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U.S. DISTRICT COURT
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10 Attorneys for Plaintiff
FACEBOOK, INC.

11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION

JF

15 FACEBOOK, INC., a Delaware
16 corporation,

Case No. **09 00798**

COMPLAINT FOR:

RS

17 Plaintiff,

1) VIOLATION OF 15 U.S.C. § 7701, *et seq.*,
CONTROLLING THE ASSAULT OF NON-
SOLICITED PORNOGRAPHY AND
MARKETING ACT OF 2003 [”CAN-SPAM”];

18 v.

2) VIOLATION OF 18 U.S.C. § 1030, THE
COMPUTER FRAUD AND ABUSE ACT;

19 SANFORD WALLACE, ADAM
20 ARZOOMANIAN, and SCOTT
SHAW, individuals; and DOES 1
21 through 25, inclusive, individuals
and/or business entities of unknown
22 nature,

3) VIOLATION OF CALIFORNIA BUSINESS
AND PROFESSIONS CODE § 229489, *et seq.*,
THE CALIFORNIA ANTI-PHISHING ACT;
AND

23 Defendants.

4) VIOLATION OF CALIFORNIA PENAL
CODE § 502, THE CALIFORNIA
COMPREHENSIVE COMPUTER DATA
ACCESS AND FRAUD ACT.

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[DEMAND FOR JURY TRIAL]

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1 For its complaint, Facebook, Inc. ("Facebook") alleges as follows:

2 **I. INTRODUCTION**

3 1. Facebook is the most popular social networking site on the Internet with more than
4 175 million active users worldwide. Founded in February 2004, Facebook is a social utility that
5 helps people communicate more efficiently with their friends, family and coworkers. The
6 company develops technologies that facilitate the sharing of information through the social graph
7 – the digital mapping of people’s real-world social connections.

8 2. In addition to providing users with an array of tools for communicating with
9 friends, family and coworkers, Facebook vigilantly protects the privacy and security of its users.
10 User privacy is a top priority for the company. Facebook tightly controls access to its network
11 and the data housed thereon. Facebook leads the industry in giving people tools to control what
12 information they share and with whom they share it. Users have the ability to share and restrict
13 information based on specific friends or friend lists, and to designate who may communicate with
14 them using Facebook’s various messaging options. Facebook also enforces a variety of security
15 policies, including a prohibition on soliciting or sharing user login information (username and
16 password) or accessing other users’ accounts.

17 3. Along with these powerful privacy options and security measures, Facebook
18 devotes substantial resources to combat unauthorized use of its website. As with any popular
19 internet service, it is inevitable that Facebook will attract phishers and spammers who seek to
20 illegally exploit Facebook’s user-base for personal profit.

21 4. This action arises from Defendants' abuse of Facebook and Facebook’s users
22 through a spam and phishing campaign. Defendants are using false and misleading messages to
23 direct Facebook users to websites designed to deceive them into divulging their Facebook
24 usernames and passwords (“phishing” websites). Defendants then use these login credentials to
25 gain unauthorized access to Facebook user accounts for the purpose of sending unsolicited
26 commercial electronic messages ("spam") to other Facebook users.

27 5. Defendants’ unlawful actions are causing irreparable harm to Facebook and to
28 Facebook's users. Accordingly, Facebook seeks injunctive, equitable, and other relief including,

1 but not limited to compensatory, statutory, exemplary, aggravated, and punitive damages;
2 disgorgement of the proceeds of Defendants' scheme; and reasonable costs and attorneys' fees.

3 II. PARTIES

4 6. Plaintiff Facebook is a Delaware corporation with its principal place of business in
5 Palo Alto, California.

6 7. Defendant Sanford Wallace is an individual believed to be residing or working at
7 7800 S. Rainbow Blvd., Apt. 1118, Las Vegas, NV 89139-6204.

8 8. Defendant Scott Shaw is an individual believed to be residing or working at 7800
9 S. Rainbow Blvd., Las Vegas NV 89139-6204

10 9. Defendant Adam Arzoomanian is an individual believed to be residing or working
11 at 375 E Harmon Ave., Las Vegas, NV 89169-7081.

