex. C.) The Facebook
13 Like button appears not only on Facebook, but “is embedded in over 7.5 million websites.” (FAC
14 ¶ 17.) Plaintiffs allege that “[a] single click on a like button by a particular Facebook user [may]
15 advertise to . . . others that a particular user backs or likes a particular company’s product or
16 service.” (FAC ¶ 15.)¹

17 A statement that a person has “Liked” a Facebook Page (e.g., “Jane Smith Likes Barack
18 Obama”) may appear contextually in a number of places throughout the site, including on the
19 person’s Timeline, on the Facebook Page that the person Liked, and on the home page (or News
20 Feed)² of the person’s Friends. (FAC ¶¶ 12-16, Exs. A-C.) For example, if Jane Smith Liked the
21 Oakland A’s on Facebook, and the Oakland A’s posted a photo from a recent victory or displayed
22 an advertisement for an upcoming game, Facebook may display, as context, the statement “Jane
23 Smith Likes the Oakland A’s” next to the photo or ad. (*See id.*) People always maintain control
24 over who can see their Likes (whether next to ads or otherwise)—e.g., no one, Friends, a custom
25

26 ¹ Plaintiffs claim that a “single click on a like button . . . will advertise to thousands of others”
27 that the user Likes content on Facebook. (FAC ¶ 15.) But a person’s Likes are shared only with
the audience he or she chooses via his or her privacy settings.

28 ² The News Feed is a running list of updates from and about a user’s Friends. (FAC, Exs. A-B.)

1 group of Friends, or the public—and they can Unlike Pages at any time. (*Id.* ¶¶ 13-22.)

2 Plaintiffs are three longtime Facebook users who have Liked a variety of content on
 3 Facebook but take issue with a single Like in each of their accounts that was allegedly
 4 republished next to an advertisement.³ Plaintiff DiTirro, who has used Facebook since 2009,
 5 alleges that, in approximately “November of 2013, [he] received notification from one of his
 6 Facebook friends that [he] was featured on Facebook, ‘Liking’ USA TODAY newspaper in a
 7 Facebook sponsored advertisement.” (FAC ¶¶ 18, 24.) DiTirro claims that “he is not an avid
 8 reader of USA TODAY,” does not “endorse the newspaper,” and has “never clicked his ‘Like
 9 Button’ on USA TODAY’s website, USA TODAY’s Facebook page, nor any Facebook content
 10 or advertisement featuring USA TODAY.” (FAC ¶¶ 25-27.) Plaintiff Bresler, who has used
 11 Facebook since 2008, makes the same claims regarding ads for Duracell in which she allegedly
 12 appeared. (FAC ¶¶ 19, 32-34.) Plaintiff Shumate, who has also used Facebook since 2008,
 13 makes the same claims with respect to ads for Kohl’s. (FAC ¶¶ 20, 39-41.)⁴ Plaintiffs bring ten
 14 claims on behalf of a putative nationwide class, including false-light invasion of privacy,
 15 violations of the UCL, FAL, and CLRA, negligence, breach of contract, breach of the implied
 16 covenant of good faith and fair dealing, and unjust enrichment. (FAC ¶¶ 57-111.)

17 Plaintiffs claim that Facebook “knowingly,” “willfully,” “intentionally,” and
 18 “maliciously” made allegedly false statements about them. (*See, e.g.*, FAC ¶¶ 28, 31, 91.)
 19 Although Plaintiffs have used Facebook for the past *five to six years*, the FAC does nothing to
 20 undermine the more plausible explanation that Plaintiffs “Liked” the content at issue and simply
 21 *forgot* that they did. Plaintiffs’ FAC also fails to acknowledge that they may have *inadvertently*
 22 Liked the content at issue by misclicking on the Facebook website (or elsewhere) or by
 23 mistapping on their mobile phones. In fact, nowhere in the FAC do Plaintiffs dispute that the

24 ³ Plaintiffs’ claims do not arise from their appearance in ads generally, and they do not challenge
 25 Facebook’s practice of selling ads displaying statements that Users “Like” particular things on
 26 Facebook. Indeed, Plaintiffs concede, as they must, that all Users consent to Facebook’s
 commercial use of their name, photos, and other content by agreeing to the SRR. (*See* FAC ¶ 98.)

27 ⁴ The attached screenshot for Shumate (FAC, Ex. C) is not actually an ad, but a page displaying
 28 her Likes in her personal profile. Of the twelve-plus pages displayed, Shumate apparently claims
 to not recall liking only the Kohl’s Facebook Page.

1 Likes in question appear on their own “Activity Log,” which is a personal record of all of one’s
 2 activity on Facebook. Nor do Plaintiffs offer any explanation as to why Facebook would falsely
 3 attribute these Likes to them, among the many other Likes that Plaintiffs do not challenge.

4 Plaintiffs also do not claim that the *content* that appeared next to their Like statements was
 5 offensive. To the contrary, each Plaintiff “has nothing negative to say” about the companies in
 6 whose ads he or she allegedly appeared. (FAC ¶¶ 25, 33, 40.) Parroting various elements of their
 7 chosen causes of action, however, Plaintiffs allege—incongruously—that the allegedly false
 8 Likes caused them “cruel and unjust hardship and humiliation” (FAC ¶ 61), “impairment of their
 9 reputation” (FAC ¶ 63; *see also id.* ¶ 73), and a loss of money or property, “including but not
 10 limited to . . . misappropriation of their likenesses (which has monetary value), the lessened value
 11 of DEFENDANT’S service to them, and the diminishment in value of their personal information”
 12 (FAC ¶ 93). Plaintiffs plead no facts in support of these allegations, as discussed below.

13 III. LEGAL STANDARD

14 Rule 12(b)(6) requires dismissal when a plaintiff fails to present a cognizable legal theory
 15 or to allege sufficient facts supporting a legal theory upon which relief may be granted. *Navarro*
 16 *v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Although “all material allegations . . . are accepted
 17 as true,” *id.*, “labels and conclusions, and a formulaic recitation of the elements [cannot defeat
 18 dismissal],” and “courts are not bound to accept as true a legal conclusion couched as a factual
 19 allegation,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal quotation omitted).

20 Once a court sets aside conclusory assertions, it considers the *well-pleaded* factual
 21 allegations to assess whether the plaintiff has pleaded sufficient facts to state a facially plausible
 22 claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). “A claim has facial plausibility
 23 when the plaintiff pleads factual content that allows the court to draw the reasonable inference
 24 that the defendant is liable for the misconduct alleged.” *Id.* at 678. “Where a complaint pleads
 25 facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between
 26 possibility and plausibility of entitlement to relief.’” *Id.* (quoting *Twombly*, 550 U.S. at 557).

27

28

1 **IV. ARGUMENT**

2 **A. Plaintiffs fail to state a claim for false-light invasion of privacy (Claim Three).**

3 Plaintiffs allege that Facebook portrayed them in a false light by displaying statements
4 that they “Liked” content on Facebook (USA Today, Duracell, and Kohl’s) when they had not
5 clicked a Like button for that content. (FAC ¶¶ 77-86.) To state a claim for false-light invasion
6 of privacy, a plaintiff must plead (1) a public disclosure, (2) that places plaintiff in a false light,
7 (3) that would be highly offensive to a reasonable person. *See Fellows v. Nat’l Enquirer, Inc.*, 42
8 Cal. 3d 234, 238 (1986); *Brahmana v. Lembo*, No. C-09-00106 RMW, 2010 U.S. Dist. LEXIS
9 24784, at *10-11 (N.D. Cal. Mar. 17, 2010). Plaintiffs’ false-light claim fails because, among
10 other things, they fail to allege (and cannot allege) that the alleged false light would be “highly
11 offensive” to a reasonable person and because they fail to comply (and cannot comply) with
12 California Civil Code section 45a.

13 **1. The alleged false light is not “highly offensive” to a reasonable person.**

14 “[T]o be actionable, the false light in which the plaintiff is placed must be highly
15 offensive to a reasonable person.” *Fellows*, 42 Cal. 3d at 238-39; *see also Newcombe v. Adolf*
16 *Coors Co.*, 157 F.3d 686, 694-95 (9th Cir. 1998). “The plaintiff’s privacy is not invaded when
17 the unimportant false statements are made, even when they are made deliberately. It is only when
18 there is such a major misrepresentation of his character, history, activities or beliefs that serious
19 offense may reasonably be expected to be taken by a reasonable man in his position, that there is
20 a cause of action for invasion of privacy.” Restatement 2d of Torts, § 652E, cmt. c; *see also*
21 *Brahmana*, 2010 U.S. Dist. LEXIS 24784, at *10-11 (“To avoid a conflict with First Amendment
22 rights, courts have narrowly construed the ‘highly offensive’ standard.” (citation omitted)).

23 The alleged false statements here (“Tony DiTirro Likes USA Today,” “Kat Bresler Likes
24 Duracell,” and “Michelle Shumate Likes Kohl’s”) do not meet this standard. Plaintiffs
25 themselves acknowledge that they have “nothing negative to say” about the companies that they
26 are alleged to have Liked (FAC ¶¶ 25, 33, 40)—a candid admission belying any claim that
27 Plaintiffs were offended by the alleged statements. Nor can Plaintiffs claim that a reasonable
28 person would take offense to mere affiliation with well-known American companies, or that such

1 affiliation would expose them to “hatred, contempt, ridicule, or obloquy,” *M.G. v. Time Warner,*
 2 *Inc.*, 89 Cal. App. 4th 623, 636 (2001).⁵ The alleged statements here are, instead, of the type that
 3 has been repeatedly deemed too trivial to support a false-light claim. *See, e.g., Newcombe*, 157
 4 F.3d at 694-95 (no false-light claim where magazine ad “made it appear that [plaintiff] endorses
 5 alcohol”); *Silva v. Hearst Corp.*, No. CV 97-4142 DDP, 1997 U.S. Dist. LEXIS 22653, at *7-8
 6 (C.D. Cal. Aug. 21, 1997) (“it is not highly offensive to state that a person has benefactors”);
 7 *Hunley v. Orbital Scis. Corp.*, No. CV-05-1879-PHX-DGC, 2007 U.S. Dist. LEXIS 24101, at *7
 8 (D. Ariz. Mar. 27, 2007) (listing plaintiff as attendee of seminar on professionalism “cannot fairly
 9 be characterized as highly offensive to a reasonable person”).⁶

10 Unable to meet their pleading burden, Plaintiffs attempt a sleight-of-hand, alleging that
 11 “[t]he publicity created by DEFENDANT was offensive and objectionable to PLAINTIFFS and
 12 Class members, and to a reasonable person of ordinary sensibilities.” (FAC ¶ 82 (emphasis
 13 added).) But this is not enough. Unwanted publicity is an independent element of the tort, *see*
 14 *Pacini v. Wells Fargo Bank, N.A.*, No. 12-04605 RS, 2012 U.S. Dist. LEXIS 183151, at *11
 15 (N.D. Cal. Dec. 26, 2012), and cannot be used to meet the “highly offensive” standard. False
 16 light simply is not actionable unless the allegedly false statement, itself, is “highly offensive to a
 17 reasonable person.” *Fellows*, 42 Cal. 3d at 238-39; *Silva*, 1997 U.S. Dist. LEXIS 22653, at *6
 18 (“[T]he statements complained of must be highly offensive to a reasonable person.” (citation
 19 omitted; emphasis added)); Judicial Council of Cal. Civ. Jury Instructions (“CACI”) No. 1802.
 20 Because Plaintiffs have not alleged (and cannot allege) that the claimed false statements would be
 21 highly offensive to a reasonable person, and because they allege no facts to support such a claim,
 22 their false-light claim must fail.

23 ⁵ Indeed, more than 1.8 million people on Facebook Like USA Today; another 6 million people
 24 Like Duracell; and nearly 11 million people Like Kohl’s. *See* <https://www.facebook.com/usatoday>;
<https://www.facebook.com/duracell>; <https://www.facebook.com/kohls>.

25 ⁶ These allegations fall far short of the false light statements that have been held to satisfy the
 26 highly offensive standard. *See, e.g., M.G.*, 89 Cal. App. 4th at 636 (suggestion that individual had
 27 been molested supports false-light claim); *Tollefson v. Price*, 430 P.2d 990, 991-92 (Ore.
 28 1967) (statement that plaintiff does not pay his debts is highly objectionable); *Dean v. Guard*
Pub. Co., 744 P.2d 1296, 1298-99 (Ore. App. 1987) (portrayal of individual as an alcoholic in
 need of inpatient aversion treatment supports false-light claim).

1 **2. Plaintiffs fail to comply with Civil Code section 45a.**

2 Plaintiffs' false-light claim should also be dismissed for the independent reason that it
3 fails to comply with Civil Code section 45a, which provides: "Defamatory language not libelous
4 on its face is not actionable unless the plaintiff alleges and proves that he has suffered special
5 damage as a proximate result thereof." In *Fellows v. National Enquirer*, the California Supreme
6 Court made this provision applicable to false-light claims, reasoning that "[s]ince virtually every
7 published defamation would support an action for false light invasion of privacy, exempting such
8 actions from the requirement of proving special damages would render the statute a nullity." 42
9 Cal. 3d at 251.⁷ Thus, under section 45a, a false-light claim is actionable only if (1) the alleged
10 false statement is defamatory on its face, or (2) plaintiff "plead[s] and pro[ves] special damages."
11 *Id.*; see also *Newcombe*, 157 F.3d at 694-95.

12 Plaintiffs' claims do not satisfy either prong of section 45a. First, the alleged false
13 statements (e.g., "Tony DiTirro Likes USA Today") are not defamatory on their face.⁸ A
14 defamatory statement is one that "exposes a[] person to hatred, contempt, ridicule, or obloquy, or
15 which causes him to be shunned or avoided, or which has a tendency to injure him in his
16 occupation." Cal. Civ. Code § 45 (defining libel); *id.* § 44 (libel is a form of defamation). To be
17 defamatory on its face, however, the statement must be "defamatory of the plaintiff without the
18 necessity of explanatory matter, such as an inducement, innuendo or other extrinsic fact"
19 Cal. Civ. Code § 45a; see also *Newcombe*, 157 F.3d at 694-95. The statements here (e.g., "Tony
20 DiTirro Likes USA Today") are not defamatory and could not be, absent facts outside the alleged
21 ads themselves (no such facts are pleaded). See *Newcombe*, 157 F.3d at 694-95 ("The only way
22 an average person viewing the advertisement [suggesting that the plaintiff was endorsing alcohol]
23 might think that it was defamatory was if the person [knew plaintiff was] . . . a recovering

24 ⁷ See also *Selleck v. Globe Int'l, Inc.*, 166 Cal. App. 3d 1123, 1133-34 (1985) ("An action for
25 invasion of privacy by placing the plaintiff in a false light in the public eye is in substance
26 equivalent to a libel claim. A plaintiff alleging false light, therefore, must satisfy the
requirement[s] [for a defamation claim]."); accord *Kapellas v. Kofman*, 1 Cal. 3d 20, 35 (1969).

27 ⁸ "[W]hether a publication is libelous on its face is [a question] of law, and must be measured by
28 'the effect the publication would have on the mind of the average reader.'" *Downing v.*
Abercrombie & Fitch, 265 F.3d 994, 1010 (9th Cir. 2001) (quoting *Newcombe*, 157 F.3d at 695).

1 alcoholic; this is a textbook example of ‘explanatory matter.’”); *Downing*, 265 F.3d at 1010
 2 (absent extrinsic evidence, “an average person viewing the Quarterly would [not] think it
 3 defamatory if Appellants’ picture was included in a section [containing] . . . nude models”). The
 4 alleged false statements plainly cannot satisfy this prong.

5 In addition, Plaintiffs cannot, and do not, plead special damages. In the context of a false-
 6 light claim, special damages are “all damages which plaintiff alleges and proves that he has
 7 suffered in respect to his *property, business, trade, profession or occupation*, including such
 8 amounts of money as the plaintiff alleges and proves he has expended as a result[.]” Cal. Civ.
 9 Code § 48a(4)(b) (emphasis added). And “[t]he facts, . . . amount, . . . and the means of
 10 occasioning” such damages must be pleaded “with particularity.” *Shook v. Pearson*, 99 Cal. App.
 11 2d 348, 352 (1950); Fed. R. Civ. P. 9(g) (“If an item of special damage is claimed, it must be
 12 specifically stated.”).⁹ Plaintiffs cannot meet this standard because they are contractually barred
 13 from pursuing special damages against Facebook. (See Solanki Decl., Ex. A, SRR § 16.3
 14 (“[Facebook] WILL NOT BE LIABLE TO YOU FOR ANY LOST PROFITS OR OTHER
 15 CONSEQUENTIAL, SPECIAL, INDIRECT, OR INCIDENTAL DAMAGES ARISING OUT
 16 OF OR IN CONNECTION WITH THIS STATEMENT OR FACEBOOK[.]”).) This provision
 17 forecloses Plaintiffs from claiming special damages as a matter of law.¹⁰ See, e.g., *Datalex*
 18 *(Ireland) Ltd. v. PSA, Inc.*, No. CV 01-06482 DDP (VBKx), 2003 U.S. Dist. LEXIS 27563, at *5,
 19 *13 (C.D. Cal. Jan. 30, 2003) (in software licensing agreement, barring consequential damages
 20 based on clause disclaiming “LIABILITY FOR ANY ACTUAL, CONSEQUENTIAL,
 21 INCIDENTAL, PUNITIVE, SPECIAL OR INDIRECT DAMAGES, COSTS OR EXPENSES”).
 22 Nor have Plaintiffs even tried to claim special damages. Indeed, Plaintiffs’ requested relief on
 23

24 ⁹ While the requirement that plaintiff plead special damages arises from state law, the requirement
 25 that special damages be specifically pleaded stems from Federal Rule of Civil Procedure 9(g).
 26 *Isuzu Motors Ltd. v. Consumers Union of U.S., Inc.*, 12 F. Supp. 2d 1035, 1047 (C.D. Cal. 1998).

26 ¹⁰ Identical or substantially identical provisions were in place when each of the named Plaintiffs
 27 signed up for Facebook. (See Solanki Decl., Ex. B (“Limitation on Liability”); *id.*, Ex. C
 28 (“Limitation on Liability”); *id.*, Ex. D, § 14.3.) Section 16.3 forecloses special and consequential
 damages with respect to Plaintiffs’ other claims, as well, and limits the total recovery available to
 Plaintiffs. (See Solanki Decl., Ex. A § 16.3.)

1 this claim is limited to “general damages in an amount according to proof.” (FAC ¶ 84.)¹¹

2 Plaintiffs’ allegations are, in any event, too conclusory to satisfy Plaintiffs’ burden of
3 pleading special damages with particularity. *See* Fed. R. Civ. P. 9(g). For example, as to
4 Plaintiffs’ claim that Facebook “decreased [the] value of their personal information,” Plaintiffs
5 provide no supporting facts at all; they do not explain, for example, the circumstances of the
6 alleged diminution, how much was supposedly lost, how they found out, or that they have been
7 unable to monetize their personal information as a result. In the absence of these critical
8 particulars, Plaintiffs cannot pursue special damages.¹²

9 **B. Plaintiffs fail to state claims under the UCL and FAL (Claims Four and Five).**

10 Plaintiffs’ claims under the UCL and FAL fail because Plaintiffs have alleged no loss of
11 money or property, depriving them of standing to pursue their claims, and allege no specific facts
12 to support either the alleged misrepresentations by Facebook or their reliance thereon.

