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 8 erroneously sued as Match.com

9 UNITED STATES DISTRICT COURT
 10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 JANE DOE, individually, and on
 13 behalf of all others similarly situated,

14 Plaintiff,

15 vs.

16 MATCH.COM,

17 Defendant.

Case No. CV11-3795 SVW (JEMx)

Hon. Stephen V. Wilson

Filed as Class Action

**NOTICE OF MOTION AND
 MOTION TO DISMISS FOR
 IMPROPER VENUE OR,
 ALTERNATIVELY, TO TRANSFER
 VENUE; MEMORANDUM OF
 POINTS AND AUTHORITIES;
 DECLARATION OF SHARMISTHA
 DUBEY**

(Fed. R. Civ. P. 12(b)(3) and
 28 U.S.C. §§ 1404(a), 1406(a).)

Proposed Order lodged concurrently.

Hearing Date: June 20, 2011
 Hearing Time: 1:30 p.m.
 Courtroom: 6

Action filed: April 13, 2011

300250714.4

1 PLEASE TAKE NOTICE that on June 20, 2011, at 1:30 p.m. in Courtroom
2 6, Defendant Match.com, LLC (“Match”) will and does move this Court for an
3 order dismissing this action for improper venue or, alternatively, transferring this
4 action to the U.S. District Court for the Northern District of Texas, Dallas Division.

5 This motion is brought under Federal Rule of Civil Procedure 12(b)(3) and
6 28 U.S.C. §§ 1404(a) and 1406(a). This Motion is based on this Notice of Motion
7 and Motion, the attached Memorandum of Points and Authorities, the attached
8 Declaration of Sharmistha Dubey, all papers on file with the Court, and all evidence
9 and argument presented at or before the hearing on this motion.

10 This motion is made following the conference of counsel under Local Rule
11 7-3 that took place on May 4, 2011.

13 Dated: May 6, 2011

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By: /s/ Joseph E. Laska
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **PRELIMINARY STATEMENT**

3 Plaintiff Jane Doe filed this putative class action against online dating service
4 provider Match.com, LLC (“Match”), on behalf of herself and other female
5 members of Match, in California state court. Yet all members of Match—including
6 Plaintiff—have entered into a Terms of Use Agreement (the “User Agreement”)
7 that requires that “any dispute arising out of the [Match] Website and/or the
8 [Match] Service” be commenced in Dallas, Texas, where Match is based.
9 Accordingly, the Court should dismiss this case for improper venue or, in the
10 alternative, transfer this action to the Northern District of Texas.

11 The User Agreement’s forum selection clause is valid and presumptively
12 enforceable. In fact, the very same clause has already been enforced by another
13 federal district court in another putative nationwide class action. *See Brodsky v.*
14 *Match.com LLC*, 2009 U.S. Dist. LEXIS 101167, at *7 (S.D.N.Y. Oct. 28, 2009).
15 Plaintiff cannot meet the heavy burden required to avoid this contractually agreed-
16 upon forum, and this case therefore should be dismissed under Fed. R. Civ. P.
17 12(b)(3) and 28 U.S.C. § 1406(a).

18 Alternatively, under 28 U.S.C. § 1404(a), this action should be transferred to
19 the Northern District of Texas because it is the most convenient forum. Match’s
20 headquarters—and all of its likely witnesses—are based in Dallas, Texas. And
21 because this is a putative *nationwide* class action, no deference should be accorded
22 to Plaintiff’s decision to file suit in California.

STATEMENT OF FACTS¹

A. The User Agreement between Plaintiff and Match Requires That “Any Dispute” Arising Out of Match’s Website or Service Must Be Commenced in Dallas County, Texas.

Match is a Dallas, Texas-based company that operates the online dating service known as Match.com. Through its website (www.match.com, the “Website”), Match enables single adults to register as members or subscribers and meet other members and subscribers online.² Before using the Match service, Plaintiff and every putative class member was required to first agree to the terms of the User Agreement. (Declaration of Sharmistha Dubey (“Dubey Decl.”) ¶¶ 8-9 and Exhibits A and B.)

Plaintiff and all putative class members knowingly entered into the User Agreement and accepted its terms. (Dubey Decl. ¶ 9.) As an express condition of use of the Website and the Match service, Match requires each user, including Plaintiff and each putative class member, to check a box on the Website affirming, “I agree to the Match.com terms of use.” (*Id.*) The phrase “terms of use” is hyperlinked to a complete copy of the User Agreement. (*Id.* and Exhibits A and B.)

The first paragraph of the User Agreement states: “**If you object to anything in this Agreement or the Match.com Privacy Policy, do not use the Website or the Service.**” (Dubey Decl., Exhibit A (emphasis in original).)

The User Agreement contains a short, clear, mandatory forum selection clause, which reads as follows:

¹ In deciding a Rule 12(b)(3) motion based on a forum selection clause, a court need not accept the factual allegations in the complaint as true. *Argueta v. Banco Mexicano, S.A.*, 87 F.3d 320, 324 (9th Cir. 1996). Further, “the court may consider supplemental written materials and consider facts outside the pleadings.” *Kelly v. Qualitest Pharm., Inc.*, No. F06-116-AW-ILJO, 2006 U.S. Dist. LEXIS 65814, at *7 (E.D. Cal. Aug. 31, 2006) (citing *Murphy v. Schneider Nat’l, Inc.*, 362 F.3d 1133, 1137 (9th Cir. 2004)).

² Subscribers are paying users who have full access to Match’s service. Members are non-paying users who can avail themselves of only certain aspects of Match’s service. (Dubey Decl. ¶ 7.) Both members and subscribers must agree to Match’s User Agreement as a condition of using the Website. (Dubey Decl. ¶ 9.)

1 **23. Jurisdiction and Choice of Law.** *If there is any*
2 *dispute arising out of the Website and/or the Service, by*
3 *using the Website, you expressly agree that any such*
4 *dispute shall be governed by the laws of the State of*
5 *Texas, without regard to its conflict of law provisions,*
6 *and you expressly agree and consent to the exclusive*
7 *jurisdiction and venue of the state and federal courts of*
8 *the State of Texas, in Dallas County, for the resolution of*
9 *any such dispute.*

10 (Dubey Decl., Exhibit A (italics added).)

11 Thus, by assenting to the User Agreement, Plaintiff, along with millions of
12 others from all over the United States (and from outside the U.S. as well), explicitly
13 agreed that the state and federal courts in Dallas County, Texas—where Match is
14 headquartered—would be the exclusive venue for the resolution of any dispute
15 arising out of the Website or Match’s service.

