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10 Attorneys for Plaintiffs

11 FACEBOOK, INC. and INSTAGRAM, LLC

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

15 FACEBOOK, INC., a Delaware
16 corporation and INSTAGRAM, LLC, a
17 Delaware limited liability company,

18 Plaintiffs,

19 v.

20 AREND NOLLEN, LEON HEDGES,
21 DAVID PASANEN, and SOCIAL
22 MEDIA SERIES LIMITED,

23 Defendants.

CASE NO.: 3:19-cv-02262

COMPLAINT; DEMAND FOR JURY TRIAL

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1 Plaintiffs Facebook, Inc. (“Facebook”) and Instagram, LLC (“Instagram”), allege
2 the following:

3 **INTRODUCTION**

4 1. Since at least July 9, 2018, to the present, Defendants Arend Nollen, Leon
5 Hedges, David Pasanen, and Social Media Series Limited, have operated an unlawful
6 business using the website Likesocial.co. Defendants’ business artificially inflates the
7 “likes,” “views,” and “followers” of Instagram accounts (known as “fake
8 engagement”). Defendants use a network of computers or “bots” and Instagram
9 accounts to deliver automated likes to their customers’ Instagram accounts, in violation
10 of Instagram’s Terms of Use (“TOU”), Community Guidelines, and California and
11 federal law. Through their business, Defendants interfered and continue to interfere
12 with Instagram’s service, create an inauthentic experience for Instagram users, and
13 attempt to fraudulently influence Instagram users for their own enrichment. Facebook
14 and Instagram bring this action for injunctive relief to stop any continued and future
15 misuse of its platform by Defendants in violation of Instagram’s TOU and Community
16 Guidelines. Facebook and Instagram also bring this action to obtain compensatory,
17 punitive, and exemplary damages under California Penal Code § 502 and the Computer
18 Fraud and Abuse Act, 18 U.S.C. § 1030.

19 **PARTIES**

20 2. Plaintiff Facebook is a Delaware corporation with its principal place of
21 business in Menlo Park, California.

22 3. Plaintiff Instagram is a Delaware limited liability company with its
23 principal place of business in Menlo Park, California. Instagram is a subsidiary of
24 Facebook.

25 4. Defendant Nollen is a resident of Upper Hutt, New Zealand. Exhibit 1.

26 5. Defendants Hedges and Pasanen are residents of Lower Hutt, New
27 Zealand. Exhibits 2 and 3.

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1 13. The Court has personal jurisdiction over Defendants because each
2 Defendant personally used Instagram, their business used thousands of Instagram
3 accounts, and, accordingly, they agreed to Instagram’s TOU. Instagram’s TOU require
4 Defendants to submit to the personal jurisdiction of this Court for litigating any claim,
5 cause of action, or dispute with Instagram.

6 14. In addition, the Court has personal jurisdiction because Defendants
7 knowingly directed their actions at Facebook and Instagram, which have their principal
8 place of business in California. For example, Defendants’ entire business model
9 depends on accessing and using Instagram in order to artificially manipulate Instagram
10 accounts in exchange for money.

11 15. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b),
12 as the threatened and actual harm to Facebook and Instagram occurred in this District.
13 Venue is also proper with respect to each of the Defendants pursuant to
14 28 U.S.C. §1391(c)(3) because none of the Defendants resides in the United States.

15 16. Pursuant to Civil L.R. 3-2(c), this case may be assigned to the San
16 Francisco Division because Facebook and Instagram are located in San Mateo County.

17 **FACTUAL ALLEGATIONS**

18 **A. Background on Instagram and Facebook**

19 17. Facebook is a social networking website and mobile application that
20 enables its users to create their own personal profiles and connect with each other on
21 their personal computers and mobile devices. As of December 2018, Facebook daily
22 active users averaged 1.52 billion and monthly active users averaged 2.32 billion,
23 worldwide. Facebook has several products, including Instagram.

24 18. Instagram is a photo and video sharing service, mobile application, and
25 social network. Instagram users can post photos and videos to their profile. They can
26 also view, comment on, and like posts shared by others on Instagram. As of June 2018,
27 Instagram had over one billion active accounts.