13 **1. Plaintiffs lack standing under the UCL and FAL.**

14 To bring a claim under the UCL or FAL, Plaintiffs must demonstrate that they “lost

15 ¹¹ Plaintiffs’ cursory allegations elsewhere in the FAC also do not plead special damages. To the
16 extent Plaintiffs claim reputational harm, embarrassment, mental anguish, humiliation, and hurt
17 feelings (*see, e.g.*, FAC ¶¶ 61, 73), they allege items only of general, not specific, damages. *See*
18 Cal. Civ. Code § 48a(4)(a) (“[G]eneral damages’ are damages for loss of reputation, shame,
19 mortification and hurt feelings[.]”). Plaintiffs also claim to have suffered “decreased value of
20 their personal information, the lessened value to them of DEFENDANT’S Facebook service, loss
21 of time in correcting DEFENDANT’S false representations and/or communicating with Friends
22 to correct these false representations, loss of reputation, misappropriation of their likenesses
(which have monetary value)[.]” (FAC ¶ 113; *accord* FAC ¶ 100.) But these alleged harms do
not relate to Plaintiffs’ “property, business, trade, profession or occupation[.]” Cal. Civ. Code §
48a(4)(b); *cf. Newcombe*, 157 F.3d at 694-95 (“medications . . . , gasoline for travel . . . ,
telephone calls, purchase of the subject magazine, [and] photocopy of the ad,” did not constitute
special damages in false light action).

23 ¹² *See, e.g., Core-Vent Corp. v. Nobel Indus. Swed. A.B.*, No. 97-552494, 1998 U.S. App. LEXIS
22175, at *20 n.6 (9th Cir. Sept. 9, 1998) (alleged injury to business, without “identify[ing] any
24 particular purchaser who refrained from buying [product],” was insufficiently particular); *Code*
25 *Rebel, LLC v. Aqua Connect, Inc.*, CV 13-4539 RSWL (MANx), 2013 U.S. Dist. LEXIS 137937,
at *12-13 (C.D. Cal. Sept. 24, 2013) (“bare allegation that [plaintiff] has or will sustain damages
in excess of \$100,000.00,” without facts about business’s value, lacked particularity); *KEMA, Inc.*
26 *v. Koperwhats*, No. C 09-1587 MMC, 2010 U.S. Dist. LEXIS 90803, at *22-24 (N.D. Cal. Sept.
1, 2010) (Rule 9(g) not satisfied where FAC failed to identify “‘particular purchasers’ who will
27 not deal with plaintiffs, or the ‘transactions of which [plaintiffs] claim[] to have been deprived,’
but, rather, contains only a conclusory allegation that . . . plaintiffs ‘have suffered damages in the
28 form of. . . lost revenue and damage to their business position and reputation’” (citation omitted)).

1 money or property” as a result of Facebook’s alleged actions. *See* Cal. Bus. & Prof. Code
 2 § 17204 (UCL); Cal. Bus. & Prof. Code § 17535 (FAL); *Kwikset Corp. v. Super. Ct.*, 51 Cal. 4th
 3 310, 325 (2011). Plaintiffs have failed to adequately allege a loss of either.

4 First, Plaintiffs have not alleged (and cannot allege) that they paid money to Facebook,
 5 which has always been free to users. Plaintiffs allude to lost “money” three times (FAC ¶¶ 93,
 6 100, 106), but allege no factual detail as to the amount or circumstances of the alleged loss. Thus,
 7 the FAC does not plead a cognizable loss of money. *See Twombly*, 550 U.S. at 555 (“labels and
 8 conclusions, and a formulaic recitation of the elements of a cause of action will not do,” and
 9 “courts are not bound to accept as true a legal conclusion couched as a factual allegation”).

10 Similarly, Plaintiffs have failed to allege a loss of property. Plaintiffs cursorily allege that
 11 they lost “money or property, including but not limited to loss to their reputations, the
 12 misappropriation of their likenesses (which has monetary value), the lessened value of
 13 DEFENDANT’S service to them, and the diminishment in value of their personal information.”
 14 (FAC ¶ 93.) Of these alleged losses, the only “property” even arguably at issue is Plaintiffs’
 15 personal information.¹³ However, it is well established that “personal information does not
 16 constitute property for purposes of a UCL claim.” *In re Facebook Privacy Litig.*, 791 F. Supp. 2d
 17 705, 714 (N.D. Cal. 2011) (dismissing UCL claim with prejudice); *see Thompson v. Home Depot,*
 18 *Inc.*, No. 07-cv-1058 IEG, 2007 WL 2746603, at *3 (S.D. Cal. Sept. 18, 2007) (“personal
 19 information” is not property under the UCL); *In re Google Inc. Street View Elec. Commc’ns*
 20 *Litig.*, 794 F. Supp. 2d 1067, 1086 (N.D. Cal. 2011) (lost personal data is not “lost property for
 21 purposes of determining Proposition 64 standing”); *see also In re Google Inc. Cookie Placement*
 22 *Consumer Privacy Litig.*, --- F. Supp. 2d ----, No. 12-2358-SLR, 2013 WL 5582866, at *10 (D.

23
 24 ¹³ Plaintiffs’ allegations of reputational injury, emotional injury, and the “the lessened value to
 25 them of DEFENDANT’S Facebook service” do not establish a loss of property under the UCL or
 26 FAL. *See Kwikset*, 51 Cal. 4th at 325 (plaintiff must suffer economic injury to have standing
 27 under UCL); *see also, e.g., In re Sony Gaming Networks & Customer Data Sec. Breach Litig.*,
 28 903 F. Supp. 2d 942, 966 (S.D. Cal. 2012) (loss of free third-party services is not a loss of money
 or property under UCL and FAL); *Robinson v. HSBC Bank USA*, 732 F. Supp. 2d 976, 988 (N.D.
 Cal. 2010) (reputational injury, based on ridicule resulting from display of advertisements next to
 pictures of plaintiff’s property, not a loss of money or property under UCL).

1 Del. Oct. 9, 2013); *Low v. LinkedIn Corp.*, No. 11-cv-01468-LHK, 2011 WL 5509848, at *5-6
 2 (N.D. Cal. Nov. 11, 2011); *Folgelstrom v. Lamps Plus, Inc.*, 195 Cal. App. 4th 986, 994 (2011).

3 Plaintiffs' allegations are also inadequate because Plaintiffs allege no specifics about the
 4 losses they allegedly sustained. Indeed, Plaintiffs fail to allege *a single fact* suggesting that their
 5 names and likenesses have value (to Plaintiffs, Facebook, or otherwise), that Plaintiffs have
 6 attempted to monetize them, or that the value of that information has been diminished. Plaintiffs
 7 also do not allege how Facebook's *free* service, which they continue to utilize, has been lessened
 8 in value to them. Plaintiffs also do not plausibly allege reputational harm; indeed, as previously
 9 discussed, they each concede that they have "nothing negative to say" about the companies in
 10 whose ads they appeared. (FAC ¶¶ 25, 33, 40.)

11 **2. Plaintiffs fail to allege particular misrepresentations and reliance.**

12 Plaintiffs' claims under the UCL and FAL are premised on the allegation that Facebook
 13 misrepresented that "[Plaintiffs] would own and control their personal information" and that
 14 Facebook "would not disseminate false, incorrect or untruthful information, and specifically
 15 would not falsely attribute sponsorship, endorsement, preference or approval in the form of
 16 'Likes' to them when they had not in fact 'Liked' a product, service or company." (FAC ¶¶ 21,
 17 23.) Plaintiffs further allege that they were "fraudulently induced to register with Facebook . . .
 18 based on their understanding that DEFENDANT would not fabricate false information about
 19 them and broadcast it to their Friends and others." (FAC ¶ 89; *see also id.* ¶ 96.)

20 Because these claims are based on alleged misrepresentations, Plaintiffs must allege that
 21 they relied upon the misrepresentations when joining and using Facebook. *Kwikset Corp.*, 51
 22 Cal. 4th at 326 (for UCL claims based on misrepresentations, plaintiffs must prove reliance); *In re*
 23 *Tobacco II*, 46 Cal. 4th 298, 326 (2009) ("Reliance is proved by showing that the defendant's
 24 misrepresentation or nondisclosure was an immediate cause of the . . . injury-producing conduct."
 25 (internal quotations and citation omitted)). Additionally, because UCL and FAL claims based on
 26 misrepresentation "sound in fraud," all elements must meet the particularity requirement of
 27 Federal Rule of Civil Procedure 9(b). *See Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1103-
 28 05 (9th Cir. 2003); *Kearns v. Ford Motor Co.*, 567 F. 3d 1120, 1125 (9th Cir. 2009). Under Rule

1 9(b), Plaintiffs must “allege that [they] [were] exposed to a *particular* representation that is
 2 claimed to be deceptive,” as well as “the ‘specifics’ of [their] reliance upon such
 3 misrepresentations.” *Donohue v. Apple, Inc.*, 871 F. Supp. 2d 913, 924 (N.D. Cal. 2012)
 4 (emphasis added). In other words, Plaintiffs must plead the “who, what, when, where, and how”
 5 of the misconduct charged. *Vess*, 317 F.3d at 1106.

6 Plaintiffs fall far short of their pleading burden. Indeed, Plaintiffs have not alleged that
 7 they were exposed to, or relied on, *any* particular statement by Facebook. Rather, they refer
 8 generically to “statements, including but not limited to [Facebook’s] terms of use” (FAC ¶ 96),
 9 “false and misleading representations and omissions” (FAC ¶ 99), “Facebook’s terms and
 10 conditions and other information provided by DEFENDANT” (FAC ¶¶ 18-20), Facebook’s
 11 “expressed purpose” (FAC ¶ 22), and its “mission and policies” (FAC ¶ 23). Without identifying
 12 specific misrepresentations by Facebook, Plaintiffs cannot plead reliance. *See Kwikset*, 51 Cal.
 13 4th at 326-27; *Donohue*, 871 F. Supp. 2d at 924 (plaintiffs must allege “particular
 14 [mis]representation” and “specifics” of reliance). Additionally, Plaintiffs’ cursory recitation fails
 15 even to approach the required level of specificity under Rule 9(b). *See Edwards v. Marin Park,*
 16 *Inc.*, 356 F.3d 1058, 1066 (9th Cir. 2003) (affirming dismissal of fraud-based claim where
 17 complaint “contain[ed] not a word of the . . . specific [alleged misrepresentation]” and plaintiff
 18 “did not attach the [alleged misrepresentations] to her complaint or to any other filing”); *Baltazar*
 19 *v. Apple, Inc.*, CV 10-3231-JF, 2011 U.S. Dist. LEXIS 13187, at *9-10 (N.D. Cal. Feb. 10, 2011)
 20 (dismissing UCL claim because plaintiffs did not allege “content of the alleged
 21 misrepresentations . . . in [defendant’s] commercials and [ads]”).

22 **C. Plaintiffs fail to state a claim under the CLRA (Claim Six).**

23 Plaintiffs’ CLRA claims fail because (1) Plaintiffs are not “consumers” within the
 24 meaning of the statute, (2) Facebook does not offer “goods or services” within the meaning of the
 25 statute, (3) Plaintiffs have failed to allege a CLRA injury, and (4) Plaintiffs’ fraud-based
 26 allegations are pleaded with insufficient specificity.

27 An action under the CLRA may be brought only by a “consumer,” defined as an
 28 individual who purchases or leases any goods or services for personal, family, or household

1 purposes. *See In re Facebook Privacy Litig.*, 791 F. Supp. 2d at 717 (citing *Schauer v. Mandarin*
 2 *Gems of Cal., Inc.*, 125 Cal. App. 4th 949, 960 (2005)). Because Facebook is free, Plaintiffs have
 3 not purchased or leased anything from Facebook. Moreover, although Plaintiffs allege that they
 4 “provide[d] personal information, and post[ed] content” on Facebook (*see, e.g.*, FAC ¶ 99), courts
 5 have repeatedly held that an exchange of personal information for software or services is beyond
 6 the scope of the CLRA. *See, e.g., In re Facebook Privacy Litig.*, 791 F. Supp. 2d at 717
 7 (dismissing CLRA claim against Facebook with prejudice, reasoning that “a ‘consumer’ is [one]
 8 who purchases or leases any goods or services for personal, family or household purposes. . . .
 9 Plaintiffs’ contention that their personal information constitutes a form of ‘payment’ to
 10 [Facebook] is unsupported by law”); *In re Google Inc. Cookie Placement*, 2013 WL 5582866, at
 11 *11 (dismissing CLRA claim, reasoning that “Plaintiffs did not pay for the advertisements and the
 12 contention that their personal information constitutes a form of ‘payment’ to Google ‘is
 13 unsupported by law”); *Yunker v. Pandora Media, Inc.*, No. 11-3113 JSW, 2013 WL 1282980, at
 14 *12 (N.D. Cal. Mar. 26, 2013) (dismissing CLRA claim in part because plaintiff alleged “he
 15 purchased the defendant’s services with his PII” and not with money).

16 Plaintiffs’ CLRA claim also fails because Facebook’s software-based website is neither a
 17 “good” nor a “service” within the meaning of the CLRA. *See, e.g., Ferrington v. McAfee, Inc.*,
 18 No. 10-CV-01455-LHK, 2010 WL 3910169, at *14 (N.D. Cal. Oct. 5, 2010) (software is not a
 19 good or service under the CLRA); *Yunker*, 2013 WL 1282980 at *13 (mobile application is not
 20 the type of tangible chattel that the CLRA defines as a good); *In re Google Inc. Cookie*
 21 *Placement*, 2013 WL 5582866, at *10 (website browser is not a service under the CLRA); *In re*
 22 *iPhone Application Litig.*, No. 11-MD-02250-LHK, 2011 WL 4403963, at *10 (N.D. Cal. Sept.
 23 20, 2011) (software is neither a good nor service under the CLRA). Thus, claims arising from the
 24 use of a free website, like Facebook, are not actionable under the CLRA.

25 Plaintiffs also allege no economic injury from their use of Facebook, as discussed *supra*
 26 Section IV.A.2, B.1. Without such injury, they cannot state a claim under the CLRA. *See In re*
 27 *iPhone Application Litig.*, No. 11-MD-02250-LHK, 2013 WL 6212591, at *6 (N.D. Cal. Nov. 25,
 28 2013) (CLRA claim requires reliance and resulting economic injury); *Kaing v. Pulte Homes, Inc.*,

1 No. 09-5057 SC, 2010 U.S. Dist. LEXIS 21320, at *12 (N.D. Cal. Feb. 18, 2010) (same).

2 Finally, as with their UCL and FAL claims, Plaintiffs' CLRA claims fail because they are
3 based on alleged misrepresentations by Facebook (*see* FAC ¶ 103), but fail to allege any specific
4 misrepresentation to which they were exposed or on which they relied. Plaintiffs' CLRA claim
5 thus fails for lack of reliance, *see Durell v. Sharp Healthcare*, 183 Cal. App. 4th 1350, 1367
6 (2010) (CLRA claim failed because plaintiff alleged no facts showing that he "relied on any
7 representation by" defendant), and because they have failed to provide the "who, what, when,
8 where, and how" required by Rule 9(b), *see Vess*, 317 F.3d at 1106.

9 **D. Plaintiffs fail to state a claim for negligence (Claim Seven).**

10 The "elements of any negligence cause of action [are] duty, breach of duty, proximate
11 cause, and damages." *Berkley v. Dowds*, 152 Cal. App. 4th 518, 526 (2007); *see also Artiglio v.*
12 *Corning Inc.*, 18 Cal. 4th 604, 614 (1998). Plaintiffs' claim fails for several independent reasons.

13 First, Plaintiffs allege no cognizable source of legal duty independent of their contractual
14 relationship with Facebook, as required to support a negligence claim. *See, e.g., Rodriguez v.*
15 *Bank of N.Y. Mellon*, No. 13-CV-1830-GPC, 2014 U.S. Dist. LEXIS 6501, at *27-28 (S.D. Cal.
16 Jan. 17, 2014) (dismissing negligence claim because "Plaintiff fails to show how, absent a valid
17 contractual relationship, Defendants owed any duty to Plaintiff"); *Missud v. Oakland Coliseum*
18 *Joint Venture*, No. 12-02967 JCS, 2013 U.S. Dist. LEXIS 91528, at *55-58 (N.D. Cal. June 27,
19 2013) (dismissing negligence claim because "the only injury alleged under this negligence theory
20 is that Plaintiffs' expectations under the contract were frustrated"); *Cal. State Auto. Ass'n Inter-*
21 *Ins. Bureau v. Policy Mgmt. Sys. Corp.*, No. C 93-4232 CW, 1996 U.S. Dist. LEXIS 21823, at
22 *17-18 (N.D. Cal. Jan. 9, 1996) (same because "Plaintiffs do not specify any . . . duty which
23 would have arisen between the parties independent of their contractual duties").

24 In an attempt to concoct such a duty, Plaintiffs claim that Facebook "assumed a duty to
25 exercise reasonable care not to misrepresent information about Plaintiffs" "[b]y soliciting and
26 encouraging PLAINTIFFS and Class members to register and use Facebook and post content, and
27 by agreeing to accept PLAINTIFFS' and Class members' content and information." (FAC
28 ¶ 111.) But Plaintiffs cite no statute, regulation, legal doctrine, or special relationship that would

1 impose such an obligation on Facebook in the absence of a contract. Rather, like Plaintiffs’
 2 contract claim (FAC ¶¶ 97-101), their negligence claim amounts to a complaint that Facebook
 3 failed to operate the site in a manner that conformed to their expectations, based on unspecified
 4 statements by Facebook (e.g., in the course of “soliciting” and “encouraging” Plaintiffs’ use of
 5 the site). (FAC ¶ 111.) Because Plaintiffs have identified no source of duty outside of the
 6 parties’ contract, their allegations cannot support a negligence claim. *See, e.g., In re iPhone*
 7 *Application Litig.*, 2011 WL 4403963, at *9 (dismissing negligence claim because “Plaintiffs
 8 have not yet adequately pled or identified a [non-contractual] legal duty on the part of Apple to
 9 protect users’ personal information from third-party app developers”); *Carillo v. Nationwide Mut.*
 10 *Fire Ins. Co.*, No. C 07-1979 JF, 2007 U.S. Dist. LEXIS 47919, at *5 (N.D. Cal. June 25, 2007)
 11 (dismissing negligence claim that simply “repackag[ed] . . . the breach of contract claim”).

12 Plaintiffs’ negligence claim is also barred by the “economic-loss rule.” Under that rule,
 13 “[g]enerally speaking, in actions for negligence, liability is limited to damages for physical
 14 injuries and recovery of economic loss is not allowed.” *Kalitta Air, LLC v. Cent. Tex. Airborne*
 15 *Inc.*, 315 F. App’x 603, 605 (9th Cir. 2008); *see also In re Sony Gaming Networks & Customer*
 16 *Data Breach Litig.*, 903 F. Supp. 2d at 961 (absent an exception, “a plaintiff’s tort recovery of
 17 economic damages is barred unless such damages are accompanied by some form of *physical*
 18 harm (i.e., personal injury or property damage).” (emphasis added)); *McKinney v. Google, Inc.*,
 19 No. 5:10-CV-01177 EJD, 2011 U.S. Dist. LEXIS 97958, at *23 (N.D. Cal. Aug. 30, 2011)
 20 (collecting cases). When it applies, the rule bars recovery of economic damages, such as “the
 21 difference between price paid and value received, and deviations from standards of quality that
 22 have not resulted in property damage or personal injury.” *Aas v. Super. Ct.*, 24 Cal. 4th 627, 636
 23 (2000), *superseded by statute on other grounds*; *see also In re iPhone Application Litig.*, 844 F.
 24 Supp. 2d 1040, 1064 (N.D. Cal. 2012) (“Purely economic damages to a plaintiff which stem from
 25 disappointed expectations from a commercial transaction must be addressed through contract law;
 26 negligence is not a viable cause of action for such claims.”); *Robinson Helicopter Co. v. Dana*
 27 *Corp.*, 34 Cal. 4th 979, 988 (2004) (“The economic loss rule requires a purchaser to recover in
 28 contract for purely economic loss due to disappointed expectations”).