16 **B. This Action Arises out of Match’s Website and Service.**

17 Plaintiff filed this putative class action in the Los Angeles County
18 Superior Court on April 13, 2011. Match timely removed the action to this Court
19 on May 3, 2011. (Docket No. 1.)

20 Plaintiff’s action arises out of her use of the Website. Plaintiff alleges that
21 she was sexually assaulted by a man whom she met using Match’s service, and that
22 this man had been previously convicted of sexual assault. (Compl. ¶¶ 3, 19-20.)
23 Plaintiff further alleges that Match does not screen its members to determine
24 whether they have been previously convicted of sexual offenses. (*Id.* ¶¶ 2, 4, 5.)

25 Plaintiff seeks to certify the following class: “all similarly situated females
26 who have been Match’s members from August 2010 to present and have been
27 exposed to the danger associated with Match allowing registered sexual predators to
28 become its members.” (Compl. ¶ 9.) On behalf of herself and this proposed class,
she asserts a single claim for injunctive relief under Civil Code Section 1770(a)(10)
for failure to “institute basic inexpensive screening processes to weed out known
registered sex offenders.” (Compl. ¶ 24.) Plaintiff seeks “[a]n injunction

1 prohibiting [Match] from signing up further members until such basic screening is
2 implemented,” plus her attorney’s fees. (*Id.*, Prayer for Relief, p. 7.)

3 In the Complaint, Plaintiff does not dispute that she entered into the User
4 Agreement or that the User Agreement is a valid and enforceable agreement. To
5 the contrary, Plaintiff alleges the existence of the User Agreement in her
6 Complaint.³ (Compl. ¶ 5.)

7 ARGUMENT

8 I. 9 THIS ACTION SHOULD BE DISMISSED UNDER RULE 12(b)(3) AND SECTION 1406(a).

10 A. Forum Selection Clauses Are Presumptively Valid.

11 “Forum selection clauses are *prima facie* valid, and are enforceable absent a
12 strong showing by the party opposing the clause ‘that enforcement would be
13 unreasonable or unjust, or that the clause [is] invalid for such reasons as fraud or
14 overreaching.’” *Manetti-Farrow, Inc. v. Gucci Am., Inc.*, 858 F.2d 509, 512 (9th
15 Cir. 1988) (quoting *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15 (1972)).
16 Once venue is challenged, the plaintiff bears the burden of establishing that her
17 chosen venue is proper. *See Pratt v. Silversea Cruises, Ltd.*, No. C 05-0693 SI,
18 2005 U.S. Dist. LEXIS 14339, at *3 (N.D. Cal. July 13, 2005). That burden is a
19 heavy one: the plaintiff must “show that trial in the contractual forum would be so
20 gravely difficult and inconvenient that he will for all practical purposes be deprived
21 of his day in court.” *Manetti-Farrow*, 858 F.2d at 515 (quoting *Bremen*, 407 U.S.
22 at 18); *see also Argueta v. Banco Mexicano, S.A.*, 87 F.3d 320, 325 (9th Cir. 1996).

23 A forum selection clause binds the parties even where it appears in a form
24 consumer contract that was not subject to negotiation. *See Carnival Cruise Lines,*
25 *Inc. v. Shute*, 499 U.S. 585, 589-95 (1991), *superseded by statute on other grounds.*

26 ³ Plaintiff alleges that Section 7 of the User Agreement—advising that Match does
27 not screen its members’ backgrounds—should be invalidated as a “one-sided
28 exculpatory provision.” (Compl. ¶ 5.) Setting aside the lack of merit of Plaintiff’s
legal assertion, the provision that Plaintiff seeks to invalidate is unrelated to the
forum selection clause.

1 This is equally true of forum selection clauses contained in so-called “click-wrap”
2 agreements, whereby “a user accepts a website’s terms and conditions” as a
3 condition of using a website, as Plaintiff and all putative class members did here.
4 *Meier v. Midwest Recreational Clearinghouse LLC*, No. 210-CV-01026, 2010 U.S.
5 Dist. LEXIS 68949, at *5 (E.D. Cal. July 12, 2010). “Such agreements ‘have
6 routinely been upheld by circuit and district courts.’” *Id.* (quoting *United States v.*
7 *Drew*, 259 F.R.D. 449, 462 (C.D. Cal. 2009) (Wu, J.)).

8 **B. The User Agreement’s Forum Selection Clause Is Valid.**

9 A forum selection clause is presumptively valid where (1) it is mandatory,
10 not permissive, (2) it was reasonably communicated to the party resisting
11 enforcement, and (3) the plaintiff’s claims are subject to the clause. *See Phillips v.*
12 *Audio Active Ltd.*, 494 F.3d 378, 383 (2d Cir. 2007).⁴ If these threshold
13 requirements are met, then the clause is presumptively enforceable. *Id.*; *see also*
14 *Doe I v. AOL LLC*, 552 F.3d 1077, 1083 (9th Cir. 2009) (“A forum selection clause
15 is presumptively valid.”). All three requirements are easily met in this case.

16 First, the forum selection clause is mandatory by its terms. It states that
17 Dallas County, Texas, is the “exclusive” venue for the resolution of any disputes
18 arising out of the Website or Match’s service. *See N. Cal. Dist. Council of*
19 *Laborers v. Pittsburgh-Des Moines Steel Co.*, 69 F.3d 1034, 1037 (9th Cir. 1995)
20 (“To be mandatory, a clause must contain language that clearly designates a forum
21 as the exclusive one.”); *Pelleport Investors, Inc. v. Budco Quality Theatres, Inc.*,
22 741 F.2d 273 (9th Cir. 1984) (holding that a provision stating that all disputes “shall
23 be litigated only in the Superior Court for Los Angeles, California” is an
24 enforceable forum selection clause), *overruled on other grounds by Powerex Corp.*
25 *v. Reliant Energy Servs.*, 551 U.S. 224 (2007); *Radian Int’l, LLC v. Alpina Ins. Co.*,

26 _____
27 ⁴ The Ninth Circuit—unlike the Second Circuit—has not explicitly articulated such
28 a three-part test. Nonetheless, the case law from the Ninth Circuit variously
addresses these three factors when determining whether a forum selection clause is
presumptively valid.

1 No. C-04-4537 SC, 2005 WL 1656884, at *2 (N.D. Cal. July 14, 2005) (holding
2 that a forum selection clause providing that “any resolution to a dispute . . . shall be
3 held in Beirut, Lebanon” was mandatory and enforceable).

