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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ROBYN COHEN, SHANNON  
STOLLER, CHRISTOPER  
MARSHALL, BRYAN SIGLOCK, and  
DEBRA LEWIN, individually and on  
behalf of others similarly situated,

Plaintiffs,

v.

FACEBOOK, INC., a Delaware  
corporation,

Defendant.

Case No. 10-cv-05282-RS

**FACEBOOK, INC.’S MOTION TO DISMISS  
CLASS ACTION COMPLAINT**

**F.R.C.P. 12(b)(6)**

Date: March 3, 2011  
Time: 1:30 p.m.  
Courtroom: 3  
Judge: Richard Seeborg  
Trial Date: None Set

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**NOTICE OF MOTION AND MOTION TO DISMISS**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 3, 2011 at 1:30 p.m. or as soon thereafter as this motion may be heard in the above-entitled court, located at 450 Golden Gate Avenue, San Francisco, California, in Courtroom 3 (17th Floor), Defendant Facebook, Inc. (“Facebook”) will move to dismiss the Class Action Complaint (the “Complaint”) filed by Plaintiffs. Facebook’s Motion is made pursuant to Federal Rule of Civil Procedure 12(b)(6) and is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Request for Judicial Notice, the Declaration of Ana Yang and accompanying Exhibits filed herewith, and all pleadings and papers on file in this matter, and upon such other matters as may be presented to the Court at the time of the hearing or otherwise.

**STATEMENT OF RELIEF SOUGHT**

Facebook seeks an order, pursuant to Federal Rule of Civil Procedure 12(b)(6), dismissing Plaintiffs’ Complaint and each of the four Claims for Relief alleged therein for failure to state a claim upon which relief can be granted.

**STATEMENT OF ISSUES TO BE DECIDED**

1. Because the Complaint fails to state a claim upon which relief can be granted under the California statute on misappropriation of the right of publicity, Civil Code section 3344, should the First Claim for Relief be dismissed?
2. Because the Complaint fails to state a claim upon which relief can be granted under California common law on misappropriation of the right of publicity, should the Second Claim for Relief be dismissed?
3. Because the Complaint fails to state a claim upon which relief can be granted under 15 U.S.C. § 1125(a)(1), should the Third Claim for Relief be dismissed?
4. Because the Complaint fails to state a claim upon which relief can be granted under California Business and Professions Code section 17200, should the Fourth Claim for Relief be dismissed?

**MEMORANDUM OF POINTS AND AUTHORITIES****I. INTRODUCTION**

Facebook is a social network that enables users to connect and share content with their family and friends. On Facebook's website, each Facebook user ("User") creates a personal network of Facebook "friends" and also creates a profile page on which to post information that the User wants to share, and on which the User's friends can also post greetings and other information. To create a profile, a User need only submit his or her name, age, gender, and a valid email address; the User may also, but is not required to, upload a "profile picture." Facebook enables Users to share information and comments about virtually anything—such as vacation photos, news about their day, or opinions about world events. Users can connect with friends down the street or continents away. Users can also use Facebook to re-connect with old friends who they have lost touch with—a college roommate or a distant cousin. Building a network of friends and maintaining those connections is one of the most fundamental purposes behind Facebook. Facebook is, and has always been, a free service.

Each of the named Plaintiffs is alleged to be a Facebook User. Their allegations pertain to the "Friend Finder" service on the Facebook website, which helps Users find their friends so they can connect with them. The Complaint alleges that Facebook published Plaintiffs' names and/or likenesses in connection with the "Friend Finder" service, thereby violating Plaintiffs' common law and statutory publicity rights (California Civil Code section 3344), Lanham Act section 1125(a)(1) (preventing false associations with goods or services), and California Business and Professions Code section 17200. Plaintiffs allege that Facebook uses "Friend Finder" to encourage Users to build a larger network of friends, which increases Facebook's User population, thereby enabling Facebook to demand a higher price for advertising on the website.

Plaintiffs' four claims fail as a matter of law. First, Plaintiffs' common law and statutory misappropriation claims fail because Plaintiffs consented to the use of their names and/or likenesses in association with Facebook services by registering for and using Facebook. Indeed, the very contractual terms and Facebook principles and policies to which Plaintiffs refer in the Complaint give Facebook permission to use their names and likenesses in the manner alleged.

1 Further, Plaintiffs have not alleged any injury, nor have they alleged that Facebook used their  
 2 names and/or likenesses for its “advantage” in the manner required by law. Second, Plaintiffs do  
 3 not have standing to bring a false association claim under the Lanham Act since they have not and  
 4 cannot allege a “commercial interest” in their names and/or likenesses that Facebook’s alleged  
 5 use could have injured, nor have they alleged any actual injury to such a commercial interest.  
 6 Third, Plaintiffs do not and cannot allege they suffered “injury in fact” and “lost money or  
 7 property” as a result of unfair competition, and, as such, they lack standing to bring a claim under  
 8 Business and Professions Code section 17200. Moreover, the Complaint fails to allege facts that  
 9 would support such a cause of action under the “unlawful,” “unfair,” or “fraudulent” prongs of  
 10 section 17200. Accordingly, the Complaint should be dismissed for failure to state a claim.

## 11 **II. STATEMENT OF FACTS<sup>1</sup>**

12 Facebook operates one of the most popular social networking sites in the world. (Compl.  
 13 ¶ 6.) On Facebook’s website, anyone with access to a computer and an Internet connection can  
 14 become a Facebook user and create a personal profile page. (*Id.* ¶¶ 6, 21, 22.) The profile page  
 15 must include a name, and may, but need not, include a “profile picture” chosen and uploaded by  
 16 the User.<sup>2</sup> On Users’ profile pages, Users can post any information or content they wish,  
 17 including their interests, education, or updates about what they are doing that day (*i.e.*, “status  
 18 updates”). (*Id.* ¶ 22.) Users may also communicate and connect with their friends. (*Id.* ¶ 21.) To  
 19 do so, one User must send a request to another Facebook User with whom he wishes to connect,  
 20 asking the other User to accept him as a “friend.” Once friends, they can both see items on each  
 21 other’s profile pages. (*Id.*) For example, friends can see each other’s photos, videos, groups on  
 22 Facebook to which they belong, or anything else the User chooses to share. (*Id.* ¶ 22.) Users can  
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24  
 25 <sup>1</sup> This Statement of Facts is based on the allegations in the Complaint, which Facebook assumes  
 as true for purposes of this motion but which Facebook does not thereby admit.

26 <sup>2</sup> Users can and do use a range of photos for their profile pictures, including pets, cars, nature  
 27 scenes, etc. The Complaint does not allege that the named Plaintiffs uploaded a profile picture  
 28 sufficient to confirm Plaintiffs are Facebook users or to locate their profile pages.

1 also communicate on Facebook through various messaging features, including chat, personal  
2 messaging, wall posts, and status updates. (*Id.*)

3 Facebook is, and has always been, a free service. Facebook earns revenue by selling  
4 space on the website for advertisements that appear on the right side of the page a User may be  
5 viewing. (*Id.* ¶¶ 7, 24, 27.) Advertisers can target their advertisements to Facebook Users based  
6 on various anonymous demographic criteria (*e.g.*, age, gender, home state, interests). (*Id.* ¶ 26.)  
7 To obtain this space, advertisers place bids. (*Id.* ¶ 28.)

8 The “Friend Finder” lets a User search through the User’s email contacts to identify  
9 people the User may know who are also Facebook Users. (Compl. ¶ 33.) If there is a match, the  
10 “Friend Finder” will alert the User, who may then request that the parties become friends. (*Id.* ¶  
11 10.) To utilize the service, the User opens the “Friend Finder” application, which contains the  
12 User’s e-mail address, and also provides his or her e-mail password, permitting Facebook to  
13 search the e-mail contacts within that e-mail account. (*Id.* ¶ 33.) When a User chooses to use  
14 “Friend Finder,” Facebook informs the User that “[w]e may use the email addresses you upload  
15 through this importer to help you connect with friends, including using this information to  
16 generate Suggestions for you and your contacts on Facebook.” (*Id.*) Plaintiffs allege that  
17 Facebook employs “Friend Finder” to increase Facebook’s user population in order to increase  
18 the revenue it can earn by selling advertising space. (*Id.* ¶¶ 25, 37.)

19 Plaintiffs complain that Facebook promotes the “Friend Finder” service by posting the  
20 names and/or likenesses of friends on the User’s profile page. (*Id.* ¶ 34.) They allege that along  
21 with this posting, Facebook includes words to the effect that the User’s friends “‘found friends  
22 using the Friend Finder,’ and suggesting that the User also ‘Give it a try!’” (*Id.*) Plaintiffs allege  
23 that Facebook used their names and/or likenesses, allegedly without their consent, in such  
24 postings and that this use constitutes misappropriation of the right of publicity, a violation of the  
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1 Lanham Act, and a violation of California Business and Professions Code § 17200.<sup>3</sup> (*Id.*)  
 2 Plaintiffs allege, without elaboration or specificity, that these actions caused them to suffer  
 3 “injury-in-fact.” (*Id.* ¶ 38.)

### 4 III. APPLICABLE STANDARDS

5 A court may dismiss a claim under Rule 12(b)(6) when “there is no cognizable legal  
 6 theory or an absence of sufficient facts alleged to support a cognizable legal theory.” *Navarro v.*  
 7 *Block*, 250 F.3d 729, 732 (9th Cir. 2001). In deciding a motion under Rule 12(b)(6), “all material  
 8 allegations of the complaint are accepted as true, as well as all reasonable inferences to be drawn  
 9 from them.” *Id.* However, as the Supreme Court recently emphasized, “labels and conclusions,  
 10 and a formulaic recitation of the elements of a cause of action will not” survive a motion to  
 11 dismiss. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “[A] complaint must contain  
 12 sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’  
 13 A claim has facial plausibility when the plaintiff pleads factual content that allows the court to  
 14 draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v.*  
 15 *Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Twombly*, 550 U.S. at 570). A plaintiff must  
 16 therefore plead “more than a sheer possibility that a defendant has acted unlawfully.” *Id.* at 1949.  
 17 A complaint must “raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 545.