1 Plaintiffs do not claim that they sustained physical injury or property damage, which,
 2 alone, is fatal to their negligence claim. *See, e.g., McKinney*, 2011 U.S. Dist. LEXIS 97958, at
 3 *23 (dismissing negligence claim on that basis). Moreover, each of Plaintiffs' asserted damage
 4 claims is unequivocally barred by the doctrine. For example, Plaintiffs seek damages for the
 5 "lessened value to them of DEFENDANT'S Facebook service," "misappropriation of their
 6 likenesses (which [allegedly] have monetary value)," and "loss of time in correcting
 7 DEFENDANT'S false representations and/or communicating with Friends to correct these false
 8 representations." (FAC ¶ 113.) But these items plainly stem from the alleged frustration of
 9 Plaintiffs' contractual expectations, not from physical harm or property damage. *See, e.g., In re*
 10 *Sony*, 903 F. Supp. 2d at 960 (in data-breach case, economic-loss rule barred recovery for "credit
 11 monitoring, loss of use and value of [defendant's] services, loss of use and value of prepaid Third
 12 Party Services, and diminution of the value of their [purchased products]");¹⁴ *see Aas*, 24 Cal. 4th
 13 at 639 (economic-loss rule "does not support recovery of damages representing the lost benefit of
 14 a bargain, such as the cost of [repair]"). Plaintiffs' alleged reputational injuries (FAC ¶ 113) fare
 15 no better, as such damages "constitute consequential economic losses, not claims of personal
 16 injury or property damage." *Barrier Specialty Roofing & Coatings, Inc. v. Ici Paints N. Am., Inc.*,
 17 No. CV 07-1614 LJO TAG, 2008 U.S. Dist. LEXIS 104963, at *16 (E.D. Cal. May 6, 2008); *see*
 18 *also Nucal Foods, Inc. v. Quality Egg LLC*, 918 F. Supp. 2d 1023, 1030 (E.D. Cal. 2013) ("[L]oss
 19 of reputation and lost profits and sales, is covered by the economic loss rule and cannot sound in
 20 tort."). Plaintiffs' asserted emotional damages also cannot save their claim because such
 21 damages, themselves, are not recoverable in negligence absent physical injury or other
 22 circumstances not present here. *See, e.g., Yu v. Signet Bank/Va.*, 69 Cal. App. 4th 1377, 1397

23
 24 ¹⁴ Cases in other jurisdictions have similarly applied the economic-loss doctrine to foreclose
 25 damages for nonphysical harm in user-content and data-breach cases. *See, e.g., AmeriFirst Bank*
 26 *v. TJX Cos.*, 564 F.3d 489, 498 (1st Cir. 2009) (alleged damage to "property interest in [] payment
 27 card information, which the security breach rendered worthless," was barred by the economic loss
 28 doctrine because it was "not a result of physical destruction of property"); *Pa. State Emps. Credit*
Union v. Fifth Third Bank, 398 F. Supp. 2d 317, 330 (M.D. Pa. 2005) (where data breach
 allegedly allowed theft of credit cards, economic loss doctrine barred negligence claim, because
 "the costs of replacing the cards" did not result from physical damage); *Cumis Ins. Soc'y, Inc. v.*
BJ's Wholesale Club, Inc., 918 N.E.2d 36, 46 (Mass. 2009) (same).

(1999) (emotional injury not compensable because “appellants suffered no physical injury as a consequence of respondents’ conduct”); *Branch v. Homefed Bank*, 6 Cal. App. 4th 793, 801 (1992) (in negligence action, vacating award of damages for emotional injury that was not accompanied by physical harm).

Independent of the economic-loss doctrine, Plaintiffs’ negligence claim fails because Plaintiffs allege no “appreciable, nonspeculative, present injury,” which is “an essential element of a tort cause of action.” *Aas*, 24 Cal. 4th at 646. As noted, Plaintiffs claim damages for the “decreased value of their personal information,” “lessened value to them of [the] Facebook service,” “loss of time in correcting DEFENDANT’S false representations and/or communicating with Friends to correct these false representations,” “loss of reputation,” and “misappropriation of their likenesses (which have monetary value)[.]” (FAC ¶ 113.) However, as discussed above, Plaintiffs plead not a single fact in support of these alleged harms. *See supra* Section IV.A.2, B.1; *Twombly*, 550 U.S. at 555 (“labels and conclusions[] . . . will not do”). Additionally, Plaintiffs’ allegations of “embarrassment, shock, anger, confusion, anxiety, and dismay” (FAC ¶ 113) are contradicted by Plaintiffs’ admissions that they have “nothing negative to say” about the companies to which Facebook allegedly attributed their Likes without permission. (FAC ¶ 25); *see Iqbal*, 556 U.S. at 663-64 (reviewing court should “draw on its experience and common sense” in determining whether complaint states plausible claim); *Kennedy v. Bank of Am., N.A.*, No. 12-CV-952 YGR, 2012 U.S. Dist. LEXIS 58636, at *12 (N.D. Cal. Apr. 26, 2012) (“the Court need not accept allegations that are contradicted by other allegations in the complaint”). For these reasons, Plaintiffs’ negligence claim must be dismissed.

E. Plaintiffs fail to state a claim for breach of contract (Claim Eight).

To state a claim for breach of contract, Plaintiffs must plead: “[1] the contract, [2] plaintiffs’ performance (or excuse for nonperformance), [3] defendant’s breach, and [4] damage to plaintiff therefrom.” *Gautier v. Gen. Tel. Co.*, 234 Cal. App. 2d 302, 305 (1965). “A cause of action for breach of implied contract has the same elements as does a cause of action for breach of contract, except that the promise is not expressed in words but is implied from the promisor’s conduct.” *Yari v. Producers Guild of Am., Inc.*, 161 Cal. App. 4th 172, 182 (2008); *see also Div.*

1 of *Labor Law Enforcement v. Transpac. Transp. Co.*, 69 Cal. App. 3d 268, 275 (1977).
 2 Plaintiffs' contract claim fails on several counts.

3 **1. Plaintiffs fail to identify the contract term(s) allegedly breached.**

4 To state a contract claim, "[t]he complaint must identify the specific provision of the
 5 contract allegedly breached by the defendant." *Donohue*, 871 F. Supp. 2d at 930 (dismissing
 6 claim on that basis); see *Bilodeau v. McAfee, Inc.*, No. 12-CV-04589-LHK, 2013 U.S. Dist.
 7 LEXIS 89226, at *39-41 (N.D. Cal. June 24, 2013) (same because plaintiff "fails to identify in
 8 what contract Defendants assumed the obligation to 'honestly and accurately inform [her] about
 9 the true condition of [her] computer,' much less identify [its] specific provisions" and warning
 10 that "[a]ny amended complaint . . . must identify the essential terms of the agreement and specific
 11 allegations of breach"); *McAfee v. Francis*, No. 5:11-CV-00821-LHK, 2011 U.S. Dist. LEXIS
 12 83878, at *5-6 (N.D. Cal. Aug. 1, 2011) (same because "Plaintiffs . . . do not specify the exact
 13 terms of the agreements . . . allegedly breached").¹⁵

14 Plaintiffs allude to vague contractual duties, but fail to identify a single contract term that
 15 Facebook allegedly breached. (*E.g.*, FAC ¶ 22 ("PLAINTIFFS . . . understood . . . from the terms
 16 and conditions that . . ."); FAC ¶ 99 ("DEFENDANT agreed, whether explicitly or impliedly, not
 17 to interject false content and/or make false representations about PLAINTIFFS . . .").) Plaintiffs'
 18 contract claims fail for this reason alone. See *Donohue*, 871 F. Supp. 2d at 930; see *Bilodeau*,
 19 2013 U.S. Dist. LEXIS 89226, at *39-41; *McAfee*, 2011 U.S. Dist. LEXIS 83878, at *5-6.

20 **2. Plaintiffs allege no appreciable damage from the alleged breach.**

21 Plaintiffs also allege no cognizable contract damages, as required to plead a claim for
 22 breach of contract. See *First Commercial Mortg. Co. v. Reece*, 89 Cal. App. 4th 731, 745 (2001);
 23 *Ruiz v. Gap, Inc.*, 622 F. Supp. 2d 908, 917 (N.D. Cal. 2009) ("Under California law, a breach of
 24

25 ¹⁵ This requirement applies whether the alleged contract is express or implied. See, e.g., *Coyotzi*
 26 *v. Countrywide Fin. Corp.*, No. CV F 09-1036 LJO SMS, 2009 U.S. Dist. LEXIS 91084, at *19
 27 (E.D. Cal. Sept. 15, 2009) (dismissing contract claim because complaint "fails to identify a
 28 specific contract and merely references 'express and implied terms of written agreements'");
Sweet v. Bridge Base Inc., No. CV F 08-1034 AWI GSA, 2009 U.S. Dist. LEXIS 44712, at *12-
 13 (E.D. Cal. May 28, 2009) (dismissing implied-contract claim because plaintiffs failed to allege
 facts supporting parties' agreement to term at issue).

1 contract claim requires a showing of appreciable and actual damage.” (citation omitted)).

2 First, Plaintiffs do not (and cannot) allege that they were monetarily damaged, since use of
 3 Facebook is free. Plaintiffs also get nowhere by alleging “that they did not receive the benefit of
 4 the bargain for which they contracted and for which they paid valuable consideration in the form
 5 of their Facebook membership and presence, personal information, and Facebook content,” and
 6 that they thus “overpaid for the bargained-for service.” (FAC ¶ 101.) Courts have long rejected
 7 the theory that the abstract economic loss of personal information can form the basis for damages,
 8 including contract damages. *See, e.g., Low v. LinkedIn Corp.*, 900 F. Supp. 2d 1010, 1028-29
 9 (N.D. Cal. 2012) (rejecting theory that, as a result of alleged breach, “Plaintiffs relinquished []
 10 valuable personal property without compensation to which they were each due[,]” explaining
 11 that “alleged decrease in the value of Plaintiffs’ personal information does not constitute
 12 cognizable contract damages”); *In re iPhone Application Litig.*, 2011 WL 4403963, at *5; *In re*
 13 *Jetblue Airways Corp. Privacy Litig.*, 379 F. Supp. 2d 299, 326 (E.D.N.Y. 2005) (loss of privacy
 14 from disclosure of data to third party “is not a damage available in a breach of contract action”).

15 Third, Plaintiffs plead no facts in support of their damages theory. For example, they do
 16 not allege that their “membership and presence, personal information, and Facebook content” has
 17 any specific, calculable monetary value (FAC ¶ 101), that they “‘reasonably expect[ed] that they
 18 would be compensated for the ‘value’ of their personal information,’ [or] . . . have been
 19 foreclosed from opportunities to capitalize on the value of their personal data,” *Low*, 900 F. Supp.
 20 2d at 1029 (citation omitted); *see also LaCourt v. Specific Media, Inc.*, No. 10-cv-1256 GW
 21 (JCGx), 2011 WL 1661532, at *5 (C.D. Cal. Apr. 28, 2011) (no injury because plaintiffs alleged
 22 no facts showing they “ascribed an economic value” to their personal information, attempted a
 23 value-for-value exchange of the information, or were deprived of its value). Plaintiffs’ bare
 24 allegation that “they did not receive the benefit of the[ir] bargain” cannot sustain this claim.

25 3. Plaintiffs’ implied-contract claim fails for additional reasons.

26 Plaintiffs’ implied-contract claim consists of a single allegation that “DEFENDANT
 27 agreed, *whether explicitly or implicitly*, not to interject false content and/or make false
 28 representations about PLAINTIFFS and Class members that would be visible to other Facebook

1 users[.]” (FAC ¶ 99 (emphasis added).) This claim fails for at least two additional reasons.

2 First, Plaintiffs cannot recover on an implied-contract theory because they allege the
3 existence of an express contract (*see, e.g.*, FAC ¶¶ 98, 103), covering the same subject matter (*see*
4 FAC ¶ 99 (“DEFENDANT agreed, *whether explicitly or implicitly*, not to interject false content
5”) (emphasis added)). Because “[a] contract is *either* express or implied,” an action “based
6 on an implied-in-fact . . . contract cannot lie where there exists between the parties a valid express
7 contract covering the same subject matter.” *O’Connor v. Uber Techs., Inc.*, No. C-13-3826 EMC,
8 2013 U.S. Dist. LEXIS 171813, at *35-36 (N.D. Cal. Dec. 5, 2013) (emphasis added; citation
9 omitted); *see also Roling v. E*Trade Secs., LLC*, 756 F. Supp. 2d 1179, 1189 (N.D. Cal. 2010)
10 (“[E]xistence of an express contract indisputably precludes allegations regarding an implied
11 contract for the same subject matter.”). This rule applies with special force here because the SRR
12 includes an integration clause (SRR § 19.2 (“This Statement makes up the entire agreement
13 between the parties regarding Facebook, and supersedes any prior agreements”)) that forecloses
14 the possibility of an implied contract between Facebook and Plaintiffs.¹⁶ *See Be In, Inc. v.*
15 *Google Inc.*, No. 12-CV-03373-LHK, 2013 U.S. Dist. LEXIS 147047, at *20-21 (N.D. Cal. Oct.
16 9, 2013) (action for implied contract did not lie where express contract covered same subject
17 matter and included integration clause). Plaintiffs’ implied-contract claim fails as a matter of law.

18 Second, Plaintiffs plead no facts supporting the existence of an implied-in-fact-contract, as
19 required to proceed under such a theory. *See, e.g., Youngman v. Nev. Irrigation Dist.*, 70 Cal. 2d
20 240, 246-47 (1969); *Yari*, 161 Cal. App. 4th at 182. Plaintiffs’ implied-contract claim reduces to
21 a bare allegation that Facebook agreed, “whether explicitly or implicitly,” to operate the site in a
22 particular manner. (FAC ¶ 99.) This allegation cannot support Plaintiffs’ claim. *See, e.g.,*
23 *Duarte v. Freeland*, No. C05-02780 MJJ, 2007 U.S. Dist. LEXIS 73750, at *30 (N.D. Cal. Sept.
24 24, 2007) (dismissing implied-contract claim for failure to plead facts showing “the existence of
25 any relationship or duties that were assumed by any of the parties”); *Gould v. Md. Sound Indus.,*
26 *Inc.*, 31 Cal. App. 4th 1137, 1151-52 (1995) (same where “vague reference[s]” and “oblique

27
28 ¹⁶ Identical or substantially identical provisions were in place when each named Plaintiff signed
up for Facebook. (*See* Solanki Decl. Ex. B (“Other”); *id.*, Ex. C (“Other”); *id.*, Ex. D, § 16.1.)

1 language” “failed to allege . . . facts from which a jury could find an implied-in-fact agreement”).

2 **F. Plaintiffs fail to state a claim for breach of the implied covenant of good faith**
 3 **and fair dealing (Claim Nine).**

4 Plaintiffs’ claim for breach of the implied covenant of good faith and fair dealing also
 5 fails. First, Plaintiffs fail to point to any particular contractual benefit of which Plaintiffs were
 6 deprived. “The implied covenant . . . [is] a *supplement* to the express contractual covenants, to
 7 prevent a contracting party from engaging in conduct which (while not technically transgressing
 8 the express covenants) frustrates the other party’s rights to the benefits of the contract.” *Racine &*
 9 *Laramie, Ltd. v. Dep’t of Parks & Recreation*, 11 Cal. App. 4th 1026, 1031-32 (1992). Thus,
 10 “[t]o state a claim for breach of the implied covenant of good faith and fair dealing, a plaintiff
 11 must identify the specific contractual provision that was frustrated.” *Perez v. Wells Fargo Bank,*
 12 *N.A.*, No. C-11-02279 JCS, 2011 U.S. Dist. LEXIS 96706, at *50-51 (N.D. Cal. Aug. 29, 2011).
 13 Plaintiffs allege that “DEFENDANT breached the implied covenant of good faith and fair dealing
 14 by falsely representing content” on Facebook (FAC ¶ 105), but do not identify any contractual
 15 provision allegedly frustrated by Facebook’s conduct. As such, this claim must be dismissed.
 16 *See, e.g., Plastino v. Wells Fargo Bank*, 873 F. Supp. 2d 1179, 1191 (N.D. Cal. 2012) (dismissing
 17 implied covenant claim for this reason); *Perez*, 2011 U.S. Dist. LEXIS 96706, at *50-51 (same).

18 Additionally, as with their contract claim, Plaintiffs have alleged no cognizable contract
 19 damages. *See supra* Section IV.E.2; *see also Lyons v. Coxcom, Inc.*, 718 F. Supp. 2d 1232 (S.D.
 20 Cal. 2009); CACI No. 325 (harm to plaintiff is a required element of breach of implied covenant).

21 Finally, the breach-of-implied-covenant claim should be dismissed because it duplicates
 22 the breach-of-contract claim. Where the allegations in support of a breach-of-implied-covenant
 23 claim “do not go beyond the statement of a mere contract breach and, relying on the same alleged
 24 acts, simply seek the same damages or other relief already claimed in a companion contract cause
 25 of action, they may be disregarded as superfluous as no additional claim is actually stated.”
 26 *Careau & Co. v. Sec. Pac. Bus. Credit*, 222 Cal. App. 3d 1371, 1395 (1990); *see also Order, In re*
 27 *Zynga Privacy Litig.*, No. 10-cv-04680, at *8 (N.D. Cal. Nov. 22, 2011), ECF No. 85 (implied
 28 covenant claim was “superfluous” where it alleged same acts as contract claim); *Lamke v.*

1 *Sunstate Equip. Co.*, 387 F. Supp. 2d 1044, 1048 (N.D. Cal. 2004) (dismissing implied-covenant
 2 claim because it “add[ed] nothing to any breach of contract claim”). Plaintiffs’ contract and
 3 implied-covenant claims are founded on the same allegation: that Facebook falsely “g[a]ve the
 4 appearance that PLAINTIFFS and Class members sponsored or endorsed products, services,
 5 and/or companies in the form of ‘Likes’ when in fact they did not.” (*Compare* FAC ¶ 105, with
 6 FAC ¶¶ 99-100.) This claim also fails.

7 **G. Plaintiffs fail to state a claim for unjust enrichment (Claim Ten).**

8 Plaintiffs’ claim for “Restitution Based on Quasi-Contract / Unjust Enrichment” fails for a
 9 number of independent reasons. As an initial matter, recent California Court of Appeal decisions
 10 have made it clear that unjust enrichment does not exist as a standalone cause of action under
 11 California law. *See Hill v. Roll Int’l Corp.*, 195 Cal. App. 4th 1295, 1307 (2011); *Durell*, 183
 12 Cal. App. 4th at 1370 (“[T]here is no cause of action in California for unjust enrichment.”);
 13 *Levine v. Blue Shield of Cal.*, 189 Cal. App. 4th 1117, 1138 (2010) (same); *Melchior v. New Line*
 14 *Prods., Inc.*, 106 Cal. App. 4th 779, 793 (2003) (same); *Vicuña v. Alexia Foods, Inc.*, No. 11-cv-
 15 6119, 2012 U.S. Dist. LEXIS 59408, at *7 (N.D. Cal. Apr. 27, 2012) (same); *Fraley v. Facebook,*
 16 *Inc.*, 830 F. Supp. 2d 785, 814-15 (N.D. Cal. 2011) (collecting authorities). As the court in
 17 *Melchior* explained, “[t]he phrase ‘Unjust Enrichment’ does not describe a theory of recovery, but
 18 an effect: the result of a failure to make restitution under circumstances where it is equitable to do
 19 so. Unjust enrichment is a general principle, underlying various legal doctrines and remedies,
 20 rather than a remedy itself.” 106 Cal. App. 4th at 793 (citations and quotation marks omitted).¹⁷

21 However, even if restitution/unjust enrichment were a standalone cause of action,
 22 Plaintiffs’ claim must still be dismissed. First, Plaintiffs nowhere dispute the existence of a valid,
 23 enforceable agreement. (FAC ¶ 98.) *See Klein v. Chevron U.S.A., Inc.*, 202 Cal. App. 4th 1342,
 24 1389 (2012) (“Although a plaintiff may plead inconsistent claims that allege both the existence of
 25 an enforceable agreement and the absence of an enforceable agreement, that is not what occurred

26 ¹⁷ Nor is restitution a cause of action, as these cases make clear. Rather, restitution is a *remedy*
 27 that may be awarded when a plaintiff proves a particular cause of action and the requirements for
 28 a restitutionary remedy are met. In any case, restitution would not be available here because
 Plaintiffs do not allege that they paid any money to Facebook. Indeed, Facebook is a free service.