4 Second, the forum selection clause was reasonably communicated to Plaintiff
5 and all putative class members. (Dubey Decl. ¶ 9 and Exhibit A.) “A forum
6 selection clause stated in clear and unambiguous language . . . is considered
7 reasonably communicated to the plaintiff in determining its enforceability.”
8 *Mazzola v. Roomster Corp.*, No. CV 10-5954, 2010 U.S. Dist. LEXIS 127879, at *2
9 (C.D. Cal. Nov. 30, 2010) (Matz, J.) (holding that a similar clause in an online user
10 agreement was reasonably communicated) (citation omitted); *see also Rodriguez v.*
11 *PepsiCo Long Term Disability Plan*, 716 F. Supp. 2d 855, 860 (N.D. Cal. 2010) (a
12 forum selection clause on a website was “reasonably communicated” and
13 enforceable). Here, the forum selection clause is set out in its own paragraph in the
14 User Agreement in clear language.

15 Third, the forum selection clause in the User Agreement encompasses
16 Plaintiff’s claims because it applies to “any dispute arising out of” the Website
17 “and/or” Match’s online dating service. (Dubey Decl., Exhibit A.) There can be no
18 question that Plaintiff’s claim in this action—which concerns her experience using
19 Match’s service (with a man she met on the Website) and seeks injunctive relief
20 affecting Match’s service—falls within the ambit of the clause. (*See, e.g.*, Compl.
21 ¶¶ 9 (“Plaintiff brings this class action on her own behalf and on behalf of all
22 similarly situated females who have been Match’s members from August 2010 to
23 present and have been exposed to the danger associated with Match allowing male
24 registered sexual predators to become its members.”), 24 (“Plaintiffs [sic] hereby
25 allege that defendant has breached its duty to provide services . . . in that
26 def[endant] is aware that sexual predators use its dating service to find sexual
27 prey.”).

1 In sum, the forum selection clause in the User Agreement easily satisfies
2 these three requirements. It is no surprise, then, that another federal district court
3 has already held the very forum selection clause at issue here to be presumptively
4 valid. *See Brodsky*, 2009 U.S. Dist. LEXIS 101167 at *7 (“[I]t is clear that the
5 forum selection clause in Match’s User Agreement is reasonably communicated
6 and mandatory, and that it covers the claims involved here—i.e., it is presumptively
7 enforceable.”).

8 **C. Plaintiff Cannot Avoid Enforcement of the Forum Selection Clause.**

9 A plaintiff cannot avoid a presumptively valid forum selection clause unless
10 the clause is so unreasonable as to be unenforceable. To make such a showing, the
11 plaintiff bears the “heavy” burden of proving that (1) the inclusion of the clause in
12 the agreement was the product of fraud or overreaching; (2) the plaintiff would
13 effectively be deprived of her day in court if the clause were enforced; or
14 (3) enforcement of the clause would contravene a strong public policy of the forum
15 in which the suit has been brought. *Bremen*, 407 U.S. at 15-18; *Argueta*, 87 F.3d at
16 325. Plaintiff cannot meet this heavy burden.

17 **1. Plaintiff Cannot Show That the Forum Selection Clause Is the**
18 **Product of Fraud or Overreaching.**

19 To circumvent the forum selection clause in the User Agreement on this
20 ground, Plaintiff must prove that the clause itself, not the User Agreement as a
21 whole, was the product of fraud or overreaching. *See, e.g., Angelotti v. RW Prof'l*
22 *Leasing Servs. Corp.*, 105 F.3d 664, 1996 U.S. App. LEXIS 33387, at *10 (9th Cir.
23 1996) (“We only can set aside a forum-selection clause if a party was fraudulently
24 induced to include the clause itself in the agreement.”); *Riley v. Kingsley*
25 *Underwriting Agencies, Ltd.*, 969 F.2d 953, 960 (10th Cir. 1992) (“A plaintiff
26 seeking to avoid a choice provision on a fraud theory must . . . plead fraud going to
27 the specific provision.”); *Moses v. Bus. Card Express, Inc.*, 929 F.2d 1131, 1138
28 (6th Cir. 1991) (to render a forum selection clause unenforceable, “there must be a

1 well-founded claim of fraud in the inducement of the clause itself, *standing apart*
2 *from the whole agreement*”) (emphasis in original).

3 Because a forum selection clause can be set aside only if the clause *itself* was
4 somehow fraudulently obtained, the fact that the clause was included in a form
5 agreement with nonnegotiable terms does not render the clause the product of fraud
6 or overreaching. *Shute*, 499 U.S. at 593-95 (holding that unequal bargaining power
7 between the parties does not make a forum selection clause unenforceable); *accord*
8 *Murphy*, 362 F.3d at 1141 (holding that “a differential in power or education on a
9 non-negotiated contract will not vitiate a forum selection clause”).

10 Plaintiff’s Complaint does not allege that the forum selection clause is
11 unenforceable. This is not surprising: The forum selection clause is plainly stated,
12 and Plaintiff cannot show that Match made any misrepresentations about the clause
13 or misled her as to its legal effect. *See Richards v. Lloyd’s of London*, 135 F.3d
14 1289, 1297 (9th Cir. 1998) (en banc) (enforcing clause where there was no
15 allegation that one party “misled [the other] as to the legal effect of the choice
16 clauses” or “fraudulently inserted the clauses”).

17 **2. Plaintiff Cannot Show That She Would Be Deprived of Her Day in**
18 **Court.**

19 A plaintiff seeking to avoid a forum selection clause also bears a “heavy
20 burden of showing that trial in the chosen forum would be so difficult and
21 inconvenient that the party would effectively be denied a meaningful day in court.”
22 *Argueta*, 87 F.3d at 325 (quoting *Pelleport Investors*, 741 F.2d at 281); *Manetti-*
23 *Farrow*, 858 F.2d at 515. Plaintiff makes no such allegation in her Complaint.
24 Though Plaintiff might claim that travel to Texas would take time and cost money,
25 courts in the Ninth Circuit routinely enforce forum selection clauses even when
26 they require plaintiffs to incur expenses to travel to far away venues. *See, e.g.,*
27 *Pelleport Investors*, 741 F.2d at 281 (travel from East Coast to West Coast held not
28

1 so inconvenient as to constitute deprivation of plaintiff's day in court); *Radian Int'l*,
2 2005 WL 1656884, at *2 (clause requiring travel to Lebanon held enforceable).