28

1 19. When an Instagram user posts a photo, other Instagram users can view the
2 photo and choose to “like” it. For private accounts, followers of the account can see the
3 post. For public accounts, anyone can see the post. When a photo is liked, that like can
4 be seen by anyone who can see the post. For marketing and other commercial purposes,
5 certain Instagram users strive to increase the number of followers, views, and likes they
6 receive to increase their visibility and popularity on Instagram.

7 20. Instagram users can gain followers, views, and likes, but only from other
8 registered Instagram users. If a visitor to Instagram does not have an Instagram account
9 and tries to like a post, the visitor is redirected to the Instagram login page to enter their
10 Instagram credentials or to create a new Instagram account.

11 21. Everyone who uses Instagram agrees to Instagram’s TOU¹ and other rules
12 that govern access to and use of Instagram, including Instagram’s Community
13 Guidelines.² The Instagram TOU state that because Instagram is a Facebook product,
14 the Instagram TOU constitute an agreement between the Instagram users and
15 Facebook.³

16 22. Since at least April 2018, Instagram’s TOU prohibit users from (a)
17 “do[ing] anything unlawful, misleading, or fraudulent or for an illegal or unauthorized
18 purpose;” (b) “interfering or impairing the intended operation of [Instagram];” (c)
19 “[a]ttempt[ing] to buy, sell, or transfer any aspect of [an Instagram] account;” (d)
20 “creating accounts or collecting information in an automated way . . . ;” and (e) “violate
21 (or help or encourage others to violate) [Instagram] terms or their policies including the
22 Instagram Community Guidelines.”

23 23. In addition, Instagram’s Community Guidelines prohibit users from
24 artificially collecting positive account attributes (*i.e.*, likes, followers, and shares).

25
26 _____
27 ¹ Instagram TOU can be found at <https://help.instagram.com/581066165581870>.

28 ² Instagram Community Guidelines can be found at
<https://help.instagram.com/477434105621119>.

³ See <https://help.instagram.com/581066165581870>.

1 **B. Facebook and Instagram’s Past Enforcement Actions against**
2 **Defendants**

3 24. Since on or about July 23, 2015, Defendants have operated various
4 websites offering fake engagement services including SocialEnvy.co, IGFamous.net,
5 and Likesocial.co. Facebook and Instagram have taken multiple enforcement actions
6 against Defendants for violating Instagram’s TOU and Community Guidelines,
7 including sending cease and desist letters and disabling Instagram accounts associated
8 with Defendants and their websites.

9 1. **SocialEnvy.co and IGFamous.net**

10 25. According to corporate records, in 2015, Defendants Nollen and Hedges
11 were the sole and equal shareholders of an entity called Social Envy Limited. Exhibits
12 9-11. Social Envy Limited was incorporated and registered as a New Zealand Limited
13 Company. Exhibit 9. Social Envy Limited is registered at 9 McCarthy Grove, Clouster
14 Park, Upper Hutt, 5018 NZ, which is the same address used by Social Media Series.
15 Exhibits 4 and 9.

16 26. Between July 23, 2015, and February 2018, Defendants Nollen and Hedges
17 controlled and operated the website SocialEnvy.co⁴ through Social Envy Limited.
18 SocialEnvy.co sold artificial Instagram views and other fake engagement services.
19 Exhibits 12 and 13.

20 27. Between December 2, 2015, and February 2018, Defendants Nollen and
21 Hedges controlled and operated the website IGFamous.net through Social Envy
22 Limited. IGFamous.net sold artificial Instagram likes and other fake engagement
23 services. Exhibit 14.

24 28. On February 20, 2018, Facebook and Instagram sent a cease and desist
25 letter to Defendants Nollen and Hedges for operating SocialEnvy.co and IGFamous.net.
26 Exhibit 15. At that time, Instagram also disabled multiple Instagram accounts
27

28 _____
⁴ Socialenvy.co is presently operated by individuals unassociated with Defendants.

1 associated with SocialEnvy.co and Defendants Nollen and Hedges. Some of those
2 accounts had been used by Defendants Nollen, Hedges, and Pasanen.