1 here. Instead, plaintiffs' breach of contract claim pleaded the existence of an enforceable
 2 agreement and their unjust enrichment claim did not deny the existence or enforceability of that
 3 agreement."); *Allen v. Hylands, Inc.*, No. 12-cv-1150, 2012 WL 1656750, at *5 (C.D. Cal. May 2,
 4 2012) (dismissing unjust enrichment claim and holding that "absent any allegation that Plaintiffs'
 5 purchases were not enforceable agreements, Plaintiffs' quasi-contract claims are likewise not
 6 viable"). Second, even if Plaintiffs had denied the express contract, their claim for
 7 restitution/unjust enrichment still fails because they allege no facts as to *how* or *why* the express
 8 contract would be invalid or unenforceable such that the remedy for restitution would arise. *See*
 9 *Levine*, 189 Cal. App. 4th at 1138 (affirming sustaining of demurrer where plaintiffs "have not
 10 demonstrated any basis on which they would be entitled to restitution").

11 **H. Plaintiffs' claims should be dismissed with prejudice.**

12 Plaintiffs' claims should be dismissed with prejudice because they cannot amend to allege
 13 facts sufficient to state a claim. Any amendment would thus be futile and would be subject to
 14 dismissal. *See Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1298 (9th Cir. 1998) (leave to
 15 amend should not be granted where amended complaint would also be subject to dismissal).

16 **V. CONCLUSION**

17 For the foregoing reasons, Counts Three through Ten of the FAC should be dismissed
 18 with prejudice for failure to state a claim upon which relief can be granted.

19 Dated: April 15, 2014

COOLEY LLP

20 /s/ Jeffrey M. Gutkin

21 Jeffrey M. Gutkin

22 Attorneys for Defendant Facebook, Inc.

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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND
13

14 ANTHONY DITIRRO, KATYA BRESLER,
15 AND MICHELLE SHUMATE, individually
16 and on behalf of all others similarly situated,

17 Plaintiffs,

18 v.

19 FACEBOOK, INC.,

20 Defendant.
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Case No. 5:14-cv-00132-PJH

**DECLARATION OF SANDEEP N. SOLANKI
IN SUPPORT OF DEFENDANT FACEBOOK,
INC.'S MOTION TO DISMISS FIRST
AMENDED COMPLAINT**

Date: June 11, 2014
Time: 9:00 a.m.
Courtroom: 3
Judge: Hon. Phyllis J. Hamilton
Trial Date: None Set

1 I, Sandeep N. Solanki, hereby declare as follows:

2 1. I am employed as Associate General Counsel with Defendant Facebook, Inc.
3 (“Facebook”). Based on my overall experience working for Facebook, I have knowledge of
4 Facebook’s current and historical terms of use, as well as the sign-up (registration) process for
5 new users. Except as otherwise noted, I have personal knowledge of the following facts and, if
6 called to testify, could and would testify competently thereto.

7 2. To register for an account on Facebook, a user must agree to Facebook’s terms of
8 use, currently called the Statement of Rights and Responsibilities (“SRR”). Facebook has revised
9 its terms of use at various times.

10 3. Attached hereto as **Exhibit A** is a true and correct copy of the current terms of use
11 (SRR) that went into effect for all Users on or about November 15, 2013. These terms were in
12 place when Plaintiffs filed their original complaint on January 9, 2014 (Dkt. No. 1) and remain in
13 effect today.

14 4. Attached hereto as **Exhibit B** is a true and correct copy of the terms of use (SRR)
15 that went into effect for all users on or about September 23, 2008 and remained in place until
16 approximately February 4, 2009.

17 5. Attached hereto as **Exhibit C** is a true and correct copy of the terms of use (SRR)
18 that went into effect for all users on or about February 4, 2009 and remained in place until
19 approximately May 1, 2009.

20 6. Attached hereto as **Exhibit D** is a true and correct copy of the terms of use (SRR)
21 that went into effect for all Users on or about May 1, 2009. Between May 1, 2009 and December
22 31, 2009, Facebook revised the terms of use, but did not revise the text of any of the provisions
23 cited in the Motion to Dismiss, i.e., the limitation-of-remedies provision or integration clause
24 (sections 14.3 and 16.1, respectively, in the May 1, 2009 terms).

25 7. I understand from Plaintiffs’ First Amended Complaint (“FAC”) that Plaintiff
26 Katya Bresler alleges that she registered for an account on Facebook in 2008. (FAC ¶ 19.) Based
27 on publicly available information on Facebook, the user who appears to be Plaintiff Bresler
28 appears to have registered for her Facebook account on or about December 11, 2008. The version

1 of the terms of use in place on December 11, 2008 were those that went into effect on September
2 23, 2008 (**Exhibit B**).

3 8. I understand from the FAC that Plaintiff Michelle Shumate alleges that she
4 registered for an account on Facebook in 2008. (FAC ¶ 20.) Based on publicly available
5 information on Facebook, the user who appears to be Plaintiff Shumate appears to have registered
6 for her Facebook account on or about October 22, 2008. The version of the terms of use in place
7 on December 11, 2008 were those that went into effect on September 23, 2008 (**Exhibit B**).

8 9. I understand from the FAC that Mr. DiTirro alleges that he registered for an
9 account on Facebook in 2009. (FAC ¶ 18.) Assuming that Plaintiff DiTirro registered for
10 Facebook in 2009, as alleged, **Exhibit B** would have been the version of the terms in place if he
11 registered prior to February 4, 2009. If Plaintiff DiTirro registered for Facebook between
12 February 4, 2009 and May 1, 2009, **Exhibit C** would have been the version of the terms in place
13 at the time. If Plaintiff DiTirro registered for Facebook between May 1, 2009 and December 31,
14 2009, he would have been subject to the versions of the limitation-of-remedies provision and
15 integration clause contained in the May 1, 2009 terms of use (**Exhibit D**).

16 10. Notwithstanding Plaintiff DiTirro's allegation that he registered for Facebook in
17 2009 (FAC ¶18), publicly available information on Facebook suggests that the user who appears
18 to be Plaintiff DiTirro actually registered for his account on or about July 22, 2008. If Plaintiff
19 DiTirro registered on that date, he would have been subject to a version of the terms that went
20 into effect on June 7, 2008, which contained a limitation-of-remedies provision and integration
21 clause identical to that contained in the September 23, 2008 version of the terms (**Exhibit B**).

22 I declare under penalty of perjury that the foregoing is true and correct. Executed on April
23 15, 2014 in Menlo Park, California.



Sandeep Solanki

EXHIBIT A


[Sign Up](#)

Email or Phone

Password

[Log In](#)☒ Keep me logged in[Forgot your password?](#)

Statement of Rights and Responsibilities

This agreement was written in English (US). To the extent any translated version of this agreement conflicts with the English version, the English version controls. Please note that Section 17 contains certain changes to the general terms for users outside the United States.

Date of Last Revision: November 15, 2013.

Statement of Rights and Responsibilities

This Statement of Rights and Responsibilities ("Statement," "Terms," or "SRR") derives from the [Facebook Principles](#), and is our terms of service that governs our relationship with users and others who interact with Facebook. By using or accessing Facebook, you agree to this Statement, as updated from time to time in accordance with Section 14 below. Additionally, you will find resources at the end of this document that help you understand how Facebook works.

1. Privacy

Your privacy is very important to us. We designed our [Data Use Policy](#) to make important disclosures about how you can use Facebook to share with others and how we collect and can use your content and information. We encourage you to read the Data Use Policy, and to use it to help you make informed decisions.

2. Sharing Your Content and Information

You own all of the content and information you post on Facebook, and you can control how it is shared through your [privacy](#) and [application settings](#). In addition:

1. For content that is covered by intellectual property rights, like photos and videos (IP content), you specifically give us the following permission, subject to your [privacy](#) and [application settings](#): you grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook (IP License). This IP License ends when you delete your IP content or your account unless your content has been shared with others, and they have not deleted it.
2. When you delete IP content, it is deleted in a manner similar to emptying the recycle bin on a computer. However, you understand that removed content may persist in backup copies for a reasonable period of time (but will not be available to others).
3. When you use an application, the application may ask for your permission to access your content and information as well as content and information that others have shared with you. We require applications to respect your privacy, and your agreement with that application will control how the application can use, store, and transfer that content and information. (To learn more about Platform, including how you can control what information other people may share with applications, read our [Data Use Policy](#) and [Platform Page](#).)
4. When you publish content or information using the Public setting, it means that you are allowing everyone, including people off of Facebook, to access and use that information, and to associate it with you (i.e., your name and profile picture).
5. We always appreciate your feedback or other suggestions about Facebook, but you understand that we may use them without any obligation to compensate you for them (just as you have no obligation to offer them).

3. Safety

We do our best to keep Facebook safe, but we cannot guarantee it. We need your help to keep Facebook safe, which includes the following commitments by you:

1. You will not post unauthorized commercial communications (such as spam) on Facebook.
2. You will not collect users' content or information, or otherwise access Facebook, using automated means (such as harvesting bots, robots, spiders, or scrapers) without our prior permission.
3. You will not engage in unlawful multi-level marketing, such as a pyramid scheme, on Facebook.
4. You will not upload viruses or other malicious code.
5. You will not solicit login information or access an account belonging to someone else.
6. You will not bully, intimidate, or harass any user.
7. You will not post content that: is hate speech, threatening, or pornographic; incites violence; or contains nudity or graphic or gratuitous violence.

8. You will not develop or operate a third-party application containing alcohol-related, dating or other mature content (including advertisements) without appropriate age-based restrictions.
9. You will follow our [Promotions Guidelines](#) and all applicable laws if you publicize or offer any contest, giveaway, or sweepstakes ("promotion") on Facebook.
10. You will not use Facebook to do anything unlawful, misleading, malicious, or discriminatory.
11. You will not do anything that could disable, overburden, or impair the proper working or appearance of Facebook, such as a denial of service attack or interference with page rendering or other Facebook functionality.
12. You will not facilitate or encourage any violations of this Statement or our policies.

4. Registration and Account Security

Facebook users provide their real names and information, and we need your help to keep it that way. Here are some commitments you make to us relating to registering and maintaining the security of your account:

1. You will not provide any false personal information on Facebook, or create an account for anyone other than yourself without permission.
2. You will not create more than one personal account.
3. If we disable your account, you will not create another one without our permission.
4. You will not use your personal timeline primarily for your own commercial gain, and will use a Facebook Page for such purposes.
5. You will not use Facebook if you are under 13.
6. You will not use Facebook if you are a convicted sex offender.
7. You will keep your contact information accurate and up-to-date.
8. You will not share your password (or in the case of developers, your secret key), let anyone else access your account, or do anything else that might jeopardize the security of your account.
9. You will not transfer your account (including any Page or application you administer) to anyone without first getting our written permission.
10. If you select a username or similar identifier for your account or Page, we reserve the right to remove or reclaim it if we believe it is appropriate (such as when a trademark owner complains about a username that does not closely relate to a user's actual name).

5. Protecting Other People's Rights

We respect other people's rights, and expect you to do the same.

1. You will not post content or take any action on Facebook that infringes or violates someone else's rights or otherwise violates the law.
2. We can remove any content or information you post on Facebook if we believe that it violates this Statement or our policies.
3. We provide you with tools to help you protect your intellectual property rights. To learn more, visit our [How to Report Claims of Intellectual Property Infringement](#) page.
4. If we remove your content for infringing someone else's copyright, and you believe we removed it by mistake, we will provide you with an opportunity to appeal.
5. If you repeatedly infringe other people's intellectual property rights, we will disable your account when appropriate.
6. You will not use our copyrights or trademarks (including Facebook, the Facebook and F Logos, FB, Face, Poke, Book and Wall), or any confusingly similar marks, except as expressly permitted by our Brand Usage Guidelines or with our prior written permission.
7. If you collect information from users, you will: obtain their consent, make it clear you (and not Facebook) are the one collecting their information, and post a privacy policy explaining what information you collect and how you will use it.
8. You will not post anyone's identification documents or sensitive financial information on Facebook.
9. You will not tag users or send email invitations to non-users without their consent. Facebook offers social reporting tools to enable users to provide feedback about tagging.

6. Mobile and Other Devices

1. We currently provide our mobile services for free, but please be aware that your carrier's normal rates and fees, such as text messaging and data

charges, will still apply.

2. In the event you change or deactivate your mobile telephone number, you will update your account information on Facebook within 48 hours to ensure that your messages are not sent to the person who acquires your old number.
3. You provide consent and all rights necessary to enable users to sync (including through an application) their devices with any information that is visible to them on Facebook.

7. Payments

If you make a payment on Facebook or use Facebook Credits, you agree to our [Payments Terms](#).

8. Special Provisions Applicable to Social Plugins

If you include our Social Plugins, such as the Share or Like buttons on your website, the following additional terms apply to you:

1. We give you permission to use Facebook's Social Plugins so that users can post links or content from your website on Facebook.
2. You give us permission to use and allow others to use such links and content on Facebook.
3. You will not place a Social Plugin on any page containing content that would violate this Statement if posted on Facebook.

9. Special Provisions Applicable to Developers/Operators of Applications and Websites

If you are a developer or operator of a Platform application or website, the following additional terms apply to you:

1. You are responsible for your application and its content and all uses you make of Platform. This includes ensuring your application or use of Platform meets our [Facebook Platform Policies](#) and our [Advertising Guidelines](#).
2. Your access to and use of data you receive from Facebook, will be limited as follows:

1. You will only request data you need to operate your application.
2. You will have a privacy policy that tells users what user data you are going to use and how you will use, display, share, or transfer that data and you will include your privacy policy URL in the [Developer Application](#).
3. You will not use, display, share, or transfer a user's data in a manner inconsistent with your privacy policy.
4. You will delete all data you receive from us concerning a user if the user asks you to do so, and will provide a mechanism for users to make such a request.
5. You will not include data you receive from us concerning a user in any advertising creative.
6. You will not directly or indirectly transfer any data you receive from us to (or use such data in connection with) any ad network, ad exchange, data broker, or other advertising related toolset, even if a user consents to that transfer or use.
7. You will not sell user data. If you are acquired by or merge with a third party, you can continue to use user data within your application, but you cannot transfer user data outside of your application.
8. We can require you to delete user data if you use it in a way that we determine is inconsistent with users' expectations.
9. We can limit your access to data.
10. You will comply with all other restrictions contained in our [Facebook Platform Policies](#).

3. You will not give us information that you independently collect from a user or a user's content without that user's consent.
4. You will make it easy for users to remove or disconnect from your application.
5. You will make it easy for users to contact you. We can also share your email address with users and others claiming that you have infringed or otherwise violated their rights.
6. You will provide customer support for your application.
7. You will not show third party ads or web search boxes on www.facebook.com.
8. We give you all rights necessary to use the code, APIs, data, and tools you receive from us.
9. You will not sell, transfer, or sublicense our code, APIs, or tools to anyone.
10. You will not misrepresent your relationship with Facebook to others.
11. You may use the logos we make available to developers or issue a press release or other public statement so long as you follow our [Facebook Platform](#)

Policies.

12. We can issue a press release describing our relationship with you.
13. You will comply with all applicable laws. In particular you will (if applicable):
 1. have a policy for removing infringing content and terminating repeat infringers that complies with the Digital Millennium Copyright Act.
 2. comply with the Video Privacy Protection Act (VPPA), and obtain any opt-in consent necessary from users so that user data subject to the VPPA may be shared on Facebook. You represent that any disclosure to us will not be incidental to the ordinary course of your business.
14. We do not guarantee that Platform will always be free.
15. You give us all rights necessary to enable your application to work with Facebook, including the right to incorporate content and information you provide to us into streams, timelines, and user action stories.
16. You give us the right to link to or frame your application, and place content, including ads, around your application.
17. We can analyze your application, content, and data for any purpose, including commercial (such as for targeting the delivery of advertisements and indexing content for search).
18. To ensure your application is safe for users, we can audit it.
19. We can create applications that offer similar features and services to, or otherwise compete with, your application.

10. About Advertisements and Other Commercial Content Served or Enhanced by Facebook

Our goal is to deliver advertising and other commercial or sponsored content that is valuable to our users and advertisers. In order to help us do that, you agree to the following:

1. You give us permission to use your name, profile picture, content, and information in connection with commercial, sponsored, or related content (such as a brand you like) served or enhanced by us. This means, for example, that you permit a business or other entity to pay us to display your name and/or profile picture with your content or information, without any compensation to you. If you have selected a specific audience for your content or information, we will respect your choice when we use it.
2. We do not give your content or information to advertisers without your consent.
3. You understand that we may not always identify paid services and communications as such.

11. Special Provisions Applicable to Advertisers

You can target your desired audience by buying ads on Facebook or our publisher network. The following additional terms apply to you if you place an order through our online advertising portal (Order):

1. When you place an Order, you will tell us the type of advertising you want to buy, the amount you want to spend, and your bid. If we accept your Order, we will deliver your ads as inventory becomes available. When serving your ad, we do our best to deliver the ads to the audience you specify, although we cannot guarantee in every instance that your ad will reach its intended target.
2. In instances where we believe doing so will enhance the effectiveness of your advertising campaign, we may broaden the targeting criteria you specify.
3. You will pay for your Orders in accordance with our [Payments Terms](#). The amount you owe will be calculated based on our tracking mechanisms.
4. Your ads will comply with our [Advertising Guidelines](#).
5. We will determine the size, placement, and positioning of your ads.
6. We do not guarantee the activity that your ads will receive, such as the number of clicks your ads will get.
7. We cannot control how clicks are generated on your ads. We have systems that attempt to detect and filter certain click activity, but we are not responsible for click fraud, technological issues, or other potentially invalid click activity that may affect the cost of running ads.
8. You can cancel your Order at any time through our online portal, but it may take up to 24 hours before the ad stops running. You are responsible for paying for all ads that run.
9. Our license to run your ad will end when we have completed your Order. You understand, however, that if users have interacted with your ad, your ad may remain until the users delete it.
10. We can use your ads and related content and information for marketing or promotional purposes.
11. You will not issue any press release or make public statements about your relationship with Facebook without our prior written permission.
12. We may reject or remove any ad for any reason.

13. If you are placing ads on someone else's behalf, you must have permission to place those ads, including the following:

1. You warrant that you have the legal authority to bind the advertiser to this Statement.
2. You agree that if the advertiser you represent violates this Statement, we may hold you responsible for that violation.

12. Special Provisions Applicable to Pages

If you create or administer a Page on Facebook, or run a promotion or an offer from your Page, you agree to our [Pages Terms](#).