3 **3. Plaintiff Cannot Show That Enforcement of the Forum Selection**
4 **Clause Would Contravene a Strong Public Policy of California.**

5 A plaintiff seeking to avoid a forum selection clause must demonstrate that
6 her chosen forum has a public policy specifically regarding venue that would be
7 threatened by enforcement of the clause. *See Swenson v. T-Mobile USA, Inc.*, 415
8 F. Supp. 2d 1101, 1105 (S.D. Cal. 2006) ("The question is not whether the
9 application of the forum's law would violate the policy of the other party's state,
10 but rather, whether enforcement of the forum selection agreement would violate the
11 policy of the other party's state as to the forum for litigation of the dispute.").

12 Plaintiff does not allege that enforcement of the forum selection clause would
13 violate California's public policy. Nor could she. California has a "strong policy in
14 favor of enforcing forum selection clauses." *Applied Med. Distribution Corp. v.*
15 *Surgical Co. BV*, 587 F.3d 909, 914 (9th Cir. 2009). Plaintiff points to nothing that
16 might take precedence over this policy. Enforcement of the forum selection clause
17 here thus would *promote* California public policy, which supports the enforcement
18 of such clauses. *See Swenson*, 415 F. Supp. 2d at 1104 ("Enforcement of the forum
19 selection clause itself here does not contravene a strong public policy in
20 California.").

21 **D. The Court Should Dismiss the Complaint.**

22 Because the forum selection clause in the User Agreement providing for
23 exclusive venue in Dallas County, Texas, is presumptively valid and enforceable,
24 and because Plaintiff cannot meet her heavy burden of overcoming the presumption
25 of validity, this case should be dismissed under Rule 12(b)(3) and Section 1406(a).

26 Where, as here, an action is filed in contravention of a forum selection
27 clause, the proper recourse is to dismiss the action for improper venue under Rule
28 12(b)(3). *See Argueta*, 87 F.3d at 324; *Docksider, Ltd. v. Sea Technology, Ltd.*, 875

1 F.2d 762, 763 (9th Cir. 1989) (affirming dismissal of an action under a forum
2 selection clause); *see also Walker v. Carnival Cruise Lines*, 63 F. Supp. 2d 1083,
3 1086-95 (N.D. Cal. 1999) (dismissing case pursuant to forum selection clause
4 specifying Florida); *accord* 28 U.S.C. § 1406(a) (district court “shall dismiss” an
5 action filed in the wrong venue or, “if it be in the interest of justice,” transfer
6 venue). Alternatively, the Court may transfer this action to the Northern District
7 of Texas under Section 1406(a) “if it be in the interest of justice.” 28 U.S.C. §
8 1406(a).

9 **II.**
10 **ALTERNATIVELY, THE COURT SHOULD TRANSFER THIS ACTION**
11 **TO THE NORTHERN DISTRICT OF TEXAS ON CONVENIENCE**
12 **GROUND.**

13 Even if the Court were to conclude that dismissal of this action for improper
14 venue would be inappropriate, the Court should nonetheless transfer this action to
15 the Northern District of Texas because it is the most convenient venue. Under
16 Section 1404(a), a district court, “[f]or the convenience of the parties and witnesses,
17 [and] in the interest of justice . . . may transfer a case to another district court in
18 which the case might have been brought.” The purpose of Section 1404(a) “is to
19 prevent the waste of ‘time, energy and money’ and ‘to protect litigants, witnesses
20 and the public against unnecessary inconvenience and expense.’” *Van Dusen v.*
21 *Barrack*, 376 U.S. 612, 616 (1964) (quoting *Cont’l Grain Co. v. Barge FBL-585*,
22 364 U.S. 19 (1960)), *superseded by statute on other grounds*. The moving party
23 bears the burden of showing that transfer is appropriate. *See Commodity Futures*
24 *Trading Comm’n v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979).

25 To support a motion to transfer, the moving party must establish that
26 (1) venue would be proper in the transferee district; (2) the action could have been
27 brought in the transferee district; and (3) transfer will serve the convenience of the
28 parties and witnesses, and will promote the interests of justice. *See Goodyear Tire*
& Rubber Co. v. McDonnell Douglas Corp., 820 F. Supp. 503, 506 (C.D. Cal.

1 1992) (Rea, J.); *accord A.J. Indus., Inc. v. United States Dist. Ct.*, 503 F.2d 384,
2 386-87 (9th Cir. 1974). These requirements are easily satisfied in this case.

3 **A. Venue Is Proper in the Northern District of Texas.**

4 As discussed above, the forum selection clause in the User Agreement clearly
5 reflects the parties' intent that venue lie exclusively in the state or federal courts in
6 Dallas County, Texas. (Dubey Decl., Exhibit A.) *See also* 28 U.S.C. §§ 1391(a)(1)
7 (venue is appropriate in the judicial district where the defendant resides), 1391(c)
8 (a corporate defendant "shall be deemed to reside in any judicial district in which it
9 is subject to personal jurisdiction"). Thus, venue is plainly proper in the Dallas
10 Division of the U.S. District Court for the Northern District of Texas.

11 **B. This Action Could Have Been Commenced in the Northern District of
12 Texas.**

13 Federal courts in Texas have diversity jurisdiction over this action—just as
14 this Court does. *See* 28 U.S.C. § 1332(d). (*See also* Match's Notice of Removal,
15 Docket No. 1.) Personal jurisdiction also exists because Match's headquarters are
16 located in Dallas, Texas. *See Hertz Corp. v. Friend*, 130 S.Ct. 1181, 1192 (2010);
17 *Cariajano v. Occidental Petroleum Corp.*, 626 F.3d 1137, 1151 (9th Cir. 2010).
18 This action clearly could have been brought—indeed, should have been brought—
19 in the Northern District of Texas, Dallas Division.

20 **C. Transfer Will Serve the Convenience of the Parties and Witnesses, and
21 Will Promote the Interests of Justice.**

22 To determine whether transfer would serve the convenience of the parties
23 and witnesses and promote the interests of justice, courts consider multiple factors,
24 including the plaintiff's choice of forum; the convenience of the parties; the
25 convenience of the witnesses; the ease of access to evidence; the familiarity of each
26 forum with the applicable law; the feasibility of consolidation of other claims; any
27 local interest in the controversy; and the relative trial court congestion and time to
28 trial in each forum. *See Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99 (9th

1 Cir. 2000); *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th
2 Cir. 1986). Importantly here, “[t]he presence of a forum selection clause [is a]
3 significant factor that figures centrally in the district court’s calculus.” *Stewart*
4 *Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988); *accord Jones*, 211 F.3d at 499.