3 29. In the February 20, 2018 cease and desist letter, Facebook and Instagram
4 demanded that Defendants Hedges and Nollen stop violating Instagram's TOU,
5 including:

- 6 • Misleading Instagram users;
- 7 • Creating false or duplicate profiles;
- 8 • Collecting user credentials;
- 9 • Automating interactions between profiles that have no prior
10 relationship;
- 11 • Facilitating or encouraging others to violate Instagram's [TOU].

12 The February 20, 2018 cease and desist letter also informed Defendants that their
13 actions may have violated state and federal laws, including Computer Fraud and Abuse
14 Act, 18 U.S.C. § 1030, and California Comprehensive Computer Data Access and Fraud
15 Act, Cal. Penal Code § 502(c).

16 30. After receiving the February 20, 2018 cease and desist letter, Defendants
17 stopped offering fake engagement services on Socialenvy.co and IGFamous.net but
18 began selling fake engagement services on other websites, including Likesocial.co.

19 2. Likesocial.co

20 31. Since on or about July 9, 2018, Defendants controlled and operated the
21 website Likesocial.co through Social Media Series.

22 32. On December 18, 2018, Facebook and Instagram sent a cease and desist
23 letter to Defendants Nollen and Hedges for offering fake engagement services through
24 Likesocial.co. Exhibit 16. The December 2018 letter referenced the February 20, 2018
25 letter:

26 We first contacted you on February 20, 2018 demanding that you stop
27 selling Instagram Followers and Likes through your websites
28 SocialEnvy.co and IGFamous.net. Facebook is aware that you have
continued your improper activities through your current websites including
but not limited to, LikeSocial.co, Social10x.com, smseries.co.nz, and
SocialSteeze.net, where you continue to sell services that automate actions

1 on Instagram including, followers, likes, and views. This violates
2 Instagram's terms of service.

3 In the December 2018 letter, Facebook and Instagram again demanded that Defendants
4 stop abusing Instagram and violating Instagram's TOU. Facebook and Instagram
5 advised Defendants that their conduct may have violated the California Penal Code §
6 502(c) and 18 U.S.C. § 1030. Facebook and Instagram also revoked Defendants' access
7 to Facebook and Instagram at that time and told Defendants that "you, your agents,
8 employees, affiliates, or anyone acting on your behalf . . . may not access the Facebook
9 or Instagram websites, Platforms, or networks for any reason whatsoever."

10 33. In addition, Facebook and Instagram have taken other enforcement actions
11 against Defendants, including blocking millions of artificial likes originating from
12 Defendants' service and disabling accounts associated with Defendants.

13 34. In response to Facebook and Instagram's past enforcement actions,
14 Defendants attempted to conceal their association with the website Likesocial.co. For
15 example, in the terms of service for Likesocial.co affiliates, Defendants used the
16 company name "New Zealand Like Social LLC." Exhibit 17. In fact, no such company
17 is registered in New Zealand. Defendants also used a domain privacy service to register
18 the domain Likesocial.co.

19 **C. Defendants Used an Automated Process, Bots, and Instagram**
20 **Accounts to Artificially Inflate Instagram Users' Likes and Interfere**
21 **with Instagram's Service and Computer Network**

22 35. Since July 2018 and continuing to the present, Defendants have marketed
23 their fake engagement services and conducted financial transactions with their
24 customers on the website Likesocial.co. Exhibits 18 and 19. Defendants offered
25 "automatic Instagram likes" using a "system [that] monitors your Instagram account
26 24/7 and detects your latest posts within seconds. Instagram Likes start delivering to
27 your post immediately after it is detected." Exhibit 20.
28

1 36. Defendants charge a fixed weekly price for their fake engagement services.
 2 The cost of the service depends on the number of automatic likes being purchased and
 3 ranges from \$10 to \$99 per week. The image shown below lists Defendants' pricing
 4 structure as of March 19, 2019, (Exhibit 19), from their website Likesocial.co:

The screenshot shows the homepage of Likesocial.co. At the top is a purple navigation bar with the logo 'Likesocial' on the left and links for 'Home', 'Getting Started', 'Blog', 'FAQ', and 'Contact' on the right. Below the navigation bar is a large red circular icon containing a hand holding a smartphone with a heart on the screen. To the right of the icon is a table titled 'Select your price plan' with a blue header. The table lists five pricing options: 50 likes for \$10.00/week, 100 likes for \$14.00/week, 250 likes for \$23.00/week, 500 likes for \$34.00/week, and 1000 likes for \$59.00/week. Below the table is a red button labeled 'Buy Now'. To the left of the table, the text reads 'Automatic Instagram Likes' and 'Easily get more Instagram likes. Select the amount of automatic Instagram likes you would like to receive per upload, then input your Instagram username, and purchase!'.