13. Special Provisions Applicable to Software

1. If you download or use our software, such as a stand-alone software product, an app, or a browser plugin, you agree that from time to time, the software may download and install upgrades, updates and additional features from us in order to improve, enhance, and further develop the software.
2. You will not modify, create derivative works of, decompile, or otherwise attempt to extract source code from us, unless you are expressly permitted to do so under an open source license, or we give you express written permission.

14. Amendments

1. Unless we make a change for legal or administrative reasons, or to correct an inaccurate statement, we will provide you with seven (7) days notice (for example, by posting the change on the [Facebook Site Governance Page](#)) and an opportunity to comment on changes to this Statement. You can also visit our [Facebook Site Governance Page](#) and "like" the Page to get updates about changes to this Statement.
2. If we make changes to policies referenced in or incorporated by this Statement, we may provide notice on the Site Governance Page.
3. Your continued use of Facebook following changes to our terms constitutes your acceptance of our amended terms.

15. Termination

If you violate the letter or spirit of this Statement, or otherwise create risk or possible legal exposure for us, we can stop providing all or part of Facebook to you. We will notify you by email or at the next time you attempt to access your account. You may also delete your account or disable your application at any time. In all such cases, this Statement shall terminate, but the following provisions will still apply: 2.2, 2.4, 3-5, 8.2, 9.1-9.3, 9.9, 9.10, 9.13, 9.15, 9.18, 10.3, 11.2, 11.5, 11.6, 11.9, 11.12, 11.13, and 15-19.

16. Disputes

1. You will resolve any claim, cause of action or dispute (claim) you have with us arising out of or relating to this Statement or Facebook exclusively in the U.S. District Court for the Northern District of California or a state court located in San Mateo County, and you agree to submit to the personal jurisdiction of such courts for the purpose of litigating all such claims. The laws of the State of California will govern this Statement, as well as any claim that might arise between you and us, without regard to conflict of law provisions.
2. If anyone brings a claim against us related to your actions, content or information on Facebook, you will indemnify and hold us harmless from and against all damages, losses, and expenses of any kind (including reasonable legal fees and costs) related to such claim. Although we provide rules for user conduct, we do not control or direct users' actions on Facebook and are not responsible for the content or information users transmit or share on Facebook. We are not responsible for any offensive, inappropriate, obscene, unlawful or otherwise objectionable content or information you may encounter on Facebook. We are not responsible for the conduct, whether online or offline, or any user of Facebook.
3. WE TRY TO KEEP FACEBOOK UP, BUG-FREE, AND SAFE, BUT YOU USE IT AT YOUR OWN RISK. WE ARE PROVIDING FACEBOOK AS IS WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. WE DO NOT GUARANTEE THAT FACEBOOK WILL ALWAYS BE SAFE, SECURE OR ERROR-FREE OR THAT FACEBOOK WILL ALWAYS FUNCTION WITHOUT DISRUPTIONS, DELAYS OR IMPERFECTIONS. FACEBOOK IS NOT RESPONSIBLE FOR THE ACTIONS, CONTENT, INFORMATION, OR DATA OF THIRD PARTIES, AND YOU RELEASE US, OUR DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS FROM ANY CLAIMS AND DAMAGES, KNOWN AND UNKNOWN, ARISING OUT OF OR IN ANY WAY CONNECTED WITH ANY CLAIM YOU HAVE AGAINST ANY SUCH THIRD PARTIES. IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE §1542, WHICH SAYS: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR. WE WILL NOT BE LIABLE TO YOU FOR ANY LOST PROFITS OR OTHER

CONSEQUENTIAL, SPECIAL, INDIRECT, OR INCIDENTAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS STATEMENT OR FACEBOOK, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. OUR AGGREGATE LIABILITY ARISING OUT OF THIS STATEMENT OR FACEBOOK WILL NOT EXCEED THE GREATER OF ONE HUNDRED DOLLARS (\$100) OR THE AMOUNT YOU HAVE PAID US IN THE PAST TWELVE MONTHS. APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN SUCH CASES, FACEBOOK'S LIABILITY WILL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

17. Special Provisions Applicable to Users Outside the United States

We strive to create a global community with consistent standards for everyone, but we also strive to respect local laws. The following provisions apply to users and non-users who interact with Facebook outside the United States:

1. You consent to having your personal data transferred to and processed in the United States.
2. If you are located in a country embargoed by the United States, or are on the U.S. Treasury Department's list of Specially Designated Nationals you will not engage in commercial activities on Facebook (such as advertising or payments) or operate a Platform application or website. You will not use Facebook if you are prohibited from receiving products, services, or software originating from the United States.
3. Certain specific terms that apply only for German users are available [here](#).

18. Definitions

1. By "Facebook" we mean the features and services we make available, including through (a) our website at www.facebook.com and any other Facebook branded or co-branded websites (including sub-domains, international versions, widgets, and mobile versions); (b) our Platform; (c) social plugins such as the Like button, the Share button and other similar offerings and (d) other media, software (such as a toolbar), devices, or networks now existing or later developed.
2. By "Platform" we mean a set of APIs and services (such as content) that enable others, including application developers and website operators, to retrieve data from Facebook or provide data to us.
3. By "information" we mean facts and other information about you, including actions taken by users and non-users who interact with Facebook.
4. By "content" we mean anything you or other users post on Facebook that would not be included in the definition of information.
5. By "data" or "user data" or "user's data" we mean any data, including a user's content or information that you or third parties can retrieve from Facebook or provide to Facebook through Platform.
6. By "post" we mean post on Facebook or otherwise make available by using Facebook.
7. By "use" we mean use, run, copy, publicly perform or display, distribute, modify, translate, and create derivative works of.
8. By "active registered user" we mean a user who has logged into Facebook at least once in the previous 30 days.
9. By "application" we mean any application or website that uses or accesses Platform, as well as anything else that receives or has received data from us. If you no longer access Platform but have not deleted all data from us, the term application will apply until you delete the data.

19. Other

1. If you are a resident of or have your principal place of business in the US or Canada, this Statement is an agreement between you and Facebook, Inc. Otherwise, this Statement is an agreement between you and Facebook Ireland Limited. References to "us," "we," and "our" mean either Facebook, Inc. or Facebook Ireland Limited, as appropriate.
2. This Statement makes up the entire agreement between the parties regarding Facebook, and supersedes any prior agreements.
3. If any portion of this Statement is found to be unenforceable, the remaining portion will remain in full force and effect.
4. If we fail to enforce any of this Statement, it will not be considered a waiver.
5. Any amendment to or waiver of this Statement must be made in writing and signed by us.
6. You will not transfer any of your rights or obligations under this Statement to anyone else without our consent.
7. All of our rights and obligations under this Statement are freely assignable by us in connection with a merger, acquisition, or sale of assets, or by operation of law or otherwise.
8. Nothing in this Statement shall prevent us from complying with the law.
9. This Statement does not confer any third party beneficiary rights.
10. We reserve all rights not expressly granted to you.

11. You will comply with all applicable laws when using or accessing Facebook.

You may also want to review the following documents, which provide additional information about your use of Facebook:

- [Data Use Policy](#): The Data Use Policy contains information to help you understand how we collect and use information.
- [Payment Terms](#): These additional terms apply to all payments made on or through Facebook.
- [Platform Page](#): This page helps you better understand what happens when you add a third-party application or use Facebook Connect, including how they may access and use your data.
- [Facebook Platform Policies](#): These guidelines outline the policies that apply to applications, including Connect sites.
- [Advertising Guidelines](#): These guidelines outline the policies that apply to advertisements placed on Facebook.
- [Promotions Guidelines](#): These guidelines outline the policies that apply if you offer contests, sweepstakes, and other types of promotions on Facebook.
- [Facebook Brand Resources](#): These guidelines outline the policies that apply to use of Facebook trademarks, logos and screenshots.
- [How to Report Claims of Intellectual Property Infringement](#)
- [Pages Terms](#): These guidelines apply to your use of Facebook Pages.
- [Community Standards](#): These guidelines outline our expectations regarding the content you post to Facebook and your activity on Facebook.

To access the Statement of Rights and Responsibilities in several different languages, change the language setting for your Facebook session by clicking on the language link in the left corner of most pages. If the Statement is not available in the language you select, we will default to the English version.

Mobile	Find Friends	Badges	People	Pages	Places	Apps	Games	Music
About	Create Ad	Create Page	Developers	Careers	Privacy	Cookies	Terms	Help

Facebook © 2014 · [English \(US\)](#)



 Sign Up

Email or Phone

Password

Log In

☒ Keep me logged in

Forgot your password?

Statement of Rights and Responsibilities

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Date of Last Revision: November 15, 2013.

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Your privacy is very important to us. We designed our [Data Use Policy](#) to make important disclosures about how you can use Facebook to share with others and how we collect and can use your content and information. We encourage you to read the Data Use Policy, and to use it to help you make informed decisions.

2. Sharing Your Content and Information

You own all of the content and information you post on Facebook, and you can control how it is shared through your [privacy](#) and [application settings](#). In addition:

1. For content that is covered by intellectual property rights, like photos and videos (IP content), you specifically give us the following permission, subject to your [privacy](#) and [application settings](#): you grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook (IP License). This IP License ends when you delete your IP content or your account unless your content has been shared with others, and they have not deleted it.
2. When you delete IP content, it is deleted in a manner similar to emptying the recycle bin on a computer. However, you understand that removed content may persist in backup copies for a reasonable period of time (but will not be available to others).
3. When you use an application, the application may ask for your permission to access your content and information as well as content and information that others have shared with you. We require applications to respect your privacy, and your agreement with that application will control how the application can use, store, and transfer that content and information. (To learn more about Platform, including how you can control what information other people may share with applications, read our [Data Use Policy](#) and [Platform Page](#).)
4. When you publish content or information using the Public setting, it means that you are allowing everyone, including people off of Facebook, to access and use that information, and to associate it with you (i.e., your name and profile picture).
5. We always appreciate your feedback or other suggestions about Facebook, but you understand that we may use them without any obligation to compensate you for them (just as you have no obligation to offer them).

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2. You will not collect users' content or information, or otherwise access Facebook, using automated means (such as harvesting bots, robots, spiders, or scrapers) without our prior permission.
3. You will not engage in unlawful multi-level marketing, such as a pyramid scheme, on Facebook.
4. You will not upload viruses or other malicious code.
5. You will not solicit login information or access an account belonging to someone else.
6. You will not bully, intimidate, or harass any user.
7. You will not post content that: is hate speech, threatening, or pornographic; incites violence; or contains nudity or graphic or gratuitous violence.

EXHIBIT B

Terms of Use

Date of Last Revision: September 23, 2008

Welcome to Facebook, a social utility that connects you with the people around you. The Facebook service and network (collectively, "Facebook" or "the Service") are operated by Facebook, Inc. and its corporate affiliates (collectively, "us", "we" or "the Company"). By accessing or using our web site at www.facebook.com or the mobile version thereof (together the "Site") or by posting a Share Button on your site, you (the "User") signify that you have read, understand and agree to be bound by these Terms of Use ("Terms of Use" or "Agreement"), whether or not you are a registered member of Facebook. We reserve the right, at our sole discretion, to change, modify, add, or delete portions of these Terms of Use at any time without further notice. If we do this, we will post the changes to these Terms of Use on this page and will indicate at the top of this page the date these terms were last revised. Your continued use of the Service or the Site after any such changes constitutes your acceptance of the new Terms of Use. If you do not agree to abide by these or any future Terms of Use, do not use or access (or continue to use or access) the Service or the Site. It is your responsibility to regularly check the Site to determine if there have been changes to these Terms of Use and to review such changes.

PLEASE READ THESE TERMS OF USE CAREFULLY AS THEY CONTAIN IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES AND OBLIGATIONS. THESE INCLUDE VARIOUS LIMITATIONS AND EXCLUSIONS, AND A DISPUTE RESOLUTION CLAUSE THAT GOVERNS HOW DISPUTES WILL BE RESOLVED.

Eligibility

Membership in the Service is void where prohibited. This Site is intended solely for users who are thirteen (13) years of age or older, and users of the Site under 18 who are currently in high school or college. Any registration by, use of or access to the Site by anyone under 13, or by anyone who is under 18 and not in high school or college, is unauthorized, unlicensed and in violation of these Terms of Use. By using the Service or the Site, you represent and warrant that you are 13 or older and in high school or college, or else that you are 18 or older, and that you agree to and to abide by all of the terms and conditions of this Agreement.

Registration Data; Account Security

In consideration of your use of the Site, you agree to (a) provide accurate, current and complete information about you as may be prompted by any registration forms on the Site ("Registration Data"); (b) maintain the security of your password and identification; (c) maintain and promptly update the Registration Data, and any other information you provide to Company, to keep it accurate, current and complete; and (d) be fully responsible for all use of your account and for any actions that take place using your account.

Proprietary Rights in Site Content; Limited License

All content on the Site and available through the Service, including designs, text, graphics, pictures, video, information, applications, software, music, sound and other files, and their selection and arrangement (the "Site Content"), are the proprietary property of the Company, its users or its licensors with all rights reserved. No Site Content may be modified, copied, distributed, framed, reproduced, republished, downloaded, scraped, displayed, posted, transmitted, or sold in any form or by any means, in whole or in part, without the Company's prior written permission, except that the foregoing does not apply to your own User Content (as defined below) that you legally post on the Site. Provided that you are eligible for use of the Site, you are granted a limited license to access and use the Site and the Site Content and to download or print a copy of any portion of the Site Content to which you have properly gained access solely for your personal, non-commercial use, provided that you keep all copyright or other proprietary notices intact. Except for your own User Content, you may not upload or republish Site Content on any Internet, Intranet or Extranet site or incorporate the information in any other database or compilation, and any other use of the Site Content is strictly prohibited. Such license is subject to these Terms of Use and does not permit use of any data mining, robots, scraping or similar data gathering or extraction methods. Any use of the Site or the Site Content other than as specifically authorized herein, without the prior written permission of Company, is strictly prohibited and will terminate the license granted herein. Such unauthorized use may also violate applicable laws including copyright and trademark laws and applicable communications regulations and statutes. Unless explicitly stated herein, nothing in these Terms of Use shall be construed as conferring any license to intellectual property rights, whether by estoppel, implication or otherwise. This license is revocable at any time without notice and with or without cause.

Trademarks

32665, FACEBOOK, THE FACEBOOK, FACEBOOKHIGH, FBOOK, POKE, THE WALL and other Company graphics, logos, designs, page headers, button icons, scripts and service names are registered trademarks, trademarks or trade dress of Company in the U.S. and/or other countries. Company's trademarks and trade dress may not be used, including as part of trademarks and/or as part of domain names, in connection with any product or service in any manner that is likely to cause confusion and may not be copied, imitated, or used, in whole or in part, without the prior written permission of the Company.

User Conduct

You understand that except for advertising programs offered by us on the Site (e.g., Facebook Flyers, Facebook Marketplace), the Service and the Site are available for your personal, non-commercial use only. You represent, warrant and agree that no

materials of any kind submitted through your account or otherwise posted, transmitted, or shared by you on or through the Service will violate or infringe upon the rights of any third party, including copyright, trademark, privacy, publicity or other personal or proprietary rights; or contain libelous, defamatory or otherwise unlawful material.

In addition, you agree not to use the Service or the Site to:

harvest or collect email addresses or other contact information of other users from the Service or the Site by electronic or other means for the purposes of sending unsolicited emails or other unsolicited communications;

use the Service or the Site in any unlawful manner or in any other manner that could damage, disable, overburden or impair the Site;

use automated scripts to collect information from or otherwise interact with the Service or the Site;

upload, post, transmit, share, store or otherwise make available any content that we deem to be harmful, threatening, unlawful, defamatory, infringing, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, invasive of privacy or publicity rights, hateful, or racially, ethnically or otherwise objectionable;

upload, post, transmit, share, store or otherwise make available any videos other than those of a personal nature that: (i) are of you or your friends, (ii) are taken by you or your friends, or (iii) are original art or animation created by you or your friends;

register for more than one User account, register for a User account on behalf of an individual other than yourself, or register for a User account on behalf of any group or entity;

impersonate any person or entity, or falsely state or otherwise misrepresent yourself, your age or your affiliation with any person or entity;

upload, post, transmit, share or otherwise make available any unsolicited or unauthorized advertising, solicitations, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;

upload, post, transmit, share, store or otherwise make publicly available on the Site any private information of any third party, including, addresses, phone numbers, email addresses, Social Security numbers and credit card numbers;

solicit personal information from anyone under 18 or solicit passwords or personally identifying information for commercial or unlawful purposes;

upload, post, transmit, share or otherwise make available any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;

intimidate or harass another;

upload, post, transmit, share, store or otherwise make available content that would constitute, encourage or provide instructions for a criminal offense, violate the rights of any party, or that would otherwise create liability or violate any local, state, national or international law;

use or attempt to use another's account, service or system without authorization from the Company, or create a false identity on the Service or the Site. upload, post, transmit, share, store or otherwise make available content that, in the sole judgment of Company, is objectionable or which restricts or inhibits any other person from using or enjoying the Site, or which may expose Company or its users to any harm or liability of any type. Without limiting any of the foregoing, you also agree to abide by our Facebook Code of Conduct that provides further information regarding the authorized conduct of users on Facebook.

User Content Posted on the Site

You are solely responsible for the photos, profiles (including your name, image, and likeness), messages, notes, text, information, music, video, advertisements, listings, and other content that you upload, publish or display (hereinafter, "post") on or through the Service or the Site, or transmit to or share with other users (collectively the "User Content"). You may not post, transmit, or share User Content on the Site or Service that you did not create or that you do not have permission to post. You understand and agree that the Company may, but is not obligated to, review the Site and may delete or remove (without notice) any Site Content or User Content in its sole discretion, for any reason or no reason, including User Content that in the sole judgment of the Company violates this Agreement or the Facebook Code of Conduct, or which might be offensive, illegal, or that might violate the rights, harm, or threaten the safety of users or others. You are solely responsible at your sole cost and expense for creating backup copies and replacing any User Content you post or store on the Site or provide to the Company.

When you post User Content to the Site, you authorize and direct us to make such copies thereof as we deem necessary in order to facilitate the posting and storage of the User Content on the Site. By posting User Content to any part of the Site, you automatically grant, and you represent and warrant that you have the right to grant, to the Company an irrevocable, perpetual, non-exclusive, transferable, fully paid, worldwide license (with the right to sublicense) to use, copy, publicly perform, publicly display, reformat, translate, excerpt (in whole or in part) and distribute such User Content for any purpose, commercial, advertising, or otherwise, on or in connection with the Site or the promotion thereof, to prepare derivative works of, or incorporate into other works, such User Content, and to grant and authorize sublicenses of the foregoing. You may remove your User Content from the Site at any time. If you choose to remove your User Content, the license granted above will automatically expire, however you acknowledge that the Company may retain archived copies of your User Content. Facebook does not assert any ownership over your User Content; rather, as between us and you, subject to the rights granted to us in these Terms, you retain full ownership of all of your User Content and any intellectual property rights or other proprietary rights associated with your User Content.

Facebook Mobile Services

The Service includes certain services that are available via your mobile phone, including (i) the ability to upload content to Facebook via your mobile phone (Mobile Uploads), (ii) the ability to receive and reply to Facebook messages, to poke and receive pokes and to write wall posts using text messaging (Mobile Texts), (iii) the ability to browse Facebook from your mobile phone (Mobile Web), and (iv) the ability to access certain Facebook features through a mobile application you have downloaded and installed on your mobile phone (Mobile Client) (collectively the "Mobile Services"). We do not charge for these Mobile Services. However, your carrier's normal messaging, data and other rates and fees will still apply. You should check with your carrier to find out what plans are available and how much they cost. In addition, downloading, installing, or using certain Mobile Services may be prohibited or restricted by your carrier, and not all Mobile Services may work with all carriers or devices. Therefore, you should check with your carrier to find out if the Mobile Services are available for your mobile devices, and what restrictions, if any, may be applicable to your use of such Mobile Services. By using the Mobile Services, you agree that we may communicate with you regarding Facebook and other entities by SMS, MMS, text message or other electronic means to your mobile device and that certain information about your usage of the Mobile Services may be communicated to us. In the event you change or deactivate your mobile telephone number, you agree to promptly update your Facebook account information to ensure that your messages are not sent to the person that acquires your old number.