5 Here, the balance of factors strongly favors transfer—especially given the
6 “significant factor” of the forum selection clause.

7 As a threshold matter, while the plaintiff’s choice of forum is generally
8 accorded deference in considering a Section 1404(a) motion to transfer, no such
9 deference is accorded in the class action context. *See Koster v. (Am.) Lumbermens*
10 *Mut. Cas. Co.*, 330 U.S. 518, 524 (1947) (observing that in the class action context,
11 there may be hundreds of plaintiffs, each of whom presumably has a preferred
12 forum); *Pfeiffer v. Himax Techs., Inc.*, 530 F. Supp. 2d 1121, 1124 (C.D. Cal. 2008)
13 (Pregerson, J.) (holding that the plaintiff’s choice of forum is not entitled to
14 deference in a class action). On the contrary, Plaintiff’s tactical decision to file suit
15 in California in contravention of the forum selection clause is not entitled to any
16 deference at all. *See Alexander v. Franklin Res., Inc.*, No. C 06-7121 SI, 2007 U.S.
17 Dist. LEXIS 19727, at *11 (N.D. Cal. Feb. 14, 2007) (“[T]he Ninth Circuit has
18 established that courts should disregard a plaintiff’s forum choice where the suit is a
19 result of forum-shopping.”) (citing *Alltrade, Inc. v. Uniweld Prods., Inc.*, 946 F.2d
20 622, 628 (9th Cir. 1991)).

21 The remaining factors in the analysis also heavily favor transferring this
22 action to Texas. The vast majority of the witnesses reside or work in Texas.
23 (Dubey Decl. ¶¶ 3-5.) The vast majority of the relevant documents are located in
24 Texas. (Dubey Decl. ¶ 6.) The User Agreement is governed by Texas law. (Dubey
25 Decl., Exhibit A.) And Texas courts have at least as great an interest in deciding
26 matters involving a Texas-based business and class members as California does in
27 deciding matters involving a California plaintiff in a nationwide class action.

28

1 Indeed, the nationwide class that Plaintiff seeks to certify presumably would
2 include a large number of persons residing in Texas.

3 **CONCLUSION**

4 For the reasons discussed above, Match respectfully requests that this Court
5 dismiss this action for improper venue under Rule 12(b)(3) and Section 1406(a).
6 Alternatively, Match respectfully requests that this Court transfer this action to the
7 U.S. District Court for the Northern District of Texas, Dallas Division, on
8 convenience grounds under Section 1404(a).

9
10 Dated: May 6, 2011

MANATT, PHELPS & PHILLIPS, LLP
ROBERT H. PLATT
JOSEPH E. LASKA

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12
13 By: /s/ Joseph E. Laska
14 Joseph E. Laska
15 *Attorneys for Defendant*
16 MATCH.COM, LLC,
17 erroneously sued as Match.com
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DECLARATION OF SHARMISTHA DUBEY

I, Sharmistha Dubey, declare as follows:

1. I am over 18 years old. I have personal knowledge of the facts set forth in this declaration. If called as a witness, I can and will testify competently to all of these facts.

2. I am Senior Vice President, Product at Match.com, LLC (“Match”), the defendant in this action. I work at Match’s offices in Dallas, Texas. I am familiar with the complaint (“Complaint”) filed by Plaintiff Jane Doe (“Plaintiff”) and the allegations contained in the Complaint.

3. Match was founded as an online dating service. Its website (www.match.com) and services are available in all 50 states. Match’s corporate headquarters are located in Dallas County, Texas. Dallas is Match’s principal place of business. The vast majority of Match employees work out of the corporate headquarters in Dallas, Texas.

4. Match’s U.S. website was designed, engineered, and is maintained by employees in Match’s Dallas office. Employees in Match’s Dallas office also primarily direct both the design and implementation of Match’s online, television, and print-based marketing strategies; direct and manage Match’s Customer Care department, which interacts with users of the Match service and assists them with various concerns and questions; and comprise Match’s fraud prevention team.

5. All major decisions and strategies regarding new product development and implementation are made in Match’s Dallas corporate headquarters and are actually implemented in Dallas, Texas.

6. The vast majority of documents related to this lawsuit are located in Dallas, Texas.

7. Match has two types of customers: subscribers and members. Subscribers are paying users that have full access to Match’s service. Members are non-paying users that can only access a subset of Match’s service. Match currently

1 has more than one million subscribers and millions of members.

2 8. Attached as **Exhibit A** is a true and correct copy of the Terms of Use
3 Agreement (“User Agreement”) on Match’s website.

4 9. All subscribers and members of Match must enter into the User
5 Agreement as a condition of using Match’s website and service. Moreover attached
6 as **Exhibit B** is an example of the “Payment” page viewed by subscribers making a
7 credit card payment on Match’s website. Regardless of the subscriber’s chosen
8 method of payment, each subscriber must affirmatively accept Match’s terms of use
9 when making a payment by checking a box affirming, “I agree to the Match.com
10 terms of use.” The phrase “terms of use” is hyperlinked to a complete copy of the
11 User Agreement (Exhibit A). Like all other current or former Match subscribers
12 and members, Plaintiff entered into the User Agreement as a condition of using
13 Match’s website and service.

14 I declare under penalty of perjury under the laws of the United States of
15 America that the contents of this declaration are true and correct, and that this
16 declaration was executed by me on May 5, 2011 in Dallas, Texas.

17
18 
19 _____
20 Sharmistha Dubey
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EXHIBIT A



Match.com Terms of Use Agreement

Welcome to Match.com, the service for single adults to meet each other online, operated by Match.com, L.L.C. ("Match.com"). By using the Match.com Website, (the "Website") you agree to be bound by these Terms of Use (this "Agreement"), whether or not you register as a member of Match.com ("Member"). If you wish to become a Member and make use of the Match.com service (the "Service"), please read these Terms of Use. **If you object to anything in this Agreement or the Match.com Privacy Policy, do not use the Website or the Service.** The Terms of Use are subject to change by Match.com at any time, effective upon posting on the Match.com website, and your use of the Service after such posting will constitute acceptance by you of such changes.