18 Additionally, “in order to ‘[p]revent[] plaintiffs from surviving a Rule 12(b)(6) motion by  
 19 deliberately omitting . . . documents upon which their claims are based,’ a court may consider a  
 20 writing referenced in a complaint but not explicitly incorporated therein if the complaint relies on  
 21 the document and its authenticity is unquestioned.” *See Swartz v. KPMG LLP*, 476 F.3d 756, 763  
 22 (9th Cir. 2007). As discussed in greater detail in the accompanying Request for Judicial Notice  
 23 filed herewith, the Complaint references and relies on the Facebook Principles, Statement of  
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25 <sup>3</sup> Plaintiffs also allege in passing, on information and belief, that Facebook sometimes uses Users’  
 26 e-mail contacts to solicit persons who are not yet Facebook Users to join. There is no suggestion  
 27 that this was allegedly the case for any of the named Plaintiffs. (*Id.* ¶¶ 10, 33.) In any event, the  
 28 Complaint admits that the terms on Facebook’s website inform Users that Facebook reserves the  
 right to use email contacts uploaded through the Friend Finder service to ask people to join  
 Facebook. (*Id.* ¶ 33.)

1 Rights and Responsibilities, and Privacy Policy (*see* Compl. ¶¶ 9, 31, 33), which, under the  
2 applicable legal principles, the Court may properly consider in ruling on this motion.<sup>4</sup>

3 **IV. ARGUMENT**

4 Plaintiffs allege that Facebook violated their common law and statutory (California Civil  
5 Code section 3344) publicity rights, Lanham Act section 1125(a)(1) (preventing false associations  
6 with goods or services), and California Business and Professions Code section 17200 when it  
7 allegedly published their names and/or likenesses in association with the “Friend Finder” service.  
8 As discussed below, for each of these four Claims for Relief, Plaintiffs fail to state a claim and,  
9 accordingly, the Complaint should be dismissed.

10 **A. Plaintiffs Fail to State a Claim for Common Law or Statutory**  
11 **Misappropriation of the Right of Publicity (First and Second Claims for**  
12 **Relief).**

13 To state a claim for common law misappropriation, Plaintiffs must allege “(1) the  
14 defendant’s use of the plaintiff’s identity; (2) the appropriation of plaintiff’s name or likeness to  
15 defendant’s advantage, commercially or otherwise; (3) lack of consent; and (4) resulting injury.”  
16 *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 692 (9th Cir. 1998). In addition to these elements,  
17 to state a claim for statutory misappropriation under California Civil Code section 3344, Plaintiffs  
18 must also allege “(1) a ‘knowing’ use; (2) for purposes of advertising, and (3) a direct connection  
19 between the use and the commercial purpose.” *Id.* Plaintiffs fail to state a claim for either a  
20 common law or statutory violation because (i) Plaintiffs consented to Facebook’s use of their  
21 name and/or likeness in connection with Facebook services; (ii) Plaintiffs have not alleged any  
22 injury, a necessary element of both claims; and (iii) Plaintiffs fail to allege that Facebook used  
23 their names and/or likenesses for its “advantage” as interpreted by the Ninth Circuit. Therefore,  
24 Plaintiffs’ First and Second Claims for Relief should be dismissed.

25 \_\_\_\_\_  
26 <sup>4</sup> What the Complaint refers to as Facebook’s “terms” (Compl. ¶ 33), Facebook formally refers to  
27 as the “Statement of Rights and Responsibilities.” The SRR can be found by clicking on a link  
28 titled “Terms” at the bottom of the Facebook webpage. (*See* Declaration of Ana Yang (“Yang  
Decl.”), filed herewith, ¶ 2, Ex. A.) The SRR, Principles, and Privacy Policy are attached as  
Exhibits A to C to the Yang Declaration.

1                   **1. Plaintiffs consented to the use of their names and/or likenesses in**  
 2                   **association with services on Facebook.**

3                   Plaintiffs allege that they never “consented to the use of their name[s], photograph[s] or  
 4                   likeness[es]” in connection with the “Friend Finder” service. This assertion, however, is  
 5                   contradicted by the very contractual terms and Facebook principles and policies to which  
 6                   Plaintiffs refer in the Complaint. These terms give Facebook the permission to use Plaintiffs’  
 7                   names and/or likenesses in exactly the manner Plaintiffs allege. As referenced by the Complaint,  
 8                   all Facebook Users are bound by Facebook’s “terms” which the company formally calls its  
 9                   “Statement of Rights and Responsibilities” (“SRR”). (Compl. ¶ 33.) Facebook also has a  
 10                  “Privacy Policy” which describes Users’ privacy controls and which Users are encouraged to read  
 11                  and understand. (*Id.* ¶ 31.)<sup>5</sup>

12                  The first statement within the SRR informs Users that it “governs [Facebook’s]  
 13                  relationship with users and others who interact with Facebook. By using or accessing Facebook,  
 14                  you agree to this Statement.” (Yang Decl. Ex. A.) As recently acknowledged in an unpublished  
 15                  opinion in this Court, when a party “accesses or uses” Facebook’s website, these terms are  
 16                  binding. *See Facebook, Inc. v. Power Ventures, Inc.*, No. C 08-05780 JW, 2010 WL 3291750, at  
 17                  \*7 n.20 (N.D. Cal. July 20, 2010) (stating that “in the act of accessing or using the Facebook  
 18                  website alone, [defendant] Power acceded to the Terms of Use and became bound by them”); *see*  
 19                  *also Craigslist, Inc. v. Naturemarket, Inc.* 694 F. Supp. 2d 1039, 1052 (N.D. Cal. 2010) (holding  
 20                  that party consented to forum selection clause in website’s terms of service where terms were  
 21                  condition to accessing website). Plaintiffs allege that they are Facebook Users (Compl. ¶¶ 14-18)  
 22                  and thus they are bound by the SRR.

23  
 24  
 25                  <sup>5</sup> The Complaint also refers to the “Facebook Principles” (Compl. ¶¶ 9, 31), which themselves  
 26                  refer to the rights and responsibilities embodied by the SRR and the privacy controls described by  
 27                  the Privacy Policy. (Yang Decl. Ex. B). As discussed in the Request for Judicial Notice filed  
 28                  herewith, the Court may and should take judicial notice of these three documents “in order to  
 ‘[p]revent[] plaintiffs from surviving a Rule 12(b)(6) motion by deliberately omitting . . .  
 documents upon which their claims are based.’” *See Swartz*, 476 F.3d at 763.

1           Though Plaintiffs allege use of their names and/or likenesses was without consent, the  
2 SRR contains terms which expressly permit Facebook to use a User’s name and/or likeness in the  
3 manner alleged. First, the section titled “Sharing Your Content and Information” states: “For  
4 content that is covered by intellectual property rights, like photos and videos (‘IP content’), you  
5 specifically give us the following permission, subject to your privacy and application settings:  
6 you grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use  
7 any IP content that you post on or in connection with Facebook (‘IP License’).” (Yang Decl.  
8 Ex. A, § 2.) This contractual term unambiguously gives Facebook the right to use any photos,  
9 including Plaintiffs’ profile photos, in any manner on Facebook, subject to Users’ privacy and  
10 application settings.

11           Furthermore, the terms of the Facebook SRR and Privacy Policy inform Users that, unlike  
12 other content they post on Facebook, they cannot limit the use of their names and/or profile  
13 photos in association with general services provided by Facebook.<sup>6</sup> This is because Facebook is a  
14 social networking service, the very purpose of which is to enable people to connect with one  
15 another. The SRR refers Users to the Privacy Policy and informs them that it contains “important  
16 disclosures about how you can use Facebook to share with others and *how we collect and can use*  
17 *your content and information*. We encourage you to read the Privacy Policy, and to use it to help  
18 make informed decisions.” (Yang Decl. Ex. A, § 1) (emphasis added.) The Privacy Policy  
19 specifically informs users that “Facebook is designed to make it easy for you to find and connect  
20 with others. For this reason, your name and profile picture do not have privacy settings. If you  
21 are uncomfortable with sharing your profile picture, you should delete it (or not add one). You  
22 can also control who can find you when searching on Facebook or on public search engines using  
23 the Applications and Websites privacy setting.” (*Id.* Ex. C, § 3.) Users are also informed, in the  
24 section titled “How We Use Your Information. We use the information we collect to provide our  
25 services and features to you . . . .” (*Id.* Ex. C, § 5.) As acknowledged by the Complaint, “Friend

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26  
27 <sup>6</sup> Users may opt out of having their names and/or profile photos associated with certain services  
28 related to advertisements of third-party goods and services on Facebook. (Yang Decl. Ex. C,  
§ 5.)

1 Finder” is a “service offered by Facebook” (Compl. ¶ 33) which assists in the fundamental  
2 purpose of the website: to enable Users to find and connect with friends.