Select your price plan	
50	\$10.00 / week
100	\$14.00 / week
250	\$23.00 / week
500	\$34.00 / week
1000	\$59.00 / week
2000	\$99.00 / week

17 37. Defendants used PayPal to accept payments for their services. The PayPal
 18 account used to receive payments from customers was in the name of Social Media
 19 Series. Exhibits 21 and 22.

20 38. Defendants used a network of bots and Instagram accounts that they
 21 controlled to deliver millions of automated likes to their customers. Some of the
 22 Instagram accounts controlled by Defendants were responsible for tens of thousands of
 23 likes on a daily basis.

24 39. For example, on November 28, 2018, after purchasing 500 likes on
 25 Likesocial.co, an Instagram user posted a photo of an empty gym on their Instagram
 26 account. Although the account had no followers and the photo had no comments, the
 27 photo received approximately 500 likes within seconds. All the likes came from
 28

1 Defendants' network of Instagram accounts using two internet service providers located
2 in Turkey.

3 40. Between on or about March 14, 2019 and March 22, 2019, multiple photos
4 were posted by the same Likesocial.co customer. Although the account had no
5 followers and the photos had no comments, each photo received between 500 and 600
6 likes shortly after the photos were posted. Defendants used a network of thousands of
7 Instagram accounts to deliver these likes.

8 **D. Defendants Unjustly Enriched Themselves and Their Unlawful Acts**
9 **Have Caused Damage and a Loss to Facebook and Instagram**

10 41. Defendants' breaches of Instagram's TOU and Community Guidelines
11 have caused Facebook and Instagram substantial harm. Defendants interfered and
12 continue to interfere with Instagram's service and burden Facebook and Instagram's
13 computer network. Moreover, Defendants created and continue to create an inauthentic
14 experience for Instagram users who used, viewed, and relied on Defendants' fake
15 engagement services, thus damaging Instagram's brand.

16 42. Defendants' actions injured Facebook and Instagram's reputation, public
17 trust, and goodwill.

18 43. Facebook and Instagram have suffered damages attributable to the efforts
19 and resources it has used to address this Complaint, investigate and mitigate
20 Defendants' illegal conduct, and attempt to identify, analyze, and stop their fraudulent
21 and injurious activities.

22 44. Since July 2018, Defendants unjustly enriched themselves at the expense
23 of Facebook and Instagram in the amount of approximately \$9,430,000.

24 **FIRST CAUSE OF ACTION**

25 (Breach of Contract)

26 45. Facebook and Instagram incorporate all other paragraphs as if fully set
27 forth herein.

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1 46. Each individual Defendant created a personal Instagram account and
2 agreed to Instagram’s TOU and Community Guidelines. The Instagram service is
3 owned and operated by Facebook, Inc. Since April 2018, the Instagram TOU have
4 stated that Instagram is a Facebook product and that the Instagram TOU constitute an
5 agreement between Instagram users and Facebook.

6 47. In addition, since at least July 2018, Defendants used thousands of
7 Instagram accounts to provide their services, which were also governed by Instagram’s
8 TOU and Community Guidelines. Because Defendants’ unlawful business used and
9 targeted Instagram users, each Defendant agreed to Instagram’s TOU and Community
10 Guidelines.

11 48. Social Media Series, through the website Likesocial.co, continually used
12 Instagram and caused it to be accessed and used to conduct Defendants’ fraudulent
13 business. As the shareholders and Directors of Social Media Services, which operates
14 the website Likesocial.co, each individual Defendant was bound by Instagram’s TOU
15 and Community Guidelines.