Copyright Complaints

We respect the intellectual property rights of others and we prohibit users from uploading, posting or otherwise transmitting on the Facebook website or service any materials that violate another party's intellectual property rights. When we receive proper Notification of Alleged Copyright Infringement as described in our Facebook Copyright Policy, we promptly remove or disable access to the allegedly infringing material and terminate the accounts of repeat infringers as described herein in accordance with the Digital Millennium Copyright Act. If you believe that any material on the Site infringes upon any copyright which you own or control, you may send a written notification of such infringement to our Designated Agent. Please see our Facebook Copyright Policy for more information on how to report infringement of your copyright.

Repeat Infringer Policy

In accordance with the Digital Millennium Copyright Act (DMCA) and other applicable law, Company has adopted a policy of terminating, in appropriate circumstances and at Company's sole discretion, members who are deemed to be repeat infringers. Company may also at its sole discretion limit access to the Site and/or terminate the memberships of any users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

Third Party Websites and Content

The Site contains (or you may be sent through the Site or the Service) links to other web sites ("Third Party Sites") as well as articles, photographs, text, graphics, pictures, designs, music, sound, video, information, applications, software and other content or items belonging to or originating from third parties (the "Third Party Applications, Software or Content"). Such Third Party Sites and Third Party Applications, Software or Content are not investigated, monitored or checked for accuracy, appropriateness, or completeness by us, and we are not responsible for any Third Party Sites accessed through the Site or any Third Party Applications, Software or Content posted on, available through or installed from the Site, including the content, accuracy, offensiveness, opinions, reliability, privacy practices or other policies of or contained in the Third Party Sites or the Third Party Applications, Software or Content. Inclusion of, linking to or permitting the use or installation of any Third Party Site or any Third Party Applications, Software or Content does not imply approval or endorsement thereof by us. If you decide to leave the Site and access the Third Party Sites or to use or install any Third Party Applications, Software or Content, you do so at your own risk and you should be aware that our terms and policies no longer govern. You should review the applicable terms and policies, including privacy and data gathering practices, of any site to which you navigate from the Site or relating to any applications you use or install from the site.

Share Service

Company offers a feature whereby users of the Site can share with others or post to their own member profile, videos, articles and other Third Party Applications, Software or Content from, and/or links to, Third Party Sites through the Service (the "Share Service"). You acknowledge and agree that your use of the Share Services and all links, User Content or Third Party Applications, Software or Content shared through the Share Service is subject to, and will fully comply with the user conduct rules set forth above and the other terms and conditions set forth in these Terms of Use.

Use of Share Links by Online Content Providers

Subject to the terms and conditions of these Terms of Use, Third Party Sites that meet the requirements set forth below may place a Share Link (as described below), in the form approved by Company, on pages of their web sites to facilitate use of the Share Service. A Third Party Site that posts a Share Link on its web site is referred to herein as an "Online Content Provider" and shall abide and be subject to the applicable sections of these Terms of Use. A "Share Link" is a button and/or a text link appearing on an Online Content Provider's web page that, upon being clicked by a user, enables us to launch a sharing mechanism through which users can share with others or post to their own member profile, links and content from that page.

In the event that the Share Link is a button that contains any icons or other graphic images, trademarks or other proprietary materials of the Company, Online Content Provider is granted permission to use such images, trademarks or other materials solely for the purpose of placing the Share Link on Online Content Provider's site and solely in the current form provided by the Company. In the event that the Share Link is a text link, it must include the word "Facebook" as part of the link. The rights granted in this paragraph may be revoked by Company at any time with or without cause in its sole discretion, and upon such termination, Online Content Provider agrees to immediately remove all Share Links from its site.

In order for an Online Content Provider to include a Share Link on its pages, the Third Party Site must not contain any web content that if shared or posted by a user would be a violation of the user conduct rules set forth above. Without limiting the foregoing, Online Content Provider agrees not to post a Share Link on any web site that contains, and represents and warrants that such web site does not and will not contain, any content that is infringing, harmful, threatening, unlawful, defamatory, abusive, inflammatory, harassing, vulgar, obscene, lewd, fraudulent, or invasive of privacy or publicity rights or that may expose Company or its users to any harm or liability of any type. Upon including of a Share Link, Online Content Provider agrees to defend, indemnify and hold the Company, its subsidiaries and affiliates, and each of their directors, officers, agents, contractors, partners and employees, harmless from and against any loss, liability, claim, demand, damages, costs and expenses, including reasonable attorney's fees, arising out of or in connection with such Share Link, any links, content or other items or materials which may be shared or posted through such Share Link, or any breach or alleged breach of the foregoing representations and warranties.

By including a Share Link, Online Content Provider automatically grants, and represents and warrants that it has the right to grant, to the Company an irrevocable, perpetual, non-exclusive, transferable, fully paid, worldwide license (with the right to sublicense) to use the Share Service in order to link to, use, copy, publish, stream, publicly perform, publicly display, reformat, translate, excerpt (in whole or in part), summarize, and distribute the content, links and other materials of any kind residing on any web pages on which Online Content Provider places the Share Link.

Facebook Marketplace

All listings posted on or through the Facebook Marketplace service and all transactions conducted in connection therewith are subject to and governed by the Facebook Marketplace Guidelines (the "Guidelines") as well as these Terms of Use. When you use Facebook Marketplace in any manner you are agreeing to abide by and be subject to the Guidelines and the other applicable rules set forth in these Terms of Use. The Guidelines are subject to change without prior notice at any time, in the Company's sole discretion, so you should review the Guidelines each time you

use Facebook Marketplace. Parties to a transaction are solely responsible for all interactions with each other, for arranging for payment and the exchange of the goods or services purchased if applicable, and for the results and performance of any transaction or relationship entered into through Facebook Marketplace. You acknowledge that Facebook is not responsible or liable for any action or inaction of any party to a transaction, for any failure to perform, to pay any amounts due, or to deliver any merchandise or services as promised, or for any other aspect of the transaction. Any fees or payments collected by Facebook applicable to Facebook Marketplace are set forth on the Site, and all terms and conditions applicable to such fees are set forth in the Facebook Terms of Sale. However, please note that the Terms of Sale do not apply to your purchases of products or services from third parties through Facebook Marketplace, as those transactions are strictly between you and the other party to the transaction. ALL USE OF FACEBOOK MARKETPLACE IS PROVIDED "AS IS" AND AT YOUR OWN RISK.

Facebook Platform Applications

The Facebook Platform is a set of APIs and services provided by Facebook that enable third-party developers ("Platform Developers") to create websites and applications that retrieve data made available by Facebook and its users and/or that retrieve authorized data from third-party sites for use on the Facebook Site ("Platform Applications")

Platform Developers may use the Facebook Platform and create Platform Applications only in accordance with the terms and conditions set forth in an agreement entered into between Facebook and the Platform Developer ("Developer Terms"). Our standard Developer Terms consist of the Facebook Developer Terms of Service and the related Facebook Platform Application Guidelines. We may from time to time enter into separate agreements with certain third party Platform Developers that contain different or additional terms, provided however, that each such separate agreement will require the third party Platform Developer to only display your information in accordance with your Facebook privacy settings. The standard Developer Terms are subject to change without prior notice at any time, in the Company's sole discretion, so you should review these documents from time to time. ALL USE OF THE FACEBOOK PLATFORM IS PROVIDED "AS IS" AND AT YOUR OWN RISK.

Users who install Platform Applications must agree to the terms and conditions set forth in the Platform Application Terms of Use ("Application User Terms") and in these Terms of Use. The Application User Terms are subject to change without prior notice at any time, in the Company's sole discretion, so you should review these terms each time you install an application and from time to time. Platform Developers may require you to agree to their own terms of service, privacy policies and/or other policies as a condition of using Platform Applications. Platform Applications have not been approved, endorsed, or reviewed in any manner by Facebook, and we are not responsible for your use of or inability to use any Platform

Applications, including the content, accuracy, or reliability of such Application and the privacy practices or other policies of Developers. YOU USE SUCH PLATFORM APPLICATIONS AT YOUR OWN RISK.

If you, your friends or members of your network use any Platform Applications, such Platform Applications may access and share certain information about you with others in accordance with your privacy settings as further described in our Privacy Policy. Platform Developers are required to agree to restrictions on access, storage and use of such information. However, while we have undertaken contractual and technical steps to restrict possible misuse of such information by such Platform Developers, we do not screen or approve Developers, and we cannot and do not guarantee that all Platform Developers will abide by such restrictions and agreements. Certain actions you take through the Platform Applications may be displayed to your friends in your profile, mini-feed and news feed, and you may opt-out of displaying your Platform Application actions on the Privacy Settings page. Please report any suspected misuse of information through the Facebook Platform as described in our Privacy Policy.

You may set your preferences for your news feed and mini-feed [here](#).

Facebook Connect

Facebook Connect ("Connect") enables participating third party websites to work just like Facebook Platform applications. Once you allow a third party website to connect with Facebook, you will be able to use your Facebook login information to log into that website. The third party website will be able to: generate and publish news feed and other stories about actions you take on their website; access Facebook information related to you (including your profile information, friends, and privacy settings) so you can use your Facebook information on the third party site; and allow you to interact with your friends on the website. In order to make Connect possible, you agree to allow Facebook to check your Facebook cookies when you are visiting participating third party websites, and allow Facebook to receive information concerning the actions you take on those third party websites. In addition, once you allow a participating third party website to connect with Facebook, you agree to allow Facebook and such third party website to generate and publish news feed and other stories about actions you take on the website without any additional permission. In the event you no longer want the third party website to publish stories about you, you can always disable this feature by changing your application settings.

When your friends connect their Facebook account with a participating third party website, Facebook Connect will enable them to find Facebook friends that may also be users of that third party website, and invite them to use Connect as well. If you do not want your friends to be able to invite you, you may change your privacy settings to disable this feature.

Connect also gives you the ability to permit Facebook and participating third party websites to generate and publish news feed and other stories about actions you have taken on such websites, even if you have not gone through the Connect process. In such cases, you will be asked whether you want to publish the story on Facebook, and will be given the opportunity to save your answer for future stories. In the event you want to change your settings for that website, visit your application settings.

Like Platform Applications, third party websites that participate in Connect are required, among other things, to protect your privacy consistent with your Facebook privacy settings and Facebook's privacy policy.

Facebook Pages

Facebook Pages are special profiles used solely for commercial, political, or charitable purposes. You may not set up a Facebook Page on behalf of another individual or entity unless you are authorized to do so. This includes fan Facebook Pages, as well as Facebook Pages to support or criticize another individual or entity.

FACEBOOK DOES NOT PRE-SCREEN OR APPROVE FACEBOOK PAGES, AND CANNOT GUARANTEE THAT A FACEBOOK PAGE WAS ACTUALLY CREATED AND IS BEING OPERATED BY THE INDIVIDUAL OR ENTITY THAT IS THE SUBJECT OF A FACEBOOK PAGE. NOR IS FACEBOOK RESPONSIBLE FOR THE CONTENT OF ANY FACEBOOK PAGE, OR ANY TRANSACTIONS ENTERED INTO OR OTHER ACTIONS TAKEN ON OR IN CONNECTION WITH ANY FACEBOOK PAGE, INCLUDING HOW THE OWNER OF THE FACEBOOK PAGE COLLECTS, HANDLES, USES AND / OR SHARES ANY PERSONAL INFORMATION IT MAY COLLECT FROM USERS (PLEASE REVIEW THE FACEBOOK PRIVACY POLICY IF YOU HAVE ANY QUESTIONS OR CONCERNS REGARDING THE USE OR SHARING OF YOUR PERSONAL INFORMATION). YOU SHOULD BE CAREFUL BEFORE PROVIDING ANY PERSONAL INFORMATION TO OR ENTERING INTO ANY TRANSACTION IN CONNECTION WITH A FACEBOOK PAGE.

In addition to these Terms of Use, Facebook Pages are subject to and governed by certain Additional Terms Applicable to Facebook Pages. The Additional Terms Applicable to Facebook Pages control in the event of any conflict between them and the Terms of Use.

Terms of Sale

Please refer to our Terms of Sale for the terms, conditions and policies applicable to your purchase of products or services from Company. By ordering products or services from Company through the Site, you agree to be bound by and accept the Terms of Sale. The Terms of Sale are subject to change without prior notice at any time, in Company's sole discretion so you should review the Terms of Sale each time you make a purchase.

User Disputes

You are solely responsible for your interactions with other Facebook users. We reserve the right, but have no obligation, to monitor disputes between you and other users.

Privacy

We care about the privacy of our users. [Click here](#) to view the Facebook's Privacy Policy. By using the Site or the Service, you are consenting to have your personal data transferred to and processed in the United States.

Disclaimers

The Company is not responsible or liable in any manner for any User Content or Third Party Applications, Software or Content posted on the Site or in connection with the Service, whether posted or caused by users of the Site, by Facebook, by third parties or by any of the equipment or programming associated with or utilized in the Site or the Service. Although we provide rules for user conduct and postings, we do not control and are not responsible for what users post, transmit or share on the Site and are not responsible for any offensive, inappropriate, obscene, unlawful or otherwise objectionable content you may encounter on the Site or in connection with any User Content or Third Party Applications, Software or Content. The Company is not responsible for the conduct, whether online or offline, of any user of the Site or Service.

The Site and the Service may be temporarily unavailable from time to time for maintenance or other reasons. Company assumes no responsibility for any error, omission, interruption, deletion, defect, delay in operation or transmission, communications line failure, theft or destruction or unauthorized access to, or alteration of, User communications. The Company is not responsible for any technical malfunction or other problems of any telephone network or service, computer systems, servers or providers, computer or mobile phone equipment, software, failure of email or players on account of technical problems or traffic congestion on the Internet or at any Site or combination thereof, including injury or damage to User's or to any other person's computer, mobile phone, or other hardware or software, related to or resulting from using or downloading materials in connection with the Web and/or in connection with the Service, including any Mobile Client software. Under no circumstances will the Company be responsible for any loss or damage, including any loss or damage to any User Content or personal injury or death, resulting from anyone's use of the Site or the Service, any User Content or Third Party Applications, Software or Content posted on or through the Site or the Service or transmitted to Users, or any interactions between users of the Site, whether online or offline.

THE SITE, THE SERVICE (INCLUDING THE MOBILE SERVICES, THE SHARE SERVICE AND THE MARKETPLACE SERVICE), ANY PLATFORM APPLICATIONS AND THE SITE CONTENT ARE PROVIDED "AS-IS" AND THE COMPANY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. THE COMPANY CANNOT GUARANTEE AND DOES NOT PROMISE ANY SPECIFIC RESULTS FROM USE OF THE SITE AND/OR THE SERVICE AND/OR ANY PLATFORM APPLICATIONS. COMPANY DOES NOT REPRESENT OR WARRANT THAT SOFTWARE, CONTENT OR MATERIALS ON THE SITE, THE SERVICE OR ANY PLATFORM APPLICATIONS ARE ACCURATE, COMPLETE, RELIABLE, CURRENT OR ERROR-FREE OR THAT THE SITE OR SERVICE ITS SERVERS, OR ANY PLATFORM APPLICATIONS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THEREFORE, YOU SHOULD EXERCISE CAUTION IN THE USE AND DOWNLOADING OF ANY SUCH SOFTWARE, CONTENT OR MATERIALS AND USE INDUSTRY-RECOGNIZED SOFTWARE TO DETECT AND DISINFECT VIRUSES. WITHOUT LIMITING THE FOREGOING, YOU UNDERSTAND AND AGREE THAT YOU DOWNLOAD OR OTHERWISE OBTAIN CONTENT, MATERIAL, DATA OR SOFTWARE (INCLUDING ANY MOBILE CLIENT) FROM OR THROUGH THE SERVICE AND ANY PLATFORM APPLICATIONS AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR YOUR USE THEREOF AND ANY DAMAGES TO YOUR MOBILE DEVICE OR COMPUTER SYSTEM, LOSS OF DATA OR OTHER HARM OF ANY KIND THAT MAY RESULT.

The Company reserves the right to change any and all content, software and other items used or contained in the Site and any Services and Platform Applications offered through the Site at any time without notice. Reference to any products, services, processes or other information, by trade name, trademark, manufacturer, supplier or otherwise does not constitute or imply endorsement, sponsorship or recommendation thereof, or any affiliation therewith, by Company.

Limitation on Liability

IN NO EVENT WILL COMPANY OR ITS DIRECTORS, EMPLOYEES OR AGENTS BE LIABLE TO YOU OR ANY THIRD PERSON FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING FOR ANY LOST PROFITS OR LOST DATA ARISING FROM YOUR USE OF THE SITE OR THE SERVICE, ANY PLATFORM APPLICATIONS OR ANY OF THE SITE CONTENT OR OTHER MATERIALS ON, ACCESSED THROUGH OR DOWNLOADED FROM THE SITE, EVEN IF THE COMPANY IS AWARE OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE COMPANY'S LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU TO COMPANY FOR THE SERVICE DURING THE TERM OF MEMBERSHIP, BUT IN NO CASE WILL THE COMPANY'S LIABILITY TO YOU EXCEED \$1000. YOU ACKNOWLEDGE THAT IF NO FEES ARE PAID TO COMPANY FOR THE SERVICE, YOU SHALL BE LIMITED TO INJUNCTIVE RELIEF

ONLY, UNLESS OTHERWISE PERMITTED BY LAW, AND SHALL NOT BE ENTITLED TO DAMAGES OF ANY KIND FROM COMPANY, REGARDLESS OF THE CAUSE OF ACTION.

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

Termination

The Company may terminate your membership, delete your profile and any content or information that you have posted on the Site or through any Platform Application and/or prohibit you from using or accessing the Service or the Site or any Platform Application (or any portion, aspect or feature of the Service or the Site or any Platform Application) for any reason, or no reason, at any time in its sole discretion, with or without notice, including if it believes that you are under 13, or under 18 and not in high school or college. When we are notified that a user has died, we will generally, but are not obligated to, keep the user's account active under a special memorialized status for a period of time determined by us to allow other users to post and view comments.

Governing Law; Venue and Jurisdiction

By visiting or using the Site and/or the Service, you agree that the laws of the State of Delaware, without regard to principles of conflict of laws, will govern these Terms of Use and any dispute of any sort that might arise between you and the Company or any of our affiliates. With respect to any disputes or claims not subject to arbitration (as set forth below), you agree not to commence or prosecute any action in connection therewith other than in the state and federal courts of California, and you hereby consent to, and waive all defenses of lack of personal jurisdiction and forum non conveniens with respect to, venue and jurisdiction in the state and federal courts of California.