3 As evident from the above terms, both the SRR and the Privacy Policy inform Users that  
4 Facebook will use their names and/or likenesses in connection with the services Facebook  
5 provides, including “Friend Finder,” and use of the Facebook website constitutes consent to such  
6 uses. *See Mortensen v. Bresnan Commc’n, LLC*, No. CV 10-13-BLG-RFC, 2010 WL 5140454,  
7 at \*5 (D. Mont. Dec. 13, 2010) (dismissing claims where online subscriber agreement and privacy  
8 policy both disclosed the manner in which user’s information would be utilized to provide content  
9 or services on the website.) Because Plaintiffs’ assertion they did not consent is contradicted by  
10 the very terms the Complaint relies on, they have not and cannot state a claim under either the  
11 common law or statutory right of publicity and these claims should be dismissed.<sup>7</sup>

12 **2. Plaintiffs fail to allege that they suffered any injury, a necessary**  
13 **element under both the common law and section 3344.**

14 Even if Plaintiffs had not consented to the use of their names and/or likenesses in  
15 association with the “Friend Finder” service, their misappropriation claims fail to allege the injury  
16 necessary to state a claim. Under both the common law and section 3344, Plaintiffs must  
17 adequately allege injury, which is a *necessary* element of both causes of action. *See Slivinsky v.*  
18 *Watkins-Johnson Co.*, 221 Cal. App. 3d 799, 807 (1990) (dismissing plaintiffs’ common law and  
19 statutory misappropriation claims because she failed to allege defendants’ use of her name caused  
20

21 <sup>7</sup> To the extent Plaintiffs suggest that the alleged use of Users’ names and/or likenesses to  
22 “promote” the “Friend Finder” service (Compl. ¶¶ 34, 36, 53) constitutes “advertising,” Facebook  
23 disputes that characterization. Even so, Plaintiffs’ claims still fail because Plaintiffs gave  
24 Facebook permission to use their names and likenesses in connection with advertising. The SRR,  
25 in the section titled “About Advertisements and Other Commercial Content Served or Enhanced  
26 by Facebook,” states “You can use your privacy settings to limit how your name and profile  
27 picture may be associated with commercial, sponsored, or related content (such as a brand you  
28 like) served or enhanced by us. *You give us permission to use your name and profile picture in  
connection with that content*, subject to the limits you place.” (Yang Decl. Ex. A, § 10)  
(emphasis added). Even if the statements alleged by Plaintiffs constituted “advertisements,”  
Plaintiffs expressly gave Facebook permission to use their name and/or likeness in connection  
with such advertising content by utilizing the website. Therefore, the first two claims for relief  
should be dismissed.

1 her any injury). The Complaint makes only one conclusory allegation regarding Plaintiffs’  
2 injuries, stating merely that Plaintiffs suffered “injury-in-fact”—a legal conclusion, not a  
3 description of Plaintiffs’ actual injury. (Compl. ¶ 38.) A motion to dismiss does not assume the  
4 truth of conclusions of fact or law. *See Twombly*, 550 U.S. at 555. Instead, the Complaint must  
5 make factual allegations of injuries that would support such a legal finding.

6 The Complaint alleges no facts that would support a finding of injury. At most, the  
7 Complaint alleges that Plaintiffs’ names and/or likenesses were shown on the Facebook profile  
8 pages of people who were already in their existing e-mail contacts, persons that they were  
9 acquainted with outside of Facebook and had connected with as friends on Facebook. It is hard to  
10 see how displaying Plaintiffs’ names and/or likenesses in association with a service offered by  
11 Facebook, to persons who are Plaintiffs’ existing Facebook friends, could cause any injury  
12 sufficient to sustain a claim for misappropriation, but in any event Plaintiffs do not even try.  
13 Failure to allege injury is fatal to both common law and section 3344 misappropriation claims. In  
14 fact, “[r]esulting injury is the sine qua non of a cause of action for misappropriation of name.”  
15 *Slivinsky*, 221 Cal. App. 3d at 807. As Plaintiffs fail to allege any injury at all, both of their  
16 misappropriation claims should be dismissed.

17 **3. Plaintiffs fail to allege that Facebook used their names and/or**  
18 **likenesses for an “advantage” as required by both the common law**  
**and section 3344.**

19 Both the common law and section 3344 distinguish between the use of a name or likeness  
20 for a party’s own benefit, which may be actionable, and an incidental use of that name or  
21 likeness, which is not. Plaintiffs do not state a claim, therefore, unless they allege the former—  
22 *i.e.*, facts demonstrating that Facebook uses their names and likenesses for its “advantage,  
23 commercially or otherwise.” *See Newcombe*, 157 F.3d at 692; Cal. Civ. Code § 3344(a). The  
24 Ninth Circuit has defined this element as it relates to those who publish advertisements. In  
25 *Newcombe*, the court considered a misappropriation claim against Time Magazine and the Coors  
26 Brewing Co., arising from an advertisement that used the image of a famous baseball player in a  
27 Coors advertisement without his consent. *Id.* at 693. In analyzing the claim, the court held that  
28 because the image was part of the beer advertisement, plaintiff had adequately demonstrated the

1 use was for the advantage of Coors (*i.e.*, to sell more beer). It held, however, that use of the  
2 likeness “could not be said to have directly benefited Time” because “the benefit [Time]  
3 received—payment for the advertising space—was unrelated to the contents of the  
4 advertisement.” *Id.* In short, Time Magazine received the same benefit (payment for advertising  
5 space) regardless of the ad’s content or efficacy.

6 Like Time Magazine, Facebook is not an advertiser, nor does it earn revenues from the  
7 sale of the advertised product. Rather, third parties use Facebook to display their advertisements  
8 and Facebook earns revenue by selling advertising space. (Compl. ¶ 21.) As the Ninth Circuit  
9 held in *Newcombe*, this sort of second-degree financial benefit is not the type of “advantage,”  
10 “commercial or otherwise,” that is actionable under the common law or section 3344. *See*  
11 *Newcombe*, 157 F.3d at 692.

12 Nor does the Complaint adequately allege that the association of Users’ names or  
13 likenesses with the “Friend Finder” service, allegedly to increase its user base, is for Facebook’s  
14 “advantage.” The Complaint does not allege that a User’s name or likeness is associated with any  
15 product or that Facebook receives direct revenue from the use of the name and/or likeness in  
16 association with “Friend Finder.” Instead, it acknowledges that Facebook earns revenue by  
17 selling space on its website to third-party advertisers. (Compl. ¶ 25.) It analogizes Facebook to  
18 “Free TV” wherein a television station makes its profits from advertisements and also tries to  
19 increase its viewer population. (*Id.*) As evident from the *Newcombe* decision, however, the sale  
20 of advertising space is not an “advantage” as contemplated by California misappropriation law.  
21 For instance, under Plaintiffs’ theory, a television station would be liable for misappropriation  
22 any time it ran a spot encouraging viewers to tune to and watch an episode of a popular TV  
23 program that included snippets of the program and likenesses of the actors. Undoubtedly, the  
24 television station is running the ad to encourage a larger viewership by which it may be able to  
25 increase the amount it can charge for advertising. Under Plaintiffs’ theory of misappropriation  
26 law, this would be enough of an “advantage” to permit suit, presumably by every actor on the  
27 program. As *Newcombe* makes clear, this is not the law. Attenuated benefits like increased  
28 advertising that are several degrees of separation away from the use of the name and likeness

1 itself are not an “advantage” under California law. For this reason as well, Plaintiffs’  
2 misappropriation claims should be dismissed.

3 **B. Plaintiffs Cannot State a Claim Under 15 U.S.C. § 1125(a)(1)(A) Since They**  
4 **Cannot Allege a Commercial Interest in Their Name Akin to a Trademark, or**  
5 **Any Injury to Such a Commercial Interest (Third Claim for Relief).**

6 Under established Ninth Circuit precedent, Plaintiffs cannot bring a claim under the  
7 Lanham Act on the facts alleged because Plaintiffs have not and cannot allege any “commercial  
8 interest” in the use of their names and or likenesses that has been injured by Facebook’s actions.  
9 Without such a commercial interest and injury to that interest, Plaintiffs do not have standing  
10 under § 1125(a)(1)(A), a statute whose purpose is to protect persons and activities engaged in  
11 commerce.

12 Section 1125(a)(1), has two distinct prongs prohibiting false advertising and false  
13 representations. Under either prong, to state a prima facie claim, Plaintiffs must allege “(1) false  
14 or deceptive advertisements and representations to customers; (2) which advertisements and  
15 representations actually deceive a significant portion of the consuming public; and (3) injury  
16 caused by such conduct.” *See William H. Morris v. Group W, Inc.*, 66 F.3d 255, 257 (9th Cir.  
17 1995). Plaintiffs claim violation of subsection (A)<sup>8</sup>—often referred to as a “false association”  
18 claim—asserting that the alleged use of their name and/or likeness in association with the “Friend  
19 Finder” service constituted a “false endorsement.” (Compl. ¶ 38.)

20 In order to sustain such a claim, Plaintiffs must allege some present “commercial interest”  
21 that was injured by Defendant’s actions. *See Waits v. Frito-Lay, Inc.*, 978 F.2d 1093, 1110 (9th  
22 Cir. 1992); *Barrus v. Sylvania*, 55 F.3d 468, 469 (9th Cir. 1995); *Condit v. Star Editorial, Inc.*,  
23 259 F. Supp. 2d 1046, 1054 (E.D. Cal. 2003) (citing Ninth Circuit precedent requiring as a  
24 “prerequisite” to a false association claim that the “identity have commercial value at the time of

25 <sup>8</sup> “(1) Any person who, on or in connection with any goods or services, or any container for  
26 goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof,  
27 or any false designation of origin, false or misleading description of fact, or false or misleading  
28 representation of fact, which – (A) is likely to cause confusion, or to cause mistake, or to deceive  
as to the affiliation, connection, or association of such person with another person, or as to the  
origin, sponsorship, or approval of his or her goods, services, or commercial activities by another  
person.” 15 U.S.C. § 1125(a)(1)(A).

1 the disputed publication”). Otherwise, a dismissal of the claim for lack of standing under Federal  
2 Rule of Civil Procedure 12(b)(6) is proper. *Id.* at 470. This requirement is consistent with the  
3 intent expressed within the Lanham Act itself, “to regulate commerce within the control of  
4 Congress by making actionable the deceptive and misleading use of marks in such commerce . . .  
5 to protect persons engaged in such commerce against unfair competition.” 15 U.S.C. § 1127; *see*  
6 *also Waits*, 978 F.2d at 1108 (noting the “express purpose of the Lanham Act is the protect  
7 commercial parties”). A party without any commercial interest cannot allege an interest protected  
8 by the Lanham Act.<sup>9</sup> *See Waits*, 978 F.2d at 1108.

9 Plaintiffs do not have standing to bring a claim under § 1125(a)(1) because they have  
10 failed to allege a present commercial interest that Defendants allegedly injured. The Complaint  
11 contains no allegation that the named Plaintiffs’ identities have commercial value. Further, aside  
12 from a recitation of the legal conclusion that Facebook’s acts caused Plaintiffs “injury-in-fact”  
13 (Compl. ¶ 38), the Complaint is devoid of any allegation of injury. It is well established that such  
14 a “formulaic recitation” of a legal conclusion without supporting factual allegations will not  
15 survive a motion to dismiss. *Twombly*, 550 U.S. at 555.