1. Acceptance of Terms of Use Agreement.

- a. Electronic Agreement.** This Agreement is an electronic contract that sets out the legally binding terms of your use of the Website and your membership in the Service. This Agreement may be modified by Match.com from time to time, such modifications to be effective upon posting by Match.com on the Website. This Agreement includes Match.com's Acceptable Use Policy for Content Posted on the Website, Match.com's Privacy Policy, Match.com's subscription policies and any notices regarding the Website. By accessing the Website or becoming a Member, you accept this Agreement and agree to the terms, conditions and notices contained or referenced herein.
- b. Electronic Form.** By accessing the Website or becoming a Member, you consent to have this Agreement provided to you in electronic form.
- c. Non-electronic Copy.** You have the right to receive this Agreement in non-electronic form. You may request a non-electronic copy of this Agreement either before or after you electronically sign the Agreement. To receive a non-electronic copy of this Agreement, please [Contact Us](#) online or send a letter and self-addressed stamped envelope to: Match.com, P.O. Box 12305, Dallas, TX 75225.
- d. Withdrawing Your Consent.** You have the right at any time to withdraw your consent to have this Agreement provided to you in electronic form.

(i) Effect. Should you choose to withdraw your consent to have this Agreement provided to you in electronic form, we will discontinue your then-current username and password. This means that you will not have the right to use the Service unless, and until, we issue you a new username and password. We only will issue you a new username and password after we receive a signed copy of a non-electronic version of this Agreement, which we will send to you upon request.

(ii) Notice. To withdraw your consent and/or request a non-electronic copy of this Agreement, please [Contact Us](#) online or send a letter and self-addressed stamped envelope to: Match.com, P.O. Box 12305, Dallas, TX 75225.

(iii) Prospective Nature. Your withdrawal of consent shall be effective within a reasonable time after we receive your withdrawal notice described above. Your withdrawal of consent

will not affect the legal validity or enforceability of the Agreement provided to, and electronically signed by, you prior to the effective date of your withdrawal.

e. Access and Retention. In order to access and retain this electronic Agreement, you must have access to the World Wide Web, either directly or through devices that access web-based content, and pay any service fees associated with such access. In addition, you must use all equipment necessary to make such connection to the World Wide Web, including a computer and modem or other access device. Please print a copy of this document for your records. To retain an electronic copy of this Agreement, you may save it into any word processing program. Via, the Website, we will notify you of any changes in the hardware or software requirements needed to access and/or retain this Agreement that create a material risk that you will not be able to continue to access and/or retain this electronic Agreement.

2. Eligibility. You must be at least eighteen (18) years of age and single or separated from your spouse to register as a member of Match.com or use the Website. Membership in the Service is void where prohibited. By using the Website, you represent and warrant that you have the right, authority and capacity to enter into this Agreement and to abide by all of the terms and conditions of this Agreement.

3. Membership and Subscription; Pricing. You may become a Member of the Service at no cost. As a Member, you will have the ability to participate in some, but not all, of the features and services available within the Service. In order to access additional features and services, including the ability to communicate with other Members, you must become a paying subscriber to the Service. Please see [Subscribe](#) for a description of the current subscription plans and their prices. Please note that the subscription policies that are disclosed to you in subscribing to the service are deemed part of this Agreement. Please see [Billing Details](#) for a description of such policies. For purposes of this Agreement the term "Member" includes subscribers, unless where its usage indicates otherwise. From time to time, Match.com may remove the profiles of non-subscribers.

4. Term. This Agreement will remain in full force and effect while you use the Website and/or are a Member. You may terminate your membership and/or subscription at any time, for any reason, by following the instructions on the Resign pages in [Account Settings](#), or you may [Contact Us](#) online or send Match.com written notice of termination to Match.com, P.O. Box 12305, Dallas, TX 75225. If you resign or cancel your membership and/or subscription via the Match.com site, to help Match.com analyze and improve the Service, you may be asked to provide a reason for your resignation/cancellation. You may bypass this brief resignation survey page and continue the resignation/cancellation process by clicking the "Continue Cancellation" or other similar button on the page. If you terminate your subscription, your subscription will remain active until the end of your then-current subscription period (that is, the subscription period through which you had paid prior to your termination). Match.com may terminate your membership and/or subscription by sending notice to you at the email address you provide in your application for membership, or such other email address as you may later provide to Match.com. **If Match.com terminates your membership in the Service because you have breached this Agreement, you will not be entitled to any refund of unused subscription fees.** All decisions regarding the termination of accounts shall be made in the sole discretion of Match.com. Match.com is not required to provide you notice prior to terminating your membership and/or subscription. Match.com is not required, and may be prohibited, from disclosing a reason for the termination of your account. Even after your membership or subscription is terminated, this Agreement will remain in effect. All terms that by their nature may survive termination of this Agreement shall be deemed to survive such termination.

5. Non-commercial Use by Members. The Website is for the personal use of individual Members only and may not be used in connection with any commercial endeavors. Organizations, companies, and/or businesses may not become Members and should not use the Service or the Website for any purpose. Illegal and/or unauthorized uses of the Website, including collecting usernames and/or email addresses of members by electronic or other means for the purpose of sending unsolicited email and unauthorized framing of or linking to the Website may be investigated, and appropriate legal action will be taken, including without limitation, civil, criminal, and injunctive redress. Use of the Website is with the permission of Match.com, which may be revoked at any time, for any reason, in Match.com's sole discretion.

6. Account Security. You are responsible for maintaining the confidentiality of the username and password that you designate during the Registration process, and you are fully responsible for all activities that occur under your username and password. You agree to (a) immediately notify Match.com of any unauthorized use of your username or password or any other breach of security, and (b) ensure that you exit from your account at the end of each session. Match.com will not be liable for any loss or damage arising from your failure to comply with this

provision. You should use particular caution when accessing your account from a public or shared computer so that others are not able to view or record your password or other personal information. If you share your computer with others, you may wish to consider disabling your auto-sign in feature if you have linked your Window's Live ID to your Match.com account.