16 49. Despite each Defendant’s agreement to Instagram’s TOU and Community
17 Guidelines, they repeatedly breached them. Not only did Defendants and their fake
18 engagement service violate Instagram’s TOU and Community Guidelines, they have
19 helped other Instagram users violate them—itsself a violation of the TOU and
20 Community Guidelines.

21 50. Defendants breached Instagram’s TOU and Community Guidelines by
22 taking the actions described above, including by accessing Instagram to fraudulently
23 and artificially inflate the likes associated with certain Instagram accounts using
24 thousands of other Instagram accounts, all in an attempt to influence other Instagram
25 users and enrich themselves while damaging Facebook and Instagram.

26 51. Facebook and Instagram have performed all conditions, covenants, and
27 promises required of it in accordance with its agreements with Defendants.
28

1 52. Defendants' many breaches have caused Facebook and Instagram to incur
2 damages in the amount of at least \$9,430,000, in addition to an amount to be determined
3 at trial.

4 **SECOND CAUSE OF ACTION**

5 (California Penal Code § 502)

6 53. Facebook and Instagram incorporate all other paragraphs as if fully set
7 forth herein.

8 54. Defendants knowingly accessed and without permission otherwise used
9 Facebook and Instagram's data, computers, computer system, and computer network in
10 order to (A) devise or execute any scheme or artifice to defraud and deceive, and (B) to
11 wrongfully control or obtain money, property, or data, in violation of California Penal
12 Code § 502(c)(1).

13 55. Defendants knowingly and without permission used or caused to be used
14 Facebook and Instagram's computer services in violation of California Penal Code
15 § 502(c)(3).

16 56. By artificially inflating certain Instagram users' likes and impairing the
17 intended operation of Instagram, Defendants knowingly and without permission
18 disrupted or caused the disruption of computer services of Facebook and Instagram's
19 computers, computer systems, and/or computer networks in violation of California
20 Penal Code § 502(c)(5).

21 57. Defendants knowingly and without permission accessed and caused to be
22 accessed Facebook and Instagram's computers, computer systems, and/or computer
23 networks in violation of California Penal Code § 502(c)(7). Defendants accessed
24 Facebook and Instagram's computer network after Facebook and Instagram disabled
25 their Instagram accounts, and sent cease and desist letters to the Defendants revoking
26 their access.

27 58. Because Facebook and Instagram suffered damages and a loss as a result
28 of Defendants' actions and continues to suffer damages as result of Defendant's actions,

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1 Facebook and Instagram are entitled to compensatory damages, in the amount of at least
2 \$9,430,000, attorney fees, and any other amount of damages proven at trial, and
3 injunctive relief under California Penal Code § 502(e)(1) and (2).

4 59. Because Defendants willfully violated California Penal Code § 502, and
5 there is clear and convincing evidence that Defendants committed “fraud” as defined
6 by section 3294 of the Civil Code, Facebook and Instagram are entitled to punitive and
7 exemplary damages under California Penal Code § 502(e)(4).

8 **THIRD CAUSE OF ACTION**

9 (Computer Fraud and Abuse Act, 18 U.S.C. § 1030)

10 60. Facebook and Instagram incorporate all other paragraphs as if fully set
11 forth herein.

12 61. Defendants’ access and use of Facebook and Instagram’s computers and
13 computer systems was unauthorized because Defendants accessed Facebook and
14 Instagram’s computer network after Facebook and Instagram disabled their Instagram
15 accounts and sent cease and desist letters to Defendants revoking their access.

16 62. Facebook and Instagram computers and servers are protected computers as
17 defined by 18 U.S.C. § 1030(e)(2).

18 63. Defendants violated 18 U.S.C. § 1030(a)(4) because they knowingly and
19 with intent to defraud accessed Facebook and Instagram-protected computers by
20 sending unauthorized commands to Facebook and Instagram computers. Defendants
21 sent the commands to Facebook and Instagram computers to manipulate Instagram’s
22 service by fraudulently inflating likes of certain Instagram accounts. Defendants did
23 these acts in exchange for profit.