16 In fact, case law establishes that Plaintiffs, as private persons and consumers, *cannot*  
17 allege an injury to any commercial interest. In interpreting whether a plaintiff has a commercial  
18 interest sufficient to confer standing under § 1125(a)(1), the Ninth Circuit first considers whether  
19 the plaintiff’s identity is “akin to . . . that of a trademark holder.” *See Waits*, 978 F.2d at 1110;  
20 *Barrus*, 55 F.3d at 469; *Ott v. Ingenix, Inc.*, 333 F. Appx. 342, 343 (9th Cir. 2009); *see also White*  
21 *v. Samsung Electronics America, Inc.*, 971 F.2d 1395, 1400 (9th Cir. 1992) (holding that  
22 “trademark” in § 1125(a) claims means a celebrity’s “persona,” which is only actionable if the  
23 persona is strong enough to rise to a level of recognition in society that would cause confusion as  
24

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25 <sup>9</sup> The commercial interest must be present at the time of the publication. *See Smith v. Montoro*,  
26 648 F.2d 602, 608 (9th Cir. 1981); *see also Condit*, 259 F. Supp. 2d at 1051-52 (discussing  
27 authority requiring plaintiffs to at least “allege an existing intent to commercialize an interest in  
28 identity” to have standing under the Lanham Act). This “present interest” requirement adheres to  
trademark law’s historic origins, requiring “that a mark must be in commercial use before the  
trademark can be registered.” *Condit*, 259 F. Supp. 2d at 1052.

1 to whether they were endorsing the product); *Condit*, 259 F. Supp. 2d at 1054 (dismissing  
2 plaintiff’s false association claim because she had not alleged her “persona has commercial  
3 value” akin to a trademark or that she intended to use her identity to create such value). The term  
4 “trademark” is defined by the statute as “any word, name, symbol, or device . . . which a person  
5 has a bona fide intention to use in commerce.” 15 U.S.C. § 1127.

6 In analyzing whether a name or likeness has a commercial interest “akin” to a trademark,  
7 the Ninth Circuit and its lower courts have held that consumers and private persons not engaged  
8 in commerce of their identity do not meet this definition. For instance in *Barrus v. Sylvania*, the  
9 Ninth Circuit considered a complaint brought by consumers who alleged that statements by a  
10 light bulb manufacturer were false and misleading under subsection (B). *Barrus*, 55 F.2d at 469.  
11 After carefully reviewing § 1125(a)(1) standing under Ninth Circuit precedent, the court  
12 concluded that “[a]s consumers, they have alleged neither commercial injury nor competitive  
13 injury” and therefore lacked standing. Additionally, in *Ott v. Ingenix, Inc.*, the Ninth Circuit  
14 considered whether a former employee could allege a § 1125(a)(1)(A) claim for his ex-company’s  
15 false representation that he would serve as a consultant on a project. *Ott*, 333 Fed. Appx. at 343.  
16 The court held that the use of a name or professional identity without allegations that they  
17 constitute “a ‘trademark’ or the ‘equivalent of a trademark (either through secondary meaning or  
18 otherwise)’” did not demonstrate the requisite commercial injury. *Id.*

19 Similarly, the Eastern District of California considered a false association claim brought  
20 by the wife of a United States Congressman. *See Condit*, 259 F. Supp. 2d at 1048. Plaintiff  
21 alleged that a false news story attributed to her constituted a false association claim under  
22 § 1125(a)(1)(A) of the Lanham Act. *Id.* at 1050. The court concluded that as a private person  
23 not normally engaged in the commerce of her identity, without factual allegations that plaintiff  
24 had some present intent to use her identity “akin to a trademark,” she failed to state a claim. *Id.* at  
25 1054. In so holding, the court cited to a number of other circuits which require a “commercial  
26 interest” that is not met by a private citizen who is not engaged in commerce of their identity. *Id.*  
27 at 1051 (“[c]ase law has not recognized the extension of [§ 1125(a)(1)] claims to protect  
28 individual non-commercial image or identity”) (citing *Colligan v. Activities Club of New York*,

1 *Ltd.*, 442 F.2d 686, 692 (2d Cir. 1972) (holding § 1125(a)(1) claims are limited to commercial  
 2 parties); *Pesina v. Midway Mfg. Co.* 948 F. Supp. 40, 43 (N.D. Ill. 1996) (holding plaintiff must  
 3 “demonstrate that [s]he was a ‘celebrity’ when defendants used [her] persona, name and likeness;  
 4 otherwise, [her] identity does not constitute an economic interest protectable under the Lanham  
 5 Act.”); *Cromer v. Lounsbury Chiropractic Offices, Inc.* 866 F. Supp. 960, 963-64 (S.D. W. Va.  
 6 1994) (noting “for this court to hold that such [personal] interests are also embraced by the  
 7 Lanham Act would be to expand the scope of that Act beyond anything its drafters intended”).

8 Here, the Complaint contains absolutely no allegation of any commercial interest  
 9 Plaintiffs have in their names and/or likenesses, much less any allegation that they have used or  
 10 may be able to use their identities in a manner akin to a trademark. The Complaint likewise  
 11 contains no factual allegations regarding any injury to such an interest. Plaintiffs thus do not have  
 12 standing to bring a claim under § 1125(a)(1) of the Lanham Act and their Third Claim for Relief  
 13 should be dismissed.

14 **C. Plaintiffs Fail to State a Claim for Violation of California Business and**  
 15 **Professions Code Section 17200 (Fourth Claim for Relief).**

16 For several reasons, Plaintiffs’ Fourth Claim for Relief, under California’s Unfair  
 17 Competition Law (the “UCL”), Business and Professions Code section 17200, fails to state a  
 18 claim upon which relief can be granted.

19 *First*, Plaintiffs lack standing to sue under the UCL because they have not alleged, and  
 20 cannot allege, that they “suffered injury in fact and ha[ve] lost money or property as a result of  
 21 such unfair competition.” Cal. Bus. & Prof. Code § 17204; *see also Californians for Disability*  
 22 *Rights v. Mervyn’s, LLC*, 39 Cal. 4th 223, 227 (2006); *Animal Legal Defense Fund v. Mendes*,  
 23 160 Cal. App. 4th 136, 145, 148 (2008). Plaintiffs’ conclusory allegation that “Plaintiffs have  
 24 suffered injury-in-fact” (Compl. ¶ 38) and their request in the Prayer for Relief for “actual  
 25 damages to each class member,” without any factual allegations suggesting that such injury exists  
 26 or is imminent, is insufficient to satisfy this element. Plaintiffs also have not alleged that they lost  
 27 any money or property, nor could they as Facebook is, and always has been, a free service. *See*  
 28 *Troyk v. Farmers Group, Inc.*, 171 Cal. App. 4th 1305, 1346 (2009) (the California proposition

1 adding the “injury in fact” requirement referred specifically to the standing requirements of the  
2 United States Constitution, which include “actual or imminent, not ‘conjectural’ or  
3 ‘hypothetical’” injury) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

4 *Second*, Plaintiffs have not sufficiently alleged that Facebook acted “unlawfully” in  
5 contravention of the UCL. Plaintiffs purport to bring claims for alleged violation their common  
6 law and statutory publicity rights, as well as the false association section of the Lanham Act.  
7 However, as shown above, Plaintiffs have failed to allege facts sufficient to state those claims,  
8 and thus Plaintiffs’ claim under the “unlawful” prong of section 17200 necessarily fails as well.  
9 *See Whiteside v. Tenet Healthcare Corp.*, 101 Cal. App. 4th 693, 706 (2001) (“unlawful” claim  
10 under UCL fails where there is no claim based on underlying statute).

11 *Third*, Plaintiffs have not alleged facts showing that Facebook acted “unfairly” within the  
12 meaning of the UCL. California courts have held that in order to state a claim for an “unfair”  
13 business practice in the context of a UCL consumer action,<sup>10</sup> a plaintiff must allege facts  
14 sufficient to establish: (1) substantial consumer injury; (2) that the injury is not outweighed by  
15 countervailing benefits to consumers; and (3) that the injury is one that consumers could not  
16 reasonably have avoided. *Camacho v. Auto. Club of S. Cal.*, 142 Cal. App. 4th 1394, 1403 (2006)  
17 (referring to factors under section 5 of Federal Trade Commission Act, codified at 15 U.S.C.  
18 § 45(n)); *accord Davis v. Ford Motor Credit Co.*, 179 Cal. App. 4th 581, 596 (2009). But, as  
19 discussed above, Plaintiffs have not sufficiently pled *any* injury, let alone a “substantial” injury.  
20 Nor have they suggested that any such injury is “not outweighed by countervailing benefits to  
21 consumers.” On the contrary, they acknowledge that via “Friend Finder” Users can connect with  
22  
23  
24

25 \_\_\_\_\_  
26 <sup>10</sup> In *Cel-Tech Commc 'ns., Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 185 (1999), the  
27 California Supreme Court reviewed definitions of “unfair” that had been developed by the lower  
28 courts and concluded they were “too amorphous and provide[d] too little guidance to courts and  
businesses.” The Court adopted a test for competitor actions, but did not decide what test should  
apply in consumer actions. *Id.* at 186-87.