Arbitration

YOU AND COMPANY AGREE THAT, EXCEPT AS MAY OTHERWISE BE PROVIDED IN REGARD TO SPECIFIC SERVICES ON THE SITE IN ANY SPECIFIC TERMS APPLICABLE TO THOSE SERVICES, THE SOLE AND EXCLUSIVE FORUM AND REMEDY FOR ANY AND ALL DISPUTES AND CLAIMS RELATING IN ANY WAY TO OR ARISING OUT OF THESE TERMS OF USE, THE SITE AND/OR THE SERVICE (INCLUDING YOUR VISIT TO OR USE OF THE SITE AND/OR THE SERVICE) SHALL BE FINAL AND BINDING ARBITRATION, except that: (a) to the extent that either of us has in any manner infringed upon or violated or threatened to infringe upon or violate the other party's patent, copyright, trademark or trade secret rights, or you

have otherwise violated any of the user conduct rules set forth above or in the Code of Conduct then the parties acknowledge that arbitration is not an adequate remedy at law and that injunctive or other appropriate relief may be sought; and (b) no disputes or claims relating to any transactions you enter into with a third party through the Facebook Marketplace may be arbitrated.

Arbitration under this Agreement shall be conducted by the American Arbitration Association (the "AAA") under its Commercial Arbitration Rules and, in the case of consumer disputes, the AAA's Supplementary Procedures for Consumer Related Disputes (the "AAA Consumer Rules") (collectively the "AAA Rules"). The location of the arbitration and the allocation of costs and fees for such arbitration shall be determined in accordance with such AAA Rules and shall be subject to the limitations provided for in the AAA Consumer Rules (for consumer disputes). If such costs are determined to be excessive in a consumer dispute, the Company will be responsible for paying all arbitration fees and arbitrator compensation in excess of what is deemed reasonable. The arbitrator's award shall be binding and may be entered as a judgment in any court of competent jurisdiction.

To the fullest extent permitted by applicable law, NO ARBITRATION OR CLAIM UNDER THESE TERMS OF USE SHALL BE JOINED TO ANY OTHER ARBITRATION OR CLAIM, INCLUDING ANY ARBITRATION OR CLAIM INVOLVING ANY OTHER CURRENT OR FORMER USER OF THE SERVICE, AND NO CLASS ARBITRATION PROCEEDINGS SHALL BE PERMITTED. In no event shall any claim, action or proceeding by you related in any way to the Site and/or the Service (including your visit to or use of the Site and/or the Service) be instituted more than three (3) years after the cause of action arose.

Indemnity

You agree to indemnify and hold the Company, its subsidiaries and affiliates, and each of their directors, officers, agents, contractors, partners and employees, harmless from and against any loss, liability, claim, demand, damages, costs and expenses, including reasonable attorney's fees, arising out of or in connection with any User Content, any Third Party Applications, Software or Content you post or share on or through the Site (including through the Share Service), your use of the Service or the Site, your conduct in connection with the Service or the Site or with other users of the Service or the Site, or any violation of this Agreement or of any law or the rights of any third party.

Submissions

You acknowledge and agree that any questions, comments, suggestions, ideas, feedback or other information about the Site or the Service ("Submissions"), provided by you to Company are non-confidential and shall become the sole property of Company. Company shall own exclusive rights, including all intellectual property rights, and shall be entitled to the unrestricted use and dissemination of

these Submissions for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

Definitions and Constructions

Unless otherwise specified, the terms "includes", "including", "e.g.", "for example", and other similar terms are deemed to include the term "without limitation" immediately thereafter. Terms used in these Terms with the initial letter(s) capitalized will have the meaning attributed to them in these Terms.

Other

These Terms of Use constitute the entire agreement between you and Company regarding the use of the Site and/or the Service, superseding any prior agreements between you and Company relating to your use of the Site or the Service. The failure of Company to exercise or enforce any right or provision of these Terms of Use shall not constitute a waiver of such right or provision in that or any other instance. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect. If any provision of these Terms of Use shall be deemed unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these Terms of Use and shall not affect the validity and enforceability of any remaining provisions.

Questions

Please visit our Help page or these links for more information.

[Facebook Copyright Policy](#)

[Facebook Terms of Sale](#)

[Facebook Marketplace Guidelines](#)

[Facebook Platform Application Guidelines](#)

[Platform Application Terms of Use](#)

[Facebook Developer Terms of Service](#)

EXHIBIT C

Terms of Use

Date of Last Revision: February 4, 2009.

Welcome to the Facebook Service, a social utility that connects you with the people around you. The Facebook Service (defined below) is operated by Facebook, Inc. and its subsidiaries and affiliates ("us," "we" or "Facebook"). By using or accessing the Facebook Service, you agree that you have read, understand and are bound by these Terms of Use ("Terms"). We reserve the right, at our sole discretion, to change or delete portions of these Terms at any time without further notice. Your continued use of the Facebook Service after any such changes constitutes your acceptance of the new Terms.

Privacy

We care about the privacy of our users and encourage you to read our [Privacy Policy](#).

Eligibility

You may not use the Facebook Service if you are under 13. If you are between the ages of 13 and 17, we strongly suggest that you seek parental consent to use the Facebook Service. If you are required to register as a sex offender in any jurisdiction, you may not use the Facebook Service.

Registration; Account Security

When you register for and use the Facebook Service, you will be asked to provide information about yourself ("User Data"). Your User Data must be accurate and current at all times. You are solely responsible for maintaining the security of your account. This means, for example, that you may not share your password or let anyone else access your account. If you have reason to believe that your account is no longer secure, please let us know immediately.

Prohibited Conduct

By using or accessing the Facebook Service, you represent, warrant and agree that you will not:

- do anything that could disable, overburden or impair the proper working of the Facebook Service;
- use any robot, spider, scraper or other automated means to access the Facebook Service;
- send spam or any other unauthorized advertisements or solicitations through or using the Facebook Service;
- harvest, collect or use addresses, phone numbers or email addresses or other contact information (collectively "Contact Information") of users of the Facebook Service without consent from such users;

- solicit private information (including social security numbers, credit card numbers and passwords) from users of the Facebook Service;
- provide any false personal information in your profile, create more than one profile, transfer your profile, create a profile for anyone other than yourself or create a page without authorization;
- use your profile (as opposed to a Page) for any commercial purpose;
- offer any contest, sweepstakes, coupon or other promotion through the Facebook Service without our prior written consent;
- use an iFrame or offer web search functionality on the Facebook Service;
- intimidate or harass any user;
- do anything that is illegal, infringing, fraudulent, malicious or could expose Facebook or the Facebook Service users to harm or liability; or
- attempt, encourage or facilitate any of the above.

User Content

By using or accessing the Facebook Service, you represent, warrant and agree that you will not Post:

- User Content that violates the law or anyone's rights, including intellectual property ("IP") rights or other proprietary rights (such as rights of publicity and privacy);
- any Contact Information or private information of any third party;
- false, misleading or fraudulent information;
- any material that contains software viruses or any other computer code designed to interrupt, destroy, or limit the functionality of any computer or telecommunications equipment;
- alcohol-related or other mature content on Pages on the Facebook Service that have not set appropriate age based restrictions (based on the country in which the page will be viewable); or
- User Content that is threatening, hateful, racially or ethnically offensive, or that depicts nudity, pornography or graphic or gratuitous violence, or anything else that we may consider offensive.

Facebook does not pre-screen, review, edit or approve any User Content. Facebook may, in its sole discretion, remove or disable access to any User Content.

"User Content" means any photos, text, link, audio, video, designs, ads and anything else that you Post on or through the Facebook Service. "Post" means to upload, post, transmit, share, store, link to or otherwise make available on or through the Facebook Service.

IP Complaints

We respect the IP rights of others and we prohibit users from Posting User Content that violates another party's IP rights. When we receive a proper claim of IP infringement, we promptly remove or disable access to the allegedly infringing User Content. We also terminate the

accounts of repeat infringers in appropriate circumstances. If you believe that User Content on the Facebook Service infringes your IP rights, please visit our [How to Report Claims of Intellectual Property Infringement page](#). All IP claims can be made through that page, including any copyright claims, which will be handled in accordance with the Digital Millennium Copyright Act. If you are a user whose User Content was removed due to alleged copyright infringement, and you believe the removal was mistaken, please visit our [How to Appeal Claims of Copyright Infringement page](#).

Mobile

There are features of the Facebook Service that may be accessible via certain mobile carriers (the "Mobile Services"). While we currently do not charge for these Mobile Services, your carrier's normal messaging, data and other rates and fees will still apply. By using the Mobile Services, you agree that we may communicate with you by SMS, MMS, text message or other electronic means to your mobile device, and that certain information about your usage of the Mobile Services may be communicated to us. In the event you change or deactivate your mobile telephone number, you agree to promptly update your account information on the Facebook Service to ensure that your messages are not sent to the person that acquires your old number.

Third Party Applications and Connect Sites

The "Facebook Platform" is a set of APIs and services that third parties may use to (a) create applications for use on the Facebook Service ("Applications") and (b) enable their websites to work like Applications ("Connect Sites") through Facebook Connect ("Connect"). Applications and Connect Sites will be referred to together as "Applications/Connect Sites," which should be read as Applications and/or Connect Sites.

If you authorize an Application or allow a Connect Site to connect with your account on the Facebook Service, you agree that such Application/Connect Site can (a) access information on the Facebook Service related to you (including your profile information, friends and privacy settings) and (b) generate and publish news feed and other stories about actions you take on such Application/Connect Site without any additional permission. If you want to change the information that Applications/Connect Sites can access, you may modify your [privacy settings](#). If you no longer want these news feed or other stories to be published, you can disable this feature by changing your [application settings](#). If you, your friends or members of your network use any Application/Connect Site, such Applications/Connect Sites may access and share certain information about you with others in accordance with your [privacy settings](#).

Once you allow a Connect Site to connect with your account on the Facebook Service, you will be able to use your login information for the Facebook Service to log into and interact with your friends on that Connect Site. In order to make Connect possible, you agree to allow us to check your cookies for the Facebook Service when you are visiting Connect Sites. When your friends connect their account on the Facebook Service with a Connect Site, Connect will enable them to find friends on the Facebook Service that may also be users of that Connect Site and invite them to use Connect as well. If you do not want your friends to be able to invite you to connect on a

Connect Site, you may change your privacy settings to disable this feature. Even if you have not gone through the Connect process, you may be able to authorize a Connect Site to generate and publish news feed and other stories about an action or all actions that you take on that Connect Site. If you want to change your settings for that Connect Site, visit your application settings.

Your Privacy Practices

We respect the privacy rights of third parties, and you must do so as well on the Facebook Service.

If you collect, access or use information relating to any user of the Facebook Service (including information contained in any user profile) you must obtain consent from the user and make it clear to the user that the collection, access and use is being carried out by you and not Facebook.

Gift Credits

You must be authorized to use the credit card, debit card or other payment source ("Card") you provide to purchase gift credits. By purchasing gift credits, you authorize Facebook or its designated payment processor to charge the purchase amount (plus any applicable tax) to your Card. By providing your Card account information to Facebook, you authorize us to collect and store it and other related transaction information.

When you purchase gift credits, you are purchasing only a limited license to use certain features on the Facebook Service that will enhance your experience on the Facebook Service, such as giving virtual gifts to your friends. Gift credits have no real value, are non-refundable and are not redeemable for any sum of money or monetary value from Facebook at any time. Facebook does not guarantee the transferability of gift credits. Gift credits may not be transferred to any third party outside of the Facebook Service and may not be used as a means to transfer money to a third party. You agree that Facebook has the absolute right to manage, regulate, control, modify and/or eliminate gift credits as it sees fit, and Facebook will have no liability to you for exercising such rights.

Ownership; Proprietary Rights

Except for User Content and Applications/Connect Sites, all materials, content and trademarks on the Facebook Service are the property of Facebook and/or its licensors and are protected by all relevant IP laws and other proprietary rights (including copyright, trademark, trade dress and patent laws) and any other applicable laws. Without limiting the foregoing, FACEBOOK, the F LOGO, FB, FACE, POKE, THE WALL and 32665 and all related logos, are trademarks of Facebook. Except as expressly authorized by Facebook in writing, you agree not to use, sell, license, distribute, copy, publish, stream, publicly perform or display, transmit, reformat, modify, edit, frame, translate, excerpt, adapt, create derivative works or otherwise make unauthorized use of the materials, content or trademarks.

Licenses

You are solely responsible for the User Content that you Post on or through the Facebook Service. You hereby grant Facebook an irrevocable, perpetual, non-exclusive, transferable, fully paid, worldwide license (with the right to sublicense) to (a) use, copy, publish, stream, store, retain, publicly perform or display, transmit, scan, reformat, modify, edit, frame, translate, excerpt, adapt, create derivative works and distribute (through multiple tiers), any User Content you (i) Post on or in connection with the Facebook Service or the promotion thereof subject only to your privacy settings or (ii) enable a user to Post, including by offering a Share Link on your website and (b) to use your name, likeness and image for any purpose, including commercial or advertising, each of (a) and (b) on or in connection with the Facebook Service or the promotion thereof. You represent and warrant that you have all rights and permissions to grant the foregoing licenses.

If you own or control a website, you may place Facebook's share link button, logo and/or text (a "Share Link"), including all trademarks therein, on your website for the sole purpose of enabling users to Post links or content from your website on the Facebook Service. By offering a Share Link on your website, you agree, represent and warrant that you will not place a Share Link on any page containing content that would violate these Terms if Posted on the Facebook Service. The rights granted in this paragraph may be revoked by us at any time in our sole discretion, and upon such termination, you will immediately remove all Share Links from your website.

Submissions

You acknowledge and agree that any questions, comments, suggestions, ideas, feedback or other information that you provide to Facebook ("Submissions"), are non-confidential and non-proprietary. Facebook will be entitled to the unrestricted use of any such Submission for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

User Disputes; Complaints

You agree not to hold Facebook responsible or liable for the User Content or actions of third parties (including your interactions with users) on or relating to the Facebook Service. This includes transactions conducted on the Facebook Service as well as the collection, handling and sharing of personal information that you provide to third parties. If you have a dispute with a third party relating to the Facebook Service, you release Facebook and its directors, officers, employees and agents (collectively, the "Facebook Entities") from any claims, causes of action and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such dispute. If you are a California resident, you waive California Civil Code §1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

If you believe that the Facebook Service or Facebook's business practices are in any way unfair, fraudulent or unlawful, you agree to bring it to the attention of Facebook's legal department. If

you do not report the issue or continue using the service after discovering the issue, you expressly waive the right to claim that the Facebook Service is unfair, fraudulent or unlawful with respect to that issue.

Indemnity

You agree to indemnify and hold Facebook Entities harmless from and against any claim or cause of action brought by a third party as well as any related damages, costs and expenses (including reasonable attorneys' fees) ("Claim") arising out of or related to your (a) use of the Facebook Service or any of the applications, features, content or materials related thereto; (b) violation of these Terms; (c) violation of the rights of any other person or entity; or (d) breach of the representations, warranties and covenants made by you herein. Facebook reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify Facebook, and you agree to cooperate with Facebook's defense of these Claims.

General Disclaimers

USE OF THE FACEBOOK SERVICE IS AT YOUR OWN RISK. THE FACEBOOK SERVICE, FACEBOOK WEBSITES AND ALL APPLICATIONS, FEATURES, CONTENT AND MATERIALS MADE AVAILABLE ON, IN CONJUNCTION WITH OR THROUGH THE FACEBOOK SERVICE ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, FACEBOOK, ITS SUPPLIERS, LICENSORS AND PARTNERS DISCLAIM ALL WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS. WITHOUT LIMITING THE FOREGOING, FACEBOOK, ITS SUPPLIERS, LICENSORS AND PARTNERS DO NOT WARRANT THAT THE FACEBOOK SERVICE WILL BE AVAILABLE, UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED OR THAT THE FACEBOOK SERVICE OR THE SERVER THAT MAKES IT AVAILABLE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

FACEBOOK IS NOT RESPONSIBLE OR LIABLE FOR, AND DOES NOT APPROVE OR ENDORSE ANY THIRD PARTY CONTENT, MATERIALS, WEBSITES OR APPLICATIONS MADE AVAILABLE ON OR THROUGH THE FACEBOOK SERVICE (COLLECTIVELY, "THIRD PARTY MATERIALS"). WITHOUT LIMITING THE FOREGOING, WE ARE NOT RESPONSIBLE FOR THE CONTENT, ACCURACY, AVAILABILITY, OFFENSIVENESS, OPINIONS, RELIABILITY, PRIVACY PRACTICES OR OTHER POLICIES APPLICABLE TO SUCH THIRD PARTY MATERIALS, AND WE CANNOT AND DO NOT GUARANTEE THAT THIRD PARTY MATERIALS WILL COMPLY WITH THE RESTRICTIONS, CONDITIONS OR OBLIGATIONS THAT WE REQUIRE. IF YOU DECIDE TO USE OR ACCESS THIRD PARTY MATERIALS, YOU DO SO AT YOUR OWN RISK AND YOU MAY BE REQUIRED TO AGREE TO TERMS OF

SERVICE, PRIVACY AND DATA GATHERING PRACTICES AND OTHER POLICIES APPLICABLE TO SUCH THIRD PARTY MATERIALS. PLEASE REVIEW ALL SUCH TERMS AND POLICIES CAREFULLY.

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

Limitation on Liability

UNDER NO CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, WILL FACEBOOK ENTITIES OR THEIR LICENSORS OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR EXEMPLARY DAMAGES, INCLUDING FOR ANY LOST PROFITS OR LOST DATA, THAT RESULT FROM YOUR USE OR YOUR INABILITY TO USE THE FACEBOOK SERVICE, THE FACEBOOK WEBSITES OR ANY APPLICATIONS, FEATURES, CONTENT OR THIRD PARTY MATERIALS MADE AVAILABLE ON, IN CONJUNCTION WITH OR THROUGH THE FACEBOOK SERVICE, EVEN IF FACEBOOK OR A FACEBOOK AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN SUCH CASES, FACEBOOK'S LIABILITY WILL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

IN NO EVENT WILL THE TOTAL AGGREGATE LIABILITY TO YOU OF FACEBOOK ENTITIES OR OF THEIR LICENSORS OR SUPPLIERS FOR ALL DAMAGES, LOSSES, CLAIMS AND CAUSES OF ACTION ARISING OUT OF OR RELATING TO THESE TERMS OR YOUR USE OF THE FACEBOOK SERVICE, INCLUDING WITHOUT LIMITATION YOUR INTERACTIONS WITH OTHER USERS OF THE FACEBOOK SERVICE (WHETHER IN CONTRACT, TORT INCLUDING NEGLIGENCE, WARRANTY OR OTHERWISE) EXCEED THE AMOUNT PAID BY YOU, IF ANY, TO FACEBOOK DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE DAY THE ACT OR OMISSION OCCURRED THAT GAVE RISE TO YOUR CLAIM OR \$100, WHICHEVER IS GREATER.

Termination and Changes to the Facebook Service

We may terminate your account on the Facebook Service, delete your profile and any User Content you have Posted on or through the Facebook Service, and/or prohibit you from using or accessing the Facebook Service (or any portion thereof) for any or no reason, at any time in our sole discretion, with or without notice. Further, we reserve the right to change any aspect or feature of the Facebook Service at any time without notice. The following sections will survive

any termination of your use of the Facebook Service: Prohibited Conduct, User Content, Your Privacy Practices, Gift Credits, Ownership; Proprietary Rights, Licenses, Submissions, User Disputes; Complaints, Indemnity, General Disclaimers, Limitation on Liability, Termination and Changes to the Facebook Service, Arbitration, Governing Law; Venue and Jurisdiction and Other.

Arbitration

Except as set forth in the paragraph below, you agree that all claims and disputes between you and Facebook that arise out of or relate in any way to the Terms or your use of the Facebook Service will be resolved either by (a) binding arbitration by a single arbitrator in Santa Clara County, California or (b) binding non-appearance based arbitration conducted by telephone, online or based solely on written submission. Such arbitration will be administered by Judicial Arbitration and Mediation Services ("JAMS") (see www.jamsadr.com) pursuant to its Comprehensive Arbitration Rules. The arbitrator's award will be binding and may be entered as a judgment in any court of competent jurisdiction.