24 64. Defendants violated 18 U.S.C. § 1030(a)(5)(A) because they knowingly
25 and intentionally caused the transmission of a program, information, code, or command,
26 and, as a result of such conduct, intentionally damaged Facebook and Instagram-
27 protected computers.
28

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1 74. Defendants used Facebook and Instagram’s service, platform, and
2 computer network to, among other things, defraud and deceive Instagram users,
3 artificially inflate certain Instagram users’ likes, impair the intended operation of
4 Instagram, interfere with Instagram’s service, platform, and computer network, and
5 wrongfully obtain money from the operation of their unlawful business.

6 75. Defendants received a benefit by profiting off of their unauthorized use of
7 Facebook and Instagram’s service, platform, and computer network.

8 76. Defendants’ retention of the profits derived from their unauthorized use of
9 Facebook and Instagram’s service, platform, and computer network would be unjust.

10 77. Defendants’ unauthorized use of Facebook and Instagram’s service,
11 platform, and computer network has injured Facebook and Instagram’s reputation,
12 public-trust, and goodwill.

13 78. Defendants’ unauthorized use of Facebook and Instagram’s service,
14 platform, and computer network has damaged Facebook and Instagram, including but
15 not limited to the time and money spent investigating and mitigating Defendants’
16 unlawful conduct.

17 79. Facebook and Instagram seek injunctive relief and damages in an amount
18 to be proven at trial, as well as disgorgement of Defendants’ ill-gotten profits in the
19 amount of approximately \$9,430,000.

20 80. As a direct result of Defendants’ unlawful actions, Facebook and
21 Instagram have suffered and continue to suffer irreparable harm for which there is no
22 adequate remedy at law, and which will continue unless Defendants’ actions are
23 enjoined.

24 **REQUEST FOR RELIEF**

25 **WHEREFORE**, Plaintiffs Facebook and Instagram request judgment against
26 Defendants as follows:

- 27 1. That the Court enter judgment against Defendants that Defendants have:
28 a. Violated the Computer Fraud and Abuse Act, in violation of

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1 18 U.S.C. 1030;

2 b. Violated the California Comprehensive Computer Data Access and
3 Fraud Act, in violation of California Penal Code § 502;

4 c. Breached Defendants' contracts with Facebook and Instagram in
5 violation of California law;

6 d. Been unjustly enriched at the expense of Facebook and Instagram in
7 violation of California law.

8 2. That the Court enter a permanent injunction enjoining and restraining
9 Defendants and their agents, servants, employees, successors, and assigns, and all other
10 persons acting in concert with or conspiracy with any of them or who are affiliated with
11 Defendants from:

12 a. Accessing or attempting to access Facebook and Instagram's service,
13 platform, and computer systems;

14 b. Creating or maintaining any Instagram accounts in violation of
15 Instagram's TOU;

16 c. Engaging in any activity that disrupts, diminishes the quality of,
17 interferes with the performance of, or impairs the functionality of
18 Facebook and Instagram's service, platform, and computer systems; and

19 d. Engaging in any activity, or facilitating others to do the same, that
20 violates Instagram's TOU, Community Guidelines, or other related
21 policy referenced herein.

22 3. That Facebook and Instagram be awarded damages, including, but not
23 limited to, compensatory, statutory, and punitive damages, as permitted by law and in
24 such amounts to be proven at trial.

25 4. That Defendants account for, hold in constructive trust, pay over to
26 Facebook and Instagram, and otherwise disgorge profits derived from Defendants'
27 unjust enrichment, which is estimated to be \$9,430,000.
28

1 5. That Facebook and Instagram be awarded its reasonable costs, including
2 reasonable attorneys' fees.

3 6. That Facebook and Instagram be awarded pre- and post-judgment interest
4 as allowed by law.

5 7. That the Court grant all such other and further relief as the Court may deem
6 just and proper.

7
8 Dated: April 25, 2019

HUNTON ANDREWS KURTH LLP

9
10 By: /s/ Ann Marie Mortimer

Ann Marie Mortimer

Jason J. Kim

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FACEBOOK, INC. and
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Platform Enforcement and
Litigation
Facebook, Inc.

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JURY TRIAL DEMAND

Plaintiffs hereby demand a trial by jury on all issues triable to a jury.

Dated: April 25, 2019

HUNTON ANDREWS KURTH LLP

By: /s/ Ann Marie Mortimer

Ann Marie Mortimer

Jason J. Kim

Attorneys for Plaintiffs

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