1 other Facebook Users (Compl. ¶ 33), one of the primary reasons people join. Therefore,  
2 Plaintiffs' claim under the "unfair" prong of section 17200 should be dismissed.<sup>11</sup>

3 *Fourth*, Plaintiffs have not alleged that Facebook is liable under the "fraudulent" prong of  
4 section 17200 (*see* Compl. ¶¶ 70-76), and, even if they had, Plaintiffs have not alleged facts that  
5 would state a claim under that prong. Claims brought under the "fraud" prong of the UCL must  
6 be pled with particularity under Federal Rule of Civil Procedure 9(b). *See Kearns v. Ford Motor*  
7 *Co.*, 567 F.3d 1120, 1125 (9th Cir. 2009) (claims brought under the fraud prong of the UCL must  
8 be pled with specificity, stating "with particularity the circumstances that constitute the fraud"  
9 including the "who, what, when, where, and how" of the misconduct charged"). To state a claim,  
10 the Complaint must allege with particularity facts demonstrating (1) a misrepresentation, (2)  
11 knowledge of its falsity, (3) intent to induce reliance, (4) that the reliance was justified, and (5)  
12 damages. *Id.* at 1126 (citing *Engalla v. Permanente Med. Group, Inc.*, 15 Cal. 4th 951, 974  
13 (1997)). The Complaint does not allege with specificity which acts or statements by Facebook  
14 were purportedly fraudulent or constituted misrepresentations, that Facebook intended to induce  
15 Plaintiffs' reliance, or the manner in which they purportedly induced some action by the named  
16 Plaintiffs. Nor does the Complaint allege when statements about the "Friend Finder" service  
17 were purportedly made to Plaintiffs, nor when their own names and/or likenesses were used, if  
18 ever. In short, the Complaint does nothing to describe the "circumstances" surrounding any  
19 alleged fraud, and thus fails to state a claim.

20 Further, a claim under the "fraud" prong could not survive given the clear language on the  
21 Facebook website. (*See supra* § IV(A)(1).) Where explanatory language is clear and

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22  
23 <sup>11</sup> After *Cel-Tech*, courts have used two other tests. *Drum v. San Fernando Valley Bar Ass'n*, 182  
24 Cal. App. 4th 247, 256 (2010). One requires that the unfair conduct be contrary to some  
25 legislatively declared public policy that is "tethered to specific constitutional, statutory, or  
26 regulatory provisions." The other, essentially a pre-*Cel-Tech* test, requires that the business  
27 practice be "immoral, unethical, oppressive, unscrupulous or substantially injurious to  
28 consumers" and that the court "weigh the utility of the defendant's conduct against the gravity of  
the harm to the alleged victim." *Id.* at 256-57. Plaintiffs fail to allege unfairness under either test,  
as they allege neither a legislatively declared public policy limiting Facebook's use of  
information voluntarily posted by users that is "tethered to specific constitutional, statutory, or  
regulatory provision" nor harm substantial enough to outweigh the utility of Facebook's services.

1 unambiguous, the language defeats a fraud claim under section 17200 as a matter of law. *See*  
 2 *Freeman v. Time, Inc.* 68 F.3d 285, 289 (9th Cir. 1995) (affirming dismissal of UCL claims  
 3 where plaintiff could have learned terms by doing a “sufficient reading” of the mailer); *Van Ness*  
 4 *v. Blue Cross of Cal.*, 87 Cal. App. 4th 364, 376 (2001) (dismissing claim that insurance policy  
 5 was deceptive under fraud prong of 17200 where the policy “clearly stated the terms of  
 6 coverage”). As discussed above, the SRR informs Users that by using the website they give  
 7 Facebook a “non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use  
 8 any IP content [including photos] that [Users] post on or in connection with Facebook.” (Yang  
 9 Decl. Ex. A, § 2.) In addition, the Privacy Policy informs Users that “your name and profile  
 10 picture do not have privacy settings,” and that Facebook will “use the information we collect to  
 11 provide our services and features to you . . . .” (*Id.* Ex. C, §§ 3, 5.) Because the SRR and Privacy  
 12 Policy disclose in multiple places that Users’ names and/or likenesses may be used in association  
 13 with Facebook services, and that using the website constitutes consent to such use, Plaintiffs  
 14 cannot allege that Facebook made a false representation regarding the use.

15 Finally, Plaintiffs cannot assert a claim for monetary relief. Under the UCL, monetary  
 16 relief is limited to restitution, *see Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134,  
 17 1148 (2003), and Plaintiffs do not and cannot allege they paid money to Facebook.

## 18 V. CONCLUSION

19 For the foregoing reasons, Plaintiffs’ Class Action Complaint should be dismissed.

20  
 21 Dated: January 11, 2011

COOLEY LLP

22  
 23 /s/ Matthew D. Brown

24 Matthew D. Brown (196972)

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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

12 ROBYN COHEN, SHANNON STOLLER,  
CHRISTOPHER MARSHALL, BRYAN  
13 SIGLOCK, and DEBRA LEWIN,  
individually and on behalf of others similarly  
14 situated,

15 Plaintiff,

16 v.

17 FACEBOOK, INC., a Delaware corporation,

18 Defendant.

Case No. 10-cv-05282-RS

**DECLARATION OF ANA YANG IN  
SUPPORT OF FACEBOOK, INC.'S  
MOTION TO DISMISS CLASS ACTION  
COMPLAINT**

**F.R.C.P. 12(b)(6)**

**DATE:** March 3, 2011  
**TIME:** 1:30 p.m.  
**COURTROOM:** 3  
**JUDGE:** Hon. Richard Seeborg  
**TRIAL DATE:** None Set

21 I, Ana Yang, hereby declare as follows:

22  
23 1. I am a Product Marketing Associate employed by Defendant Facebook, Inc.  
24 ("Facebook"). Except as otherwise noted, I have personal knowledge of the following facts and if  
25 called to testify could and would testify competently thereto.

26 2. Facebook's Statement of Rights and Responsibilities (previously referred to as  
27 Facebook's "Terms of Use," "Terms of Service," or "Terms") sets forth certain rights and  
28


1 obligations of both Facebook and users of the Facebook website. The Statement of Rights and  
2 Responsibilities is posted on the Facebook website, and can be found by clicking on a link titled  
3 "Terms" at the bottom of the Facebook webpage. Attached as **Exhibit A** is a true and correct  
4 copy of the Statement of Rights and Responsibilities.

5 3. The Facebook Principles are the foundation of the rights and responsibilities  
6 applicable to Facebook and its users. The Facebook Principles are posted on the Facebook  
7 website. Attached as **Exhibit B** is a true and correct copy of the Facebook Principles.

8 4. Facebook's Privacy Policy discloses how Facebook users can utilize Facebook to  
9 share content and information with others and how Facebook collects and uses that content and  
10 information. The Privacy Policy is posted on the Facebook website. Attached as **Exhibit C** is a  
11 true and correct copy of the Privacy Policy.

12 I declare under penalty of perjury that the foregoing is true and correct.

13 Executed on January 10, 2011, at Palo Alto, California.

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15   
16 Ana Yang

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# **EXHIBIT A**



Email  Password    
 Keep me logged in [Forgot your password?](#)

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 16 contains certain changes to the general terms for users outside the United States.

Date of Last Revision: October 4, 2010.

### 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 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 Privacy Policy, and to use it 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 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, your content and information is shared with the application. 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, read our [Privacy Policy](#) and [Platform Page](#).)
4. When you publish content or information using the "everyone" 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 do that, which includes the following commitments:

1. You will not send or otherwise 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 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 hateful, 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 or other mature content (including advertisements) without appropriate age-based restrictions.
9. You will not offer any contest, giveaway, or sweepstakes ("promotion") on Facebook 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.
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 of Facebook, such as a denial of service attack.
12. 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:

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 profile.
3. If we disable your account, you will not create another one without our permission.
4. You will not use your personal profile for your own commercial gain (such as selling your status update to an advertiser).
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 for your account we reserve the right to remove or reclaim it if we believe 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.
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.
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, Wall and 32665), or any confusingly similar marks, without our 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.

#### 6. Mobile

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.
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 all rights necessary to enable users to sync (including through an application) their contact lists with any basic information and contact information that is visible to them on Facebook, as well as your name and profile picture.

#### 7. Payments

If you make a payment on Facebook or use Facebook Credits, 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:

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.
2. You give us permission to use and allow others to use such links and content on Facebook.

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 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 Facebook.
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, profiles, 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 ads that are not only valuable to advertisers, but also valuable to you. In order to do that, you agree to the following:

1. You can use your [privacy settings](#) to limit how your name and profile picture may be associated with commercial, sponsored, or related content (such as a brand you like) served or enhanced by us. You give us permission to use your name and profile picture in connection with that content, subject to the limits you place.
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 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"):

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 you will get.
7. 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. We do, however, have systems to detect and filter certain suspicious activity. [Learn more here](#).
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 those ads.
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 written permission.
12. We may reject or remove any ad for any reason.
13. 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:
  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, you agree to our [Pages Terms](#).

### 13. Amendments

1. We can change this Statement if we provide you notice (by posting the change on the [Facebook Site Governance Page](#)) and an opportunity to comment. To get notice of any future changes to this Statement, visit our [Facebook Site Governance Page](#) and become a fan.
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. All such comments must be made on the [Facebook Site Governance Page](#).
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.
4. We can make changes for legal or administrative reasons, or to correct an inaccurate statement, upon notice without opportunity to comment.

### 14. 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 14-18.

### 15. 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 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.
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.
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, 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.

16. **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 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.
3. Certain specific terms that apply only for German users are available [here](#).

17. **Definitions**

1. By "Facebook" we mean the features and services we make available, including through (a) our website at [www.facebook.com](http://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 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 you take.
4. By "content" we mean anything you post on Facebook that would not be included in the definition of "information."
5. By "data" we mean content and information that third parties can retrieve from Facebook or provide to Facebook through Platform.
6. By "post" we mean post on Facebook or otherwise make available to us (such as by using an application).
7. By "use" we mean use, 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.

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

**You may also want to review the following documents:**

- [Privacy Policy](#): The Privacy Policy is designed 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 have obtained written pre-approval from us to offer contests, sweepstakes, and other types of promotions on Facebook.
  - [How to Report Claims of Intellectual Property Infringement](#)
  - [How to Appeal Claims of Copyright Infringement](#)
  - [Pages Terms](#)
- **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.**

# **EXHIBIT B**



Email	Password	<input type="button" value="Login"/>
<input type="text"/>	<input type="text"/>	
<input type="checkbox"/> Keep me logged in	<a href="#">Forgot your password?</a>	

## Facebook Principles

We are building Facebook to make the world more open and transparent, which we believe will create greater understanding and connection. Facebook promotes openness and transparency by giving individuals greater power to share and connect, and certain principles guide Facebook in pursuing these goals. Achieving these principles should be constrained only by limitations of law, technology, and evolving social norms. We therefore establish these Principles as the foundation of the rights and responsibilities of those within the Facebook Service.