With respect to any claims or disputes you intend to bring on behalf of a class, you agree to arbitrate whether a class could be certified before bringing such action in a court of law. If the arbitrator refuses to certify the class, you will continue to resolve your individual claims or disputes through binding arbitration. If the arbitrator finds that a class should be certified, you may file the class action in a court of law provided you waive any right to a trial by jury. Claims for injunctive or other equitable relief may also be brought in a court of law.

Governing Law; Venue and Jurisdiction

You agree that all claims and disputes between you and Facebook that arise out of or relate in any way to the Terms or your use of the Facebook Service will be governed by the laws of the State of California (and United States federal laws applicable therein), without regard to principles of conflict of laws. You further agree that you will bring any claims or disputes that are not subject to arbitration (as set forth above) in, and you submit to the exclusive jurisdiction of, the state and federal courts located in Santa Clara County, California.

Other

The "Facebook Service" means the features, services and properties that Facebook makes available through (a) www.facebook.com or any other Facebook-branded or co-branded website (including, without limitation, any and all sub-domains and all international, mobile versions and successors thereof), (b) the Facebook Platform and (c) other media, devices or networks now existing or later developed. Unless otherwise specified, the terms "includes," "including," "e.g.," "for example," and other similar terms used herein are deemed to include the term "without limitation" immediately thereafter. Our failure to exercise or enforce any right or provision of these Terms will not constitute a waiver of such right or provision in that or any other instance. If, for any reason, any provision of these Terms or portion thereof is rendered invalid or unenforceable, the remainder of these Terms will remain in full force and effect and will be

enforced to the maximum extent permissible so as to effect the intent of the parties. An arbitrator or court will substitute or rewrite any invalid or unenforceable term or provision to make such term or provision valid and enforceable. All communications and notices to be made or given pursuant to these Terms will be in the English language. You consent to receiving communications and notices from Facebook at the email address you provide in registering for the Facebook Service or otherwise elect in your account settings. These Terms constitute the entire agreement and supersede any prior agreement between you and us regarding your use of the Facebook Service.

Questions

Please visit our [Help](#) pages for more information.

EXHIBIT D

Statement of Rights and Responsibilities

This Statement of Rights and Responsibilities (“Statement”) derives from the Facebook Principles, and governs our relationship with users and others who interact with Facebook. By using or accessing Facebook, you agree to this Statement.

1. Privacy

Your privacy is very important to us. We designed our [Privacy Policy](#) to make important disclosures to you about how we collect and use the information you post on Facebook. We encourage you to read the Privacy Policy, and to use the information it contains to help make informed decisions.

2. Sharing Your Content and Information

You own all of the content and information you post on Facebook, and you can control how we share your content through your [privacy](#) and [application](#) settings. In order for us to use certain types of content and provide you with Facebook, you agree to the following:

- 2.1 For content that is covered by intellectual property rights, like photos and videos (“IP content”), you specifically give us the following permission, subject to your [privacy](#) and [application](#) settings: you grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook (“IP License”). This IP License ends when you delete your IP content or your account (except to the extent your content has been shared with others, and they have not deleted it).
- 2.2 When you delete IP content, it is deleted in a manner similar to emptying the recycle bin on a computer. However, you understand that removed content may persist in backup copies for a reasonable period of time (but will not be available to others).
- 2.3 We always appreciate your feedback or other suggestions about Facebook, but you understand that we may use them without any obligation to compensate you for them (just as you have no obligation to offer them).

3. Safety

We do our best to keep Facebook safe, but we cannot guarantee it. We need your help in order to do that, which includes the following commitments:

- 3.1 You will not send or otherwise post unauthorized commercial communications to users (such as spam).
- 3.2 You will not collect users’ information, or otherwise access Facebook, using automated means (such as harvesting bots, robots, spiders, or scrapers) without our permission.
- 3.3 You will not upload viruses or other malicious code.
- 3.4 You will not solicit login information or access an account belonging to someone else.
- 3.5 You will not bully, intimidate, or harass any user.
- 3.6 You will not post content that is hateful, threatening, pornographic, or that contains nudity or graphic or gratuitous violence.
- 3.7 You will not develop or operate a third party application containing, or advertise or otherwise market alcohol-related or other mature content without appropriate age-based restrictions.
- 3.8 You will not use Facebook to do anything unlawful, misleading, malicious, or discriminatory.
- 3.9 You will not facilitate or encourage any violations of this Statement.

4. Registration and Account Security

Facebook users provide their real names and information, and we need your help to keep it that way. Here are some commitments you make to us relating to registering and maintaining the security of your account:

- 4.1 You will not provide any false personal information on Facebook, or create an account for anyone other than yourself without permission.
- 4.2 You will not use Facebook if you are under 13.
- 4.3 You will not use Facebook if you are located in a country embargoed by the U.S., or are on the U.S. Treasury Department’s list of Specially Designated Nationals.
- 4.4 You will not use Facebook if you are a convicted sex offender.

- 4.5 You will keep your contact information accurate and up-to-date.
- 4.6 You will not share your password, let anyone else access your account, or do anything else that might jeopardize the security of your account.
- 4.7 You will not transfer your account to anyone without first getting our written permission.

5. Protecting Other People's Rights

We respect other people's rights, and expect you to do the same.

- 5.1 You will not post content or take any action on Facebook that infringes someone else's rights or otherwise violates the law.
- 5.2 We can remove any content you post on Facebook if we believe that it violates this Statement.
- 5.3 We will provide you with tools to help you protect your intellectual property rights. To learn more, visit our [How to Report Claims of Intellectual Property Infringement](#) page.
- 5.4 If we removed your content for infringing someone else's copyright, and you believe we removed it by mistake, we will provide you with an opportunity to [appeal](#).
- 5.5 If you repeatedly infringe other people's intellectual property rights, we will disable your account when appropriate.
- 5.6 You will not use our copyrights or trademarks (including Facebook, the Facebook and F Logos, FB, Face, Poke, Wall and 32665) without our written permission.
- 5.7 If you collect information from users, you will: obtain their consent, make it clear you (and not Facebook) are the one collecting their information, and post a privacy policy explaining what information you collect and how you will use it.
- 5.8 You will not post anyone's identification documents or sensitive financial information on Facebook.

6. Mobile

- 6.1 We currently provide our mobile services for free, but please be aware that your carrier's normal rates and fees, such as text messaging fees, will still apply.
- 6.2 In the event you change or deactivate your mobile telephone number, you will update your account information on Facebook within 48 hours to ensure that your messages are not sent to the person who acquires your old number.

7. Payments

If you purchase or use Facebook Credits, or make direct payments, you agree to our [Payments Terms](#).

8. Special Provisions Applicable to Share Links

If you include our Share Link button on your website, the following additional terms apply to you:

- 8.1 We give you permission to use Facebook's Share Link button so that users can post links or content from your website on Facebook.
- 8.2 You give us permission to use such links and content on Facebook.
- 8.3 You will not place a Share Link button on any page containing content that would violate this Statement if posted on Facebook.

9. Special Provisions Applicable to Developers/Operators of Applications and Websites

If you are a developer or operator of a Platform application or a website using Connect ("application") or otherwise use Platform, the following additional terms apply to you:

- 9.1 You are responsible for your application and its content and all uses you make of Platform. This includes ensuring your application or use of Platform meets our [Platform Guidelines](#).
- 9.2 When users add your application or connect it to their Facebook account, they give permission for you to receive certain data relating to them. Your access to and use of that data will be limited as follows:
 - 9.2.1 You will only use the data you receive for your application, and will only use it in connection with Facebook.

- 9.2.2 You will make it clear to users what user data you are going to use and how you will use, display, or share that data.
- 9.2.3 You will not use, display, or share a user's data in a manner inconsistent with the user's [privacy](#) settings without the user's consent.
- 9.2.4 You will delete all data you received from us relating to any user who removes or disconnects from your application unless otherwise permitted in our [Platform Guidelines](#).
- 9.2.5 You will delete all data you received from Facebook if we disable your application or ask you to do so.
- 9.2.6 We can require you to update any data you have received from us.
- 9.2.7 We can limit your access to data.
- 9.2.8 You will not transfer the data you receive from us without our prior consent.
- 9.3 You will not give us data that you independently collect from a user or a user's content without that user's consent.
- 9.4 You will make it easy for users to remove or disconnect from your application.
- 9.5 You will make it easy for users to contact you. We can also share your email address with users.
- 9.6 You will provide customer support for your application.
- 9.7 You will not show ads or web search boxes on Facebook profiles.
- 9.8 We give you all rights necessary to use the code, APIs (along with all content and data received), or tools we provide to you, but only in connection with your application.
- 9.9 You will not sell, transfer, or sublicense our code, APIs, or tools to anyone.
- 9.10 You will not misrepresent your relationship with Facebook to others.
- 9.11 You may use the logos we make available to developers or issue a press release or other public statement so long as you follow our [Platform Guidelines](#).
- 9.12 We can issue a press release describing our relationship with you.
- 9.13 You will comply with all applicable laws. In particular you will (if applicable):
 - 9.13.1 have a policy for removing infringing content and terminating repeat infringers that complies with the Digital Millennium Copyright Act.
 - 9.13.2 comply with the Video Privacy Protection Act ("VPPA"), and will obtain explicit, opt-in consent from users prior to sharing with Facebook user data subject to the VPPA. You acknowledge Facebook has no obligations under the VPPA.
- 9.14 We do not guarantee that Platform will always be free.
- 9.15 You give us all rights necessary to enable your application to work with Facebook, including the right to:
 - 9.15.1 incorporate your content into streams, profiles, and user action stories;
 - 9.15.2 link to or frame your application; and
 - 9.15.3 place content, including ads, around your application.
- 9.16 We can analyze your application, content, and data for any purpose, including commercial (such as for targeting the delivery of advertisements and indexing content for search).
- 9.17 To ensure your application is safe for users, we can audit it.
- 9.18 We can create applications that offer similar features and services to, or otherwise compete with, your application.

10. About Advertisements on Facebook

Our goal is to deliver ads that are not only valuable to advertisers, but also valuable to you. In order to do that, you agree to the following:

- 10.1 You can use your [privacy](#) settings to limit how your name and profile picture may be associated with commercial or sponsored content. You give us permission to use your name and profile picture in connection with that content, subject to the limits you place.
- 10.2 We do not give your content to advertisers.
- 10.3 You understand that we may not always identify paid services and communications as such.

11. Special Provisions Applicable to Advertisers

You can target your specific audience by buying ads on Facebook or our publisher network. The following additional terms apply to you if you place an order through our online advertising portal ("Order"):

- 11.1 When you place an Order, you will tell us the type of advertising you want to buy, the amount you want to spend, and your bid. If we accept your Order, we will deliver your ads as inventory becomes available.

- 11.2 You will pay for your Orders in accordance with our [Payments Terms](#). The amount you owe will be calculated based on our tracking mechanisms.
- 11.3 Your ads will comply with our [Ad Guidelines](#).
- 11.4 We will determine the size, placement, and positioning of your ads.
- 11.5 We do not guarantee the activity that your ads will receive, such as the number of clicks you will get.
- 11.6 We cannot control how people interact with your ads, and are not responsible for click fraud or other improper actions that affect the cost of running ads.
- 11.7 You will not offer any contest or sweepstakes ("promotion") without our prior written consent. If we consent, you take full responsibility for the promotion, and will follow our [Promotions Guidelines](#) and all applicable laws.
- 11.8 You can cancel your Order at any time through our online portal, but it may take us seven days before the ad stops running.
- 11.9 Our license to run your ad will end when we have completed your Order. You understand, however, that if users have interacted with your ads, your ads may remain until the users delete it.
- 11.10 We can use your ads and related information for marketing or promotional purposes.
- 11.11 You will not issue any press release or make public statements about your relationship with Facebook without written permission.
- 11.12 We may reject or remove any ad for any reason.

If you are placing ads on someone else's behalf, we need to make sure you have permission to place those ads, including the following:

- 11.13 You warrant that you have the legal authority to bind the advertiser to this Statement.
- 11.14 You agree that if the advertiser you represent violates this Statement, we may hold you responsible for that violation.

12. Amendments

- 12.1 We can change this Statement so long as we provide you notice through Facebook (unless you opt-out of such notice) and an opportunity to comment.
- 12.2 For changes to sections 7, 8, 9, and 11 (sections relating to payments, application developers, website operators, and advertisers), we will give you a minimum of three days notice. For all other changes we will give you a minimum of seven days notice.
- 12.3 If more than 7,000 users comment on the proposed change, we will also give you the opportunity to participate in a vote in which you will be provided alternatives. The vote shall be binding on us if more than 30% of all active registered users as of the date of the notice vote.
- 12.4 We can make changes for legal or administrative reasons upon notice without opportunity to comment.

13. Termination

If you violate the letter or spirit of this Statement, or otherwise create possible legal exposure for us, we can stop providing all or part of Facebook to you. We will generally try to notify you, but have no obligation to do so. You may also delete your account or disable your application at any time. In all such cases, this Statement shall terminate, but the following provisions will still apply: 2.2, 2.3, 3-5, 8.2, 9.1-9.3, 9.9, 9.10, 9.13, 9.15.1, 9.18, 10.3, 11.2, 11.5, 11.6, 11.9, 11.10, 11.13, 11.14, and 13-16.

14. Disputes

- 14.1 You will resolve any claim, cause of action or dispute ("claim") you have with us arising out of or relating to this Statement or Facebook in a state or federal court located in Santa Clara County. The laws of the State of California will govern this Statement, as well as any claim that might arise between you and us, without regard to conflict of law provisions. You agree to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.
- 14.2 If anyone brings a claim against us related to your actions or your content on Facebook, you will indemnify and hold us harmless from and against all damages, losses, and expenses of any kind (including reasonable legal fees and costs) related to such claim.
- 14.3 WE TRY TO KEEP FACEBOOK UP, BUG-FREE, AND SAFE, BUT YOU USE IT AT YOUR OWN RISK. WE ARE PROVIDING FACEBOOK "AS IS" WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, IMPLIED

WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. WE DO NOT GUARANTEE THAT FACEBOOK WILL BE SAFE OR SECURE. FACEBOOK IS NOT RESPONSIBLE FOR THE ACTIONS OR CONTENT OF THIRD PARTIES, AND YOU RELEASE US, OUR DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS FROM ANY CLAIMS AND DAMAGES, KNOWN AND UNKNOWN, ARISING OUT OF OR IN ANY WAY CONNECTED WITH ANY CLAIM YOU HAVE AGAINST ANY SUCH THIRD PARTIES. IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE §1542, WHICH SAYS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR." WE WILL NOT BE LIABLE TO YOU FOR ANY LOST PROFITS OR OTHER CONSEQUENTIAL, SPECIAL, INDIRECT, OR INCIDENTAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS STATEMENT OR FACEBOOK, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. OUR AGGREGATE LIABILITY ARISING OUT OF THIS STATEMENT OR FACEBOOK WILL NOT EXCEED THE GREATER OF ONE HUNDRED DOLLARS (\$100) OR THE AMOUNT YOU HAVE PAID US IN THE PAST TWELVE MONTHS. APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN SUCH CASES, FACEBOOK'S LIABILITY WILL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

15. Definitions

- 15.1 By "Facebook" we mean the features and services we make available, including through (a) our website at www.facebook.com and any other Facebook branded or co-branded websites (including sub-domains, international versions, and mobile versions); (b) our Platform; and (c) other media, devices or networks now existing or later developed.
- 15.2 By "us," "we" and "our" we mean Facebook, Inc. and/or its affiliates.
- 15.3 By "Platform" we mean a set of APIs and services that enable applications, developers, operators or services to retrieve data from Facebook and provide data to us relating to Facebook users.
- 15.4 By "content" we mean the content and information you post on Facebook, including information about you and the actions you take.
- 15.5 By "post" we mean post on Facebook or otherwise make available to us.
- 15.6 By "use" we mean use, copy, publicly perform or display, distribute, modify, translate, and create derivative works of.

16. Other

- 16.1 This Statement makes up the entire agreement between the parties regarding Facebook, and supersedes any prior agreements.
- 16.2 If any portion of this Statement is found to be unenforceable, the remaining portion will remain in full force and effect.
- 16.3 If we fail to enforce any of this Statement, it will not be considered a waiver.
- 16.4 Any amendment to or waiver of this Statement must be made in writing and signed by us.
- 16.5 You will not transfer any of your rights or obligations under this Statement to anyone else without our consent.
- 16.6 All of our rights and obligations under this Statement are freely assignable by us in connection with a merger, acquisition, or sale of assets, or by operation of law or otherwise.
- 16.7 Nothing in this Agreement shall prevent us from complying with the law.
- 16.8 We may enter into separate agreements that vary from and supersede certain provisions of this Statement so long as such agreements are consistent with your intellectual property rights under this Statement and no less protective of your privacy than this Statement and the Privacy Policy.
- 16.9 This Statement does not confer any third party beneficiary rights.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

ANTHONY DITIRRO, KATYA BRESLER,
AND MICHELLE SHUMATE, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

FACEBOOK, INC.,

Defendant.

Case No. 5:14-cv-00132-PJH

**[PROPOSED] ORDER GRANTING
DEFENDANT FACEBOOK, INC.'S MOTION
TO DISMISS FIRST AMENDED
COMPLAINT AND REQUEST FOR
CONSIDERATION OF DOCUMENTS
INCORPORATED INTO FIRST AMENDED
COMPLAINT**

Date: June 11, 2014
Time: 9:00 a.m.
Courtroom: 3
Dist. Judge: Hon. Phyllis J. Hamilton
Trial Date: None Set

Defendant Facebook, Inc.'s ("Facebook") Motion to Dismiss Plaintiffs' First Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) was heard on June 11, 2014 at 9:00 a.m. in this Court. Having considered the parties' papers filed in support of and in opposition to the motion, oral argument, and all other materials properly before the Court, the Court issues the following findings and orders:

IT IS HEREBY ORDERED THAT Facebook's Request for Consideration of Documents Incorporated into First Amended Complaint in support of its Motion to Dismiss is **GRANTED**.

The Court further holds and finds as follows:

With respect to Count Three of the First Amended Complaint, which alleges false light invasion of privacy, Plaintiffs fail to state a claim upon which relief can be granted.

With respect to Count Four of the First Amended Complaint, which alleges violations of California's Unfair Competition Law, Plaintiffs fail to state a claim upon which relief can be granted.

With respect to Count Five of the First Amended Complaint, which alleges violations of California's False Advertising Law, Plaintiffs fail to state a claim upon which relief can be granted.

With respect to Count Six of the First Amended Complaint, which alleges violations of California's Consumers Legal Remedies Act, Plaintiffs fail to state a claim upon which relief can be granted.

With respect to Count Seven of the First Amended Complaint, which alleges negligence, Plaintiffs fail to state a claim upon which relief can be granted.

With respect to Count Eight of the First Amended Complaint, which alleges breach of contract, Plaintiffs fail to state a claim upon which relief can be granted.

With respect to Count Nine of the First Amended Complaint, which alleges breach of the implied covenant of good faith and fair dealing, Plaintiffs fail to state a claim upon which relief can be granted.

With respect to Count Ten of the First Amended Complaint, which alleges unjust enrichment, Plaintiffs fail to state a claim upon which relief can be granted.

1 Accordingly, **IT IS HEREBY ORDERED THAT:**

2 Facebook's Motion to Dismiss Plaintiffs' First Amended Complaint is **GRANTED**; and

3 Counts Three through Ten of Plaintiffs' First Amended Complaint are hereby **DISMISSED**

4 **WITH PREJUDICE.**

5 **IT IS SO ORDERED.**

6
7 DATED: _____

UNITED STATES DISTRICT JUDGE