7. YOUR INTERACTIONS WITH OTHER MEMBERS. YOU ARE SOLELY RESPONSIBLE FOR YOUR INTERACTIONS WITH OTHER MEMBERS. YOU UNDERSTAND THAT MATCH.COM DOES NOT IN ANY WAY SCREEN ITS MEMBERS, NOR DOES MATCH.COM INQUIRE INTO THE BACKGROUNDS OF ITS MEMBERS OR ATTEMPT TO VERIFY THE STATEMENTS OF ITS MEMBERS. MATCH.COM MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE CONDUCT OF MEMBERS OR THEIR COMPATIBILITY WITH ANY CURRENT OR FUTURE MEMBERS. IN NO EVENT SHALL MATCH.COM BE LIABLE FOR ANY DAMAGES WHATSOEVER, WHETHER DIRECT, INDIRECT, GENERAL, SPECIAL, COMPENSATORY, CONSEQUENTIAL, AND/OR INCIDENTAL, ARISING OUT OF OR RELATING TO THE CONDUCT OF YOU OR ANYONE ELSE IN CONNECTION WITH THE USE OF THE SERVICE, INCLUDING WITHOUT LIMITATION, BODILY INJURY, EMOTIONAL DISTRESS, AND/OR ANY OTHER DAMAGES RESULTING FROM COMMUNICATIONS OR MEETINGS WITH OTHER REGISTERED USERS OF THIS SERVICE OR PERSONS YOU MEET THROUGH THIS SERVICE. YOU AGREE TO TAKE REASONABLE PRECAUTIONS IN ALL INTERACTIONS WITH OTHER MEMBERS OF THE SERVICE, PARTICULARLY IF YOU DECIDE TO MEET OFFLINE OR IN PERSON. IN ADDITION, YOU AGREE TO REVIEW MATCH.COM'S [DATING SAFETY TIPS](#) PRIOR TO USING THE SERVICE. YOU UNDERSTAND THAT MATCH.COM MAKES NO GUARANTEES, EITHER EXPRESS OR IMPLIED, REGARDING YOUR ULTIMATE COMPATIBILITY WITH INDIVIDUALS YOU MEET THROUGH THE SERVICE. YOU SHOULD NOT PROVIDE YOUR FINANCIAL INFORMATION (FOR EXAMPLE, YOUR CREDIT CARD OR BANK ACCOUNT INFORMATION) TO OTHER MEMBERS.

8. Content on Match.com.

(a) Proprietary Rights. Match.com owns and retains all proprietary rights in the Website and the Service. The Website contains the copyrighted material, trademarks, and other proprietary information of Match.com, and its licensors. Except for that information which is in the public domain or for which you have been given written permission, you may not copy, modify, publish, transmit, distribute, perform, display, or sell any such proprietary information.

(b) Reliance on Content, Advice, Etc. Opinions, advice, statements, offers, or other information or content made available through the Service, but not directly by Match.com, are those of their respective authors, and should not necessarily be relied upon. Such authors are solely responsible for such content. **Match.com does not: (i) guarantee the accuracy, completeness, or usefulness of any information on the Service, or (ii) adopt, endorse or accept responsibility for the accuracy or reliability of any opinion, advice, or statement made by any party that appears on the Website. Under no circumstances will Match.com or its affiliates be responsible for any loss or damage resulting from your reliance on information or other content posted on the Website or transmitted to or by any Members.**

9. Content Posted by You on Match.com.

a. You are solely responsible for the Content that you publish or display (hereinafter, "post") on the Service, or transmit to other Members. You will not post on the Service, or transmit to other Members, any defamatory, inaccurate, abusive, obscene, profane, offensive, sexually oriented, threatening, harassing, racially offensive, or illegal material, or any material that infringes or violates another party's rights (including, but not limited to, intellectual property rights, and rights of privacy and publicity). You will not provide inaccurate, misleading or false information to the Company or to any other Member. If information provided to Match.com, or

another Member, subsequently becomes inaccurate, misleading or false, you will promptly notify Match.com of such change.

b. You understand and agree that Match.com may review and delete any content, messages, double-blind emails, photos or profiles (collectively, "Content"), in each case in whole or in part, that in the sole judgment of Match.com violate this Agreement or which might be offensive, illegal, or that might violate the rights, harm, or threaten the safety of Members.

c. By posting Content to any public area of Match.com, you automatically grant, and you represent and warrant that you have the right to grant, to Match.com, its affiliates, licensees and successors, an irrevocable, perpetual, non-exclusive, fully paid, worldwide license to use, copy, perform, display, reproduce, adapt, modify and distribute such information and content and to prepare derivative works of, or incorporate into other works, such information and content, and to grant and authorize sublicenses of the foregoing. You further represent and warrant that public posting and use of your content by Match.com will not infringe or violate the rights of any third party.

d. The following is a partial list of the kind of Content that is illegal or prohibited on the Website. Match.com reserves the right to investigate and take appropriate legal action in its sole discretion against anyone who violates this provision, including without limitation, removing the offending communication from the Service and terminating the membership of such violators. It includes, but is not limited to, Content that:

- is patently offensive to the online community, such as Content that promotes racism, bigotry, hatred or physical harm of any kind against any group or individual;
- harasses or advocates harassment of another person;
- involves the transmission of "junk mail", "chain letters," or unsolicited mass mailing or "spamming";
- promotes information that you know is false, misleading or promotes illegal activities or conduct that is abusive, threatening, obscene, defamatory or libelous;
- promotes an illegal or unauthorized copy of another person's copyrighted work, such as providing pirated computer programs or links to them, providing information to circumvent manufacture-installed copy-protect devices, or providing pirated images, audio or video, or links to pirated images, audio or video files;
- contains restricted or password only access pages, or hidden pages or images (those not linked to or from another accessible page);
- provides material that exploits people under the age of 18 in a sexual or violent manner, or solicits personal information from anyone under the age of 18;
- provides instructional information about illegal activities such as making or buying illegal weapons, violating someone's privacy, or providing or creating computer viruses;
- solicits passwords or personal identifying information for commercial or unlawful purposes from other users; and
- engages in commercial activities and/or sales without our prior written consent such as contests, sweepstakes, barter, advertising, and pyramid schemes.

e. Your use of the Service, including but not limited to the

Content you post on the Service, must be in accordance with any and all applicable laws and regulations.

f. You may not include in your Member profile any telephone numbers, street addresses, last names, URLs or email addresses.

g. You may not engage in advertising to, or solicitation of, other Members. This includes but is not limited to solicitation or advertising to buy or sell any products or services through the Service or to attend parties or other social functions or networking for commercial purposes. You may not transmit any chain letters or junk email to other Members. Although Match.com cannot monitor the conduct of its Members off the Website, it is also a violation of these rules to use any information obtained from the Service in order to harass, abuse, or harm another person, or in order to contact, advertise to, solicit, or sell to any Member without their prior explicit consent. In order to protect our Members from such advertising or solicitation, we reserve the right to restrict the number of emails which a Member may send to other Members in any 24-hour period to a number which we deem appropriate in our sole discretion.

h. All information you include in your Member profile must be accurate, current and complete.