### 1. Freedom to Share and Connect

People should have the freedom to share whatever information they want, in any medium and any format, and have the right to connect online with anyone - any person, organization or service - as long as they both consent to the connection.

### 2. Ownership and Control of Information

People should own their information. They should have the freedom to share it with anyone they want and take it with them anywhere they want, including removing it from the Facebook Service. People should have the freedom to decide with whom they will share their information, and to set privacy controls to protect those choices. Those controls, however, are not capable of limiting how those who have received information may use it, particularly outside the Facebook Service.

### 3. Free Flow of Information

People should have the freedom to access all of the information made available to them by others. People should also have practical tools that make it easy, quick, and efficient to share and access this information.

### 4. Fundamental Equality

Every Person - whether individual, advertiser, developer, organization, or other entity - should have representation and access to distribution and information within the Facebook Service, regardless of the Person's primary activity. There should be a single set of principles, rights, and responsibilities that should apply to all People using the Facebook Service.

### 5. Social Value

People should have the freedom to build trust and reputation through their identity and connections, and should not have their presence on the Facebook Service removed for reasons other than those described in Facebook's Statement of Rights and Responsibilities.

### 6. Open Platforms and Standards

People should have programmatic interfaces for sharing and accessing the information available to them. The specifications for these interfaces should be published and made available and accessible to everyone.

### 7. Fundamental Service

People should be able to use Facebook for free to establish a presence, connect with others, and share information with them. Every Person should be able to use the Facebook Service regardless of his or her level of participation or contribution.

### 8. Common Welfare

The rights and responsibilities of Facebook and the People that use it should be described in a Statement of Rights and Responsibilities, which should not be inconsistent with these Principles.

### 9. Transparent Process

Facebook should publicly make available information about its purpose, plans, policies, and operations. Facebook should have a town hall process of notice and comment and a system of voting to encourage input and discourse on amendments to these Principles or to the Rights and Responsibilities.

### 10. One World

The Facebook Service should transcend geographic and national boundaries and be available to everyone in the world.

To access the Facebook Principles in several different languages, please use the following links:

[French translation \(Français\)](#)  
[Italian translation \(Italiano\)](#)  
[German translation \(Deutsch\)](#)  
[Spanish translation \(Español\)](#)

# **EXHIBIT C**



Email	Password	<input type="button" value="Login"/>
<input type="text"/>	<input type="text"/>	
<input type="checkbox"/> Keep me logged in	<a href="#">Forgot your password?</a>	

## Facebook's Privacy Policy.

Date of last revision: December 22, 2010.

This policy contains nine sections, and you can jump to each by selecting the links below:

1. Introduction
2. Information We Receive
3. Sharing information on Facebook
4. Information You Share With Third Parties
5. How We Use Your Information
6. How We Share Information
7. How You Can Change or Remove Information
8. How We Protect Information
9. Other Terms

### 1. Introduction

**Questions.** If you have any questions or concerns about our privacy policy, contact our privacy team through this [help page](#). You may also contact us by mail at 1601 S. California Avenue, Palo Alto, CA 94304.

**TRUSTe Program.** Facebook has been awarded TRUSTe's Privacy Seal signifying that this privacy policy and practices have been reviewed by TRUSTe for compliance with TRUSTe's program requirements. If you have questions or complaints regarding our privacy policy or practices, please contact us by mail at 1601 S. California Avenue, Palo Alto, CA 94304 or through this [help page](#). If you are not satisfied with our response you can contact TRUSTe [here](#). This privacy policy covers the website [www.facebook.com](#). The TRUSTe program covers only information that is collected through this Web site, and does not cover other information, such as information that may be collected through software downloaded from Facebook.



**Safe Harbor.** Facebook also complies with the EU Safe Harbor framework as set forth by the Department of Commerce regarding the collection, use, and retention of data from the European Union. As part of our participation in the Safe Harbor, we agree to resolve all disputes you have with us in connection with our policies and practices through TRUSTe. We will also provide initial responses to access requests within a reasonable period of time. To view our certification, visit the U.S. Department of Commerce's Safe Harbor [Web site](#).

**Scope.** This privacy policy covers all of Facebook. It does not, however, apply to entities that Facebook does not own or control, such as applications and websites using Platform. By using or accessing Facebook, you agree to our privacy practices outlined [here](#).

**No information from children under age 13.** If you are under age 13, please do not attempt to register for Facebook or provide any personal information about yourself to us. If we learn that we have collected personal information from a child under age 13, we will delete that information as quickly as possible. If you believe that we might have any information from a child under age 13, please contact us through this [help page](#).

**Parental participation.** We strongly recommend that minors 13 years of age or older ask their parents for permission before sending any information about themselves to anyone over the Internet and we encourage parents to teach their children about safe internet use practices. Materials to help parents talk to their children about safe internet use can be found on this [help page](#).

### 2. Information We Receive

#### Information you provide to us:

**Information About Yourself.** When you sign up for Facebook you provide us with your name, email, gender, and birth date. During the registration process we give you the opportunity to connect with your friends, schools, and employers. You will also be able to add a picture of yourself. In some cases we may ask for additional information for security reasons or to provide specific services to you. Once you register you can provide other information about yourself by connecting with, for example, your current city, hometown, family, relationships, networks, activities, interests, and places. You can also provide personal information about yourself, such as your political and religious views.

**Content.** One of the primary reasons people use Facebook is to share content with others. Examples include when you update your status, upload or take a photo, upload or record a video, share a link, create an event or a group, make a comment, write something on someone's Wall, write a note, or send someone a message. If you do not want us to store metadata associated with content you share on Facebook (such as photos), please remove the metadata before uploading the content.

**Transactional Information.** We may retain the details of transactions or payments you make on Facebook. If you do not want us to store your payment source account number, you can remove it using your [payments page](#).

**Friend Information.** We offer contact importer tools to help you upload your friends' addresses so that you can find your friends on Facebook, and invite your contacts who do not have Facebook accounts to join. If you do not want us to store this information, visit this [help page](#). If you give us your password to retrieve those contacts, we will not store your password after you have uploaded your contacts' information.

#### Information we collect when you interact with Facebook:

**Site activity information.** We keep track of some of the actions you take on Facebook, such as adding connections (including joining a group or adding a friend), creating a photo album, sending a gift, poking another user, indicating you "like" a post, attending an event, or connecting with an application. In some cases you are also taking an action when you provide information or content to us. For example, if you share a video, in addition to storing the actual content you uploaded, we might log the fact that you shared it.

**Access Device and Browser Information.** When you access Facebook from a computer, mobile phone, or other device, we may collect information from that device about your browser type, location, and IP address, as well as the pages you visit.

**Cookie Information.** We use "cookies" (small pieces of data we store for an extended period of time on your computer, mobile phone, or other device) to make Facebook easier to use, to make our advertising better, and to protect both you and Facebook. For example, we use them to store your login ID (but never your password) to make it easier for you to login whenever you come back to Facebook. We also use them to confirm that you are logged into Facebook, and to know when you are interacting with Facebook Platform applications and websites, our widgets and Share buttons, and our advertisements. You can remove or block cookies using the settings in your browser, but in some cases that may impact your ability to use Facebook.

**Information we receive from third parties:**

**Facebook Platform.** We do not own or operate the applications or websites that you use through Facebook Platform (such as games and utilities). Whenever you connect with a Platform application or website, we will receive information from them, including information about actions you take. In some cases, in order to personalize the process of connecting, we may receive a limited amount of information even before you connect with the application or website.

**Information from other websites.** We may institute programs with advertising partners and other websites in which they share information with us:

- We may ask advertisers to tell us how our users responded to the ads we showed them (and for comparison purposes, how other users who didn't see the ads acted on their site). This data sharing, commonly known as "conversion tracking," helps us measure our advertising effectiveness and improve the quality of the advertisements you see.
- We may receive information about whether or not you've seen or interacted with certain ads on other sites in order to measure the effectiveness of those ads.

If in any of these cases we receive data that we do not already have, we will "anonymize" it within 180 days, meaning we will stop associating the information with any particular user. If we institute these programs, we will only use the information in the ways we explain in the "How We Use Your Information" section below.

**Information from other users.** We may collect information about you from other Facebook users, such as when a friend tags you in a photo, video, or place, provides friend details, or indicates a relationship with you.

**3. Sharing information on Facebook.**

This section explains how your [privacy settings](#) work, and how your information is shared on Facebook. You should always consider your [privacy settings](#) before sharing information on Facebook.

**Name and Profile Picture.** Facebook is designed to make it easy for you to find and connect with others. For this reason, your name and profile picture do not have privacy settings. If you are uncomfortable with sharing your profile picture, you should delete it (or not add one). You can also control who can find you when searching on Facebook or on public search engines using the Applications and Websites [privacy setting](#).

**Contact Information.** Your contact information settings control (available when customizing your [privacy settings](#)) who can contact you on Facebook, and who can see your contact information such as your email and phone number(s). Remember that none of this information is required except for your email address, and you do not have to share your email address with anyone.

**Personal Information.** Your personal information settings control who can see your personal information, such as your religious and political views, if you choose to add them. We recommend that you share this information using the friends of friends setting.

**Posts by Me.** You can select a privacy setting for every post you make using the publisher on our site. Whether you are uploading a photo or posting a status update, you can control exactly who can see it at the time you create it. Whenever you share something look for the lock icon. Clicking on the lock will bring up a menu that lets you choose who will be able to see your post. If you decide not to select your setting at the time you post the content, your content will be shared consistent with your Posts by Me default privacy

(available when customizing your [privacy settings](#)).

**Gender and Birth Date.** In addition to name and email address, we require you to provide your gender and birth date during the registration process. We ask for your date of birth to verify that you are 13 or older, and so that we can better limit your access to content and advertisements that are not age appropriate. Because your date of birth and gender are required, you cannot delete them. You can, however, edit your profile to hide all (or part) of such fields from other users.

**Other.** Here are some other things to remember:

- Some of the content you share and the actions you take will show up on your friends' home pages and other pages they visit.
- If another user tags you in a photo or video or at a place, you can remove the tag. You can also limit who can see that you have been tagged on your profile from your [privacy settings](#).
- Even after you remove information from your profile or delete your account, copies of that information may remain viewable elsewhere to the extent it has been shared with others, it was otherwise distributed pursuant to your [privacy settings](#), or it was copied or stored by other users.
- You understand that information might be reshared or copied by other users.
- Certain types of communications that you send to other users cannot be removed, such as messages.
- When you post information on another user's profile or comment on another user's post, that information will be subject to the other user's [privacy settings](#).
- If you use an external source to publish information to Facebook (such as a mobile application or a Connect site), you should check the privacy setting for that post, as it is set by that external source.

**"Everyone" Information.** Information set to "everyone" is publicly available information, just like your name, profile picture, and connections. Such information may, for example, be accessed by everyone on the Internet (including people not logged into Facebook), be indexed by third party search engines, and be imported, exported, distributed, and redistributed by us and others without privacy limitations. Such information may also be associated with you, including your name and profile picture, even outside of Facebook, such as on public search engines and when you visit other sites on the internet. The default privacy setting for certain types of information you post on Facebook is set to "everyone." You can review and change the default settings in your [privacy settings](#). If you delete "everyone" content that you posted on Facebook, we will remove it from your Facebook profile, but have no control over its use outside of Facebook.

**Minors.** We reserve the right to add special protections for minors (such as to provide them with an age-appropriate experience) and place restrictions on the ability of adults to share and connect with minors, recognizing this may provide minors a more limited experience on Facebook

**4. Information You Share With Third Parties.**

**Facebook Platform.** As mentioned above, we do not own or operate the applications or websites that use Facebook Platform. That means that when you use those applications and websites you are making your Facebook information available to someone other than Facebook. Prior to allowing them to access any information about you, we require them to agree to terms that limit their use of your information (which you can read about in Section 9 of our [Statement of Rights and Responsibilities](#)) and we use technical measures to ensure that they only obtain authorized information. To learn more about Platform, visit our [About Platform](#) page.

**Connecting with an Application or Website.** When you connect with an application or website it will have access to General Information about you. The term General Information includes your and your friends' names, profile pictures, gender, user IDs, connections, and any content shared using the Everyone privacy setting. We may also make information about the location of your computer or access device and your age available to applications and websites in order to help them implement appropriate security measures and control the distribution of age-appropriate content. If the application or website wants to access any other data, it will have to ask for your permission.

We give you tools to control how your information is shared with applications and websites that use Platform. For example, you can block all platform applications and websites completely or block specific applications from accessing your information by visiting your Applications and Websites [privacy setting](#) or the specific application's "About" page. You can also use your [privacy settings](#) to limit which of your information is available to "everyone".

You should always review the policies of third party applications and websites to make sure you are comfortable with the ways in which they use information you share with them. We do not guarantee that they will follow our rules. If you find an application or website that violates our rules, you should report the violation to us on this [help page](#) and we will take action as necessary.

**When your friends use Platform.** If your friend connects with an application or website, it will be able to access your name, profile picture, gender, user ID, and information you have shared with "everyone." It will also be able to access your connections, except it will not be able to access your friend list. If you have already connected with (or have a separate account with) that website or application, it may also be able to connect you with your friend on that application or website. If the application or website wants to access any of your other content or information (including your friend list), it will have to obtain specific permission from your friend. If your friend grants specific permission to the application or website, it will generally only be

able to access content and information about you that your friend can access. In addition, it will only be allowed to use that content and information in connection with that friend. For example, if a friend gives an application access to a photo you only shared with your friends, that application could allow your friend to view or print the photo, but it cannot show that photo to anyone else.

We provide you with a number of tools to control how your information is shared when your friend connects with an application or website. For example, you can use your Application and Websites [privacy setting](#) to limit some of the information your friends can make available to applications and websites. You can block all platform applications and websites completely or block particular applications or websites from accessing your information. You can use your [privacy settings](#) to limit which friends can access your information, or limit which of your information is available to "everyone." You can also disconnect from a friend if you are uncomfortable with how they are using your information.

**Pre-Approved Third-Party Websites and Applications.** In order to provide you with useful social experiences off of Facebook, we occasionally need to provide General Information about you to pre-approved third party websites and applications that use Platform at the time you visit them (if you are still logged in to Facebook). Similarly, when one of your friends visits a pre-approved website or application, it will receive General Information about you so you and your friend can be connected on that website as well (if you also have an account with that website). In these cases we require these websites and applications to go through an approval process, and to enter into separate agreements designed to protect your privacy. For example, these agreements include provisions relating to the access and deletion of your General Information, along with your ability to opt-out of the experience being offered. You can disable instant personalization on all pre-approved websites and applications using your Applications and Websites [privacy setting](#). You can also block a particular pre-approved website or application by clicking "No Thanks" in the blue bar when you visit that application or website. In addition, if you log out of Facebook before visiting a pre-approved application or website, it will not be able to access your information.

**Exporting Information.** You (and those you make your information available to) may use tools like RSS feeds, mobile phone address book applications, or copy and paste functions, to capture, export (and in some cases, import) information from Facebook, including your information and information about you. For example, if you share your phone number with your friends, they may use third party applications to sync that information with the address book on their mobile phone.

**Advertisements.** Sometimes the advertisers who present ads on Facebook use technological methods to measure the effectiveness of their ads and to personalize advertising content. You may opt-out of the placement of cookies by many of these advertisers [here](#). You may also use your browser cookie settings to limit or prevent the placement of cookies by advertising networks. Facebook does not share personally identifiable information with advertisers unless we get your permission.

**Links.** When you click on links on Facebook you may leave our site. We are not responsible for the privacy practices of other sites, and we encourage you to read their privacy statements.

## 5. How We Use Your Information

We use the information we collect to try to provide a safe, efficient, and customized experience. Here are some of the details on how we do that:

**To manage the service.** We use the information we collect to provide our services and features to you, to measure and improve those services and features, and to provide you with customer support. We use the information to prevent potentially illegal activities, and to enforce our [Statement of Rights and Responsibilities](#). We also use a variety of technological systems to detect and address anomalous activity and screen content to prevent abuse such as spam. These efforts may on occasion result in a temporary or permanent suspension or termination of some functions for some users.

**To contact you.** We may contact you with service-related announcements from time to time. You may opt out of all communications except essential updates on your [account notifications](#) page. We may include content you see on Facebook in the emails we send to you.

**To serve personalized advertising to you.** We don't share your information with advertisers without your consent. (An example of consent would be if you asked us to provide your shipping address to an advertiser to receive a free sample.) We allow advertisers to choose the characteristics of users who will see their advertisements and we may use any of the non-personally identifiable attributes we have collected (including information you may have decided not to show to other users, such as your birth year or other sensitive personal information or preferences) to select the appropriate audience for those advertisements. For example, we might use your interest in soccer to show you ads for soccer equipment, but we do not tell the soccer equipment company who you are. You can see the criteria advertisers may select by visiting our [advertising page](#). Even though we do not share your information with advertisers without your consent, when you click on or otherwise interact with an advertisement there is a possibility that the advertiser may place a cookie in your browser and note that it meets the criteria they selected.

**To serve social ads.** We occasionally pair advertisements we serve with relevant information we have about you and your friends to make advertisements more interesting and more tailored to you and your friends. For example, if you connect with your favorite band's page, we may display your name and profile photo next to an advertisement for that page that is displayed to your friends. We only share the personally identifiable information visible in the social ad with the friend who can see the ad. You can opt out of having your information used in social ads on this [help page](#).

**To supplement your profile.** We may use information about you that we collect from other Facebook users to supplement your profile (such as when you are tagged in a photo or mentioned in a status update). In such cases we generally give you the ability to remove the content (such as allowing you to remove a photo tag of you) or limit its visibility on your profile.

**To make suggestions.** We use your information, including the addresses you import through our contact importers, to make suggestions to you and other users on Facebook. For example, if another user imports the same email address as you do, we may suggest that you add each other as friends. Similarly, if one of your friends uploads a picture of you, we may suggest that your friend tag you in the picture. We do this by comparing your friend's pictures to information we've put together from the photos you've been tagged in. We may also suggest that you use certain tools and features based on what your friends have used. You can control whether we suggest that another user add you as a friend through your "search for you on Facebook" [privacy setting](#). You can control whether we suggest that another user tag you in a photo by clicking customize from your [privacy settings](#).

**To help your friends find you.** We allow other users to use contact information they have about you, such as your email address, to find you, including through contact importers and search. You can prevent other users from using your email address to find you using the search section of your [privacy settings](#).

**Downloadable Software.** Certain downloadable software applications and applets that we offer, such as our browser toolbars and photo uploaders, transmit data to us. We may not make a formal disclosure if we believe our collection of and use of the information is the obvious purpose of the application, such as the fact that we receive photos when you use our photo uploader. If we believe it is not obvious that we are collecting or using such information, we will make a disclosure to you the first time you provide the information to us so that you can decide whether you want to use that feature.

**Memorializing Accounts.** If we are notified that a user is deceased, we may memorialize the user's account. In such cases we restrict profile access to confirmed friends, and allow friends and family to write on the user's Wall in remembrance. We may close an account if we receive a formal request from the user's next of kin or other proper legal request to do so.

## 6. How We Share Information

Facebook is about sharing information with others — friends and people in your communities — while providing you with [privacy settings](#) that you can use to restrict other users from accessing some of your information. We share your information with third parties when we believe the sharing is permitted by you, reasonably necessary to offer our services, or when legally required to do so. For example:

**When you make a payment.** When you enter into transactions with others or make payments on Facebook, we will share transaction information with only those third parties necessary to complete the transaction. We will require those third parties to agree to respect the privacy of your information.