10. Prohibited Activities. Match.com reserves the right to investigate and terminate your membership if you have misused the Service, or behaved in a way which could be regarded as inappropriate or whose conduct is unlawful or illegal. The following is a partial list of the type of actions that you may not engage in with respect to the Service:

- You will not impersonate any person or entity.
- You will not "stalk" or otherwise harass any person.
- You will not express or imply that any statements you make are endorsed by Match.com without our specific prior written consent.
- You will not use any robot, spider, site search/retrieval application, or other manual or automatic device or process to retrieve, index, "data mine", or in any way reproduce or circumvent the navigational structure or presentation of the Service or its contents.
- You will not post, distribute or reproduce in any way any copyrighted material, trademarks, or other proprietary information without obtaining the prior consent of the owner of such proprietary rights.
- You will not remove any copyright, trademark or other proprietary rights notices contained in the Service.
- You will not interfere with or disrupt the Services or the site or the servers or networks connected to the Services or the site.
- You will not post, email or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment.
- You will not forge headers or otherwise manipulate identifiers in order to disguise the origin of any information transmitted through the Service.
- You will not "frame" or "mirror" any part of the Service or the Website, without Match.com's prior written authorization. You also shall not use meta tags or code or other devices containing any reference to Match.com or the Service or the site in order to direct any person to any other web site for any purpose.
- You will not modify, adapt, sublicense, translate, sell, reverse engineer, decipher, decompile or otherwise disassemble any portion of the Service or the Website or any software used on or for the Service or cause others to do so.

11. Customer Service. Match.com provides assistance and guidance through its customer care representatives. When communicating with our customer care representatives, you may not be abusive, obscene, profane, offensive, sexist, threatening, harassing, racially offensive, or otherwise behave inappropriately. If we feel that your behavior towards any of our customer care representatives or other employees is at any time threatening or offensive, we reserve the right to immediately terminate your membership and you will not be entitled to any refund of unused subscription fees.

12. Subscriptions; Charges on Your Billing Account.

(a) General. Match.com bills you through an online account

(your "Billing Account") for use of the Service. You agree to pay Match.com all charges at the prices then in effect for any use of the Service by you or other persons (including your agents) using your Billing Account, and you authorize Match.com to charge your chosen payment provider (your "Payment Method") for the Service. You agree to make payment using that selected Payment Method. Match.com reserves the right to correct any errors or mistakes that it makes even if it has already requested or received payment.

(b) Recurring Billing. Most subscription plans to the Service consist of an initial period, for which there is a one time charge, followed by recurring period charges as agreed to by you. By entering into this Agreement, you acknowledge that your subscription has an initial and recurring payment feature and you accept responsibility for all recurring charges prior to cancellation. MATCH.COM MAY SUBMIT PERIODIC CHARGES (E.G., MONTHLY) WITHOUT FURTHER AUTHORIZATION FROM YOU, UNTIL YOU PROVIDE PRIOR NOTICE (CONFIRMED IN WRITING UPON REQUEST BY MATCH.COM) THAT YOU HAVE TERMINATED THIS AUTHORIZATION OR WISH TO CHANGE YOUR PAYMENT METHOD. SUCH NOTICE WILL NOT AFFECT CHARGES SUBMITTED BEFORE MATCH.COM REASONABLY COULD ACT. TO TERMINATE YOUR AUTHORIZATION OR CHANGE YOUR PAYMENT METHOD, GO TO [ACCOUNT SETTINGS](#).

(c) Current Information Required. YOU MUST PROVIDE CURRENT, COMPLETE AND ACCURATE INFORMATION FOR YOUR BILLING ACCOUNT. YOU MUST PROMPTLY UPDATE ALL INFORMATION TO KEEP YOUR BILLING ACCOUNT CURRENT, COMPLETE AND ACCURATE (SUCH AS A CHANGE IN BILLING ADDRESS, CREDIT CARD NUMBER, OR CREDIT CARD EXPIRATION DATE), AND YOU MUST PROMPTLY NOTIFY MATCH.COM IF YOUR PAYMENT METHOD IS CANCELED (E.G., FOR LOSS OR THEFT) OR IF YOU BECOME AWARE OF A POTENTIAL BREACH OF SECURITY, SUCH AS THE UNAUTHORIZED DISCLOSURE OR USE OF YOUR USER NAME OR PASSWORD. CHANGES TO SUCH INFORMATION CAN BE MADE AT [ACCOUNT SETTINGS](#). IF YOU FAIL TO PROVIDE MATCH.COM ANY OF THE FOREGOING INFORMATION, YOU AGREE THAT MATCH.COM MAY CONTINUE CHARGING YOU FOR ANY USE OF THE SERVICE UNDER YOUR BILLING ACCOUNT UNLESS YOU HAVE TERMINATED YOUR SUBSCRIPTION FOR THE SERVICE (CONFIRMED BY YOU IN WRITING UPON REQUEST BY MATCH.COM).

(d) Payment Method. The terms of your payment will be based on your Payment Method and may be determined by agreements between you and the financial institution, credit card issuer or other provider of your chosen Payment Method (the "Payment Method Provider"). If Match.com does not receive payment from your Payment Method Provider, you agree to pay all amounts due on your Billing Account upon demand.

(e) Change in Amount Authorized. If the amount to be charged to your Billing Account varies from the amount you preauthorized (other than due to the imposition or change in the amount of state sales taxes), you have the right to

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(h) Free Trials and Other Promotions. Any free trial or other promotion that provides subscriber-level access to the Service must be used within the specified time of the trial. You must cancel your subscription before the end of the trial period in order to avoid being charged a subscription fee. If you cancel prior to the end of the trial period and are inadvertently charged for a subscription, please contact [Customer Care](#) to have the charges reversed.

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24. **Indemnity by You.** You agree to indemnify and hold Match.com, its subsidiaries, affiliates, officers, agents, and other partners and employees, harmless from any loss, liability, claim, or demand, including reasonable attorney's fees, made by any third party due to or arising out of your use of the Service in violation of this Agreement and/or arising from a breach of this Agreement and/or any breach of your representations and warranties set forth above.

25. **No Third Party Beneficiaries.** You agree that, except as otherwise expressly provided in this Agreement, there shall be no third party beneficiaries to this Agreement.

Other. This Agreement contains the entire agreement between you and Match.com regarding the use of the Website and/or the Service. If any provision of this Agreement is held invalid, the remainder of this

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