**When you invite a friend to join.** When you ask us to invite a friend to join Facebook, we will send your friend a message on your behalf using your name. The invitation may also contain information about other users your friend might know. We may also send up to two reminders to them in your name. You can see who has accepted your invitations, send reminders, and delete your friends' email addresses on your [invite history page](#). If your friend does not want us to keep their information, we will also remove it at their request by using this [help page](#).

**When you choose to share your information with marketers.** You may choose to share information with marketers or electronic commerce providers that are not associated with Facebook through on-site offers. This is entirely at your discretion and we will not provide your information to these marketers without your consent.

**To help your friends find you.** By default, we make certain information you have posted to your profile available in search results on Facebook to help your friends find you. However, you can control who can see some of this information, as well as who can find you in searches, through your [privacy settings](#). We also partner with email and instant messaging providers to help their users identify which of their contacts are Facebook users, so that we can promote Facebook to those users.

**To give search engines access to publicly available information.** We generally limit search engines' access to our site. We may allow them to access information set to the "everyone" setting (along with your name and profile picture) and your profile information that is visible to everyone. You can change the visibility of some of your profile information using the customize section of your [privacy settings](#). You can also prevent search engines from indexing your profile using the Applications and Websites [privacy setting](#).

**To help improve or promote our service.** Sometimes we share aggregated information with third parties to help improve or promote our service. But we only do so in such a way that no individual user can be identified or linked to any specific action or information.

**To provide you with services.** We may provide information to service providers that help us bring you the services we offer. For example, we may use third parties to help host our website, send out email updates about Facebook, remove repetitive information from our user lists, process payments, or provide search results or links (including sponsored links). These service providers may have access to your personal information for use for a limited time, but when this occurs we implement reasonable contractual and technical protections to limit their use of that information to helping us provide the service.

**To advertise our services.** We may ask advertisers outside of Facebook to display ads promoting our services. We may ask them to deliver those ads based on the presence of a cookie, but in doing so will not share any other information with the advertiser.

**To offer joint services.** We may provide services jointly with other companies, such as the classifieds service in the Facebook Marketplace. If you use these services, we may share your information to facilitate that service. However, we will identify the partner and present the joint service provider's privacy policy to you before you use that service.

**To respond to legal requests and prevent harm.** We may disclose information pursuant to subpoenas, court orders, or other requests (including criminal and civil matters) if we have a good faith belief that the response is required by law. This may include respecting requests from jurisdictions outside of the United States where we have a good faith belief that the response is required by law under the local laws in that jurisdiction, apply to users from that jurisdiction, and are consistent with generally accepted international standards. We may also share information when we have a good faith belief it is necessary to prevent fraud or other illegal activity, to prevent imminent bodily harm, or to protect ourselves and you from people violating our [Statement of Rights and Responsibilities](#). This may include sharing information with other companies, lawyers, courts or other government entities.

**Transfer in the Event of Sale or Change of Control.** If the ownership of all or substantially all of our business changes, we may transfer your information to the new owner so that the service can continue to operate. In such a case, your information would remain subject to the promises made in any pre-existing Privacy Policy.

## 7. How You Can Change or Remove Information

**Editing your profile.** You may change or remove your profile information at any time by going to your profile page and clicking "Edit My Profile." Information will be updated immediately.

**Delete uploaded contacts.** If you use our contact importer to upload addresses, you can later delete the list on this [help page](#). You can delete the email addresses of friends you have invited to join Facebook on your [invite history page](#).

**Deactivating or deleting your account.** If you want to stop using your account you may deactivate it or delete it. When you deactivate an account, no user will be able to see it, but it will not be deleted. We save your profile information (connections, photos, etc.) in case you later decide to reactivate your account. Many users deactivate their accounts for temporary reasons and in doing so are asking us to maintain their information until they return to Facebook. You will still have the ability to reactivate your account and restore your profile in its entirety. When you delete an account, it is permanently deleted from Facebook. You should only delete your account if you are certain you never want to reactivate it. You may deactivate your account on your [account settings page](#) or delete your account on this [help page](#).

**Limitations on removal.** Even after you remove information from your profile or delete your account, copies of that information may remain viewable elsewhere to the extent it has been shared with others, it was otherwise distributed pursuant to your [privacy settings](#), or it was copied or stored by other users. However, your name will no longer be associated with that information on Facebook. (For example, if you post something to another user's profile and then you delete your account, that post may remain, but be attributed to an "Anonymous Facebook User.") Additionally, we may retain certain information to prevent identity theft and other misconduct even if deletion has been requested. If you have given third party applications or websites access to your information, they may retain your information to the extent permitted under their terms of service or privacy policies. But they will no longer be able to access the information through our Platform after you disconnect from them.

**Backup copies.** Removed and deleted information may persist in backup copies for up to 90 days, but will not be available to others.

**Non-user contact information.** If a user provides your email address to us, and you are not a Facebook user but you want us to delete your address, you can do so on this [help page](#). However, that request will only apply to addresses we have at the time of the request and not to any addresses that users provide to us later.

## 8. How We Protect Information

We do our best to keep your information secure, but we need your help. For more detailed information about staying safe on Facebook, visit the Facebook [Security Page](#).

**Steps we take to keep your information secure.** We keep your account information on a secured server behind a firewall. When you enter sensitive information (such as credit card numbers and passwords), we encrypt that information using secure socket layer technology (SSL). We also use automated and social measures to enhance security, such as analyzing account behavior for fraudulent or otherwise anomalous behavior, may limit use of site features in response to possible signs of abuse, may remove inappropriate content or links to illegal content, and may suspend or disable accounts for violations of our [Statement of Rights and Responsibilities](#).

**Risks inherent in sharing information.** Although we allow you to set privacy options that limit access to your information, please be aware that no security measures are perfect or impenetrable. We cannot control the actions of other users with whom you share your information. We cannot guarantee that only authorized persons will view your information. We cannot ensure that information you share on Facebook will not become publicly available. We are not responsible for third party circumvention of any [privacy settings](#) or security measures on Facebook. You can reduce these risks by using common sense security practices such as choosing a strong password, using different passwords for different services, and using up to date antivirus software.

**Report Violations.** You should report any security violations to us on this [help page](#).

## 9. Other Terms

**Changes.** We may change this Privacy Policy pursuant to the procedures outlined in the Facebook [Statement of Rights and Responsibilities](#). Unless stated otherwise, our current privacy policy applies to all information that we have about you and your account. If we make changes to this Privacy Policy we will notify you by publication here and on the [Facebook Site Governance Page](#). If the changes are material, we will provide you additional, prominent notice as appropriate under the circumstances. You can make sure that you receive notice directly by liking the [Facebook Site Governance Page](#).

**Consent to Collection and Processing in the United States.** By using Facebook, you consent to having your personal data transferred to and processed in the United States.

**Defined Terms.** "Us," "we," "our," "Platform" and "Facebook" mean the same as they do in the [Statement of Rights and Responsibilities](#). "Information" and "content" are used more generally and interchangeably here than in the [Statement of Rights and Responsibilities](#) unless otherwise limited by the context.

### Helpful links

[Statement of Rights and Responsibilities](#)  
[Facebook Site Governance Page](#)  
[application settings](#)  
[privacy settings](#)  
[account notifications page](#)  
[help page for complaints about our privacy policies or practices](#)  
[help page to report use by a child under age 13](#)  
[help page with info to help parents talk to children about safe internet use](#)  
[deleting an account](#)  
[reporting a deceased user](#)  
[reporting an impostor](#)  
[reporting abusive content](#)  
[reporting a compromised account](#)  
[requesting deletion of data for non-user](#)  
[removing Friend Finder contacts](#)  
[reporting and blocking third-party applications](#)  
[general explanation of third-party applications and how they access data](#)



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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

12 ROBYN COHEN, SHANNON STOLLER,  
CHRISTOPHER MARSHALL, BRYAN  
13 SIGLOCK, and DEBRA LEWIN,  
individually and on behalf of others similarly  
14 situated,

15 Plaintiff,

16 v.

17 FACEBOOK, INC., a Delaware corporation,

18 Defendant.

Case No. 10-cv-05282-RS

**[PROPOSED] ORDER GRANTING  
FACEBOOK, INC.'S MOTION TO DISMISS  
CLASS ACTION COMPLAINT**

**DATE:** March 3, 2011  
**TIME:** 1:30 p.m.  
**COURTROOM:** 3  
**JUDGE:** Hon. Richard Seeborg  
**TRIAL DATE:** None Set

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22 This motion of Defendant Facebook, Inc. to dismiss Plaintiffs' Class Action Complaint  
23 was heard on March 3, 2011 at 1:30 p.m. in this Court. Counsel for Facebook and counsel for  
24 Plaintiffs were in attendance and presented oral arguments. Having considered the parties' papers  
25 filed in support of and in opposition to the motion, oral argument, and any other materials  
26 properly considered by the Court, and good cause having been shown, the Court issues the  
27 following findings and orders:

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**IT IS HEREBY ORDERED THAT** Facebook's Request for Judicial Notice in support of its Motion to Dismiss is **GRANTED**.

With respect to the first claim for relief, for violation of California Civil Code § 3344, Plaintiffs fail to state a claim upon which relief can be granted.

With respect to the second claim for relief, for violation of California's common law right of publicity, Plaintiffs also fail to state a claim upon which relief can be granted.

With respect to the third claim for relief, for violation of 15 U.S.C. § 1125, Plaintiffs also fail to state a claim upon which relief can be granted.

With respect to the fourth claim for relief, for violation of California Business and Professions Code § 17200, Plaintiffs also fail to state a claim upon which relief can be granted.

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

Facebook's Motion to Dismiss the Class Action Complaint is **GRANTED**; and

Plaintiffs' Class Action Complaint and all claims for relief alleged therein are hereby **DISMISSED WITH PREJUDICE**.

**IT IS SO ORDERED.**

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE RICHARD SEEBORG  
UNITED STATES DISTRICT JUDGE