12 10. Does 1-25 are persons or entities responsible in whole or in part for the
13 wrongdoing alleged herein. Facebook is informed and believes, and based thereon, alleges that
14 Does 1-25 individually directed, conducted, participated in, ratified, endorsed, or were otherwise
15 involved in the acts complained of, and that they have liability for such acts. Facebook is
16 ignorant of the true names of Does 1-25, which are fictitious names. Facebook will amend this
17 Complaint if and when the identities of such persons or entities and/or the scope of their actions
18 become known.

19 III. JURISDICTION AND VENUE

20 11. This Court has federal question jurisdiction over this action under 28 U.S.C.
21 § 1331, because this action alleges violations of the CAN-SPAM Act of 2003 (15 U.S.C. § 7701
22 *et seq.*) and the Computer Fraud and Abuse Act (18 U.S.C. § 1030 *et seq.*). The Court has
23 supplemental jurisdiction over the remaining claims under 29 U.S.C. § 1367.

24 12. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a substantial
25 part of the events giving rise to the claims raised in this lawsuit occurred in this District.

26 13. Jurisdiction and venue are also proper in this Court under Cal. Penal Code
27 § 520(j), which states: "For purposes of bringing a civil or a criminal action under this section, a
28 person who causes, by any means, the access of a computer, computer system, or computer

1 network in one jurisdiction from another jurisdiction is deemed to have personally accessed the
2 computer, computer system, or computer network in each jurisdiction.”

3 14. During all relevant times, Defendants repeatedly, knowingly, and intentionally
4 accessed or permitted access to Facebook servers located in California to access without
5 authorization the accounts of Facebook users and send spam to other Facebook users. While
6 accessing Facebook servers and sending spam to Facebook users, Defendants made systematic
7 and continuous contacts with California, and have targeted their wrongful acts at Facebook,
8 which is headquartered in Palo Alto, California. Facebook’s servers and offices are present in
9 this judicial district. At all relevant times, Defendants were aware that their illegal acts would
10 harm Facebook and its computer network.

11 IV. INTRA-DISTRICT ASSIGNMENT

12 15. Assignment to the San Jose Division of this Court is appropriate under
13 Civil L.R. 3-2, in that the claims asserted herein arose in the county of Santa Clara. Facebook is
14 headquartered in the county of Santa Clara, and it has servers located at several locations in this
15 county.

16 V. FACTS AND BACKGROUND

17 A. Facebook Background

18 16. Facebook owns and operates the widely popular social networking website located
19 at <http://www.facebook.com>. Facebook currently has more than 175 million active users.

20 17. To access its computer network and social networking website, Facebook requires
21 users to register and establish a unique username and password. Only registered users may access
22 Facebook user profiles and use the Facebook service.

23 18. Registered users may customize their profile by adding personal information,
24 content related to their interests, photographs, and other information that they can then share with
25 other Facebook users.

26 19. Facebook users may only be contacted by other registered Facebook users,
27 authorized Facebook Pages and Groups, or Facebook itself.

28

1 20. Users increase the number of their Facebook connections by becoming “friends”
2 with other Facebook users. A Facebook friendship is mutual. Both users must agree to be friends
3 before a connection is established between their Facebook accounts. In this manner, Facebook
4 creates a virtual social network of interconnected profiles.

5 21. Facebook allows registered Facebook users to exchange messages in several ways,
6 including by way of “Facebook Chat” (real-time instant messaging), internal messages to another
7 user’s “inbox,” and messages posted on another user’s “Wall.” Facebook permits users to control
8 access to their Facebook messaging options so they can control the privacy of their
9 communications and minimize unwanted contact.

10 22. Facebook Wall messages are particularly attractive to spammers. Only registered
11 Facebook users may post Wall messages, and they may only do so on the Walls of friends who
12 have permitted such postings via their privacy settings. A user’s Wall and the messages thereon
13 are visible to anyone permitted to see the user’s profile. Therefore, a spammer who has gained
14 access to a user account can reach multiple Facebook users with a single Wall message.
15 Moreover, because Wall messages are displayed with a header showing the sender’s name and
16 profile picture, the recipient (and others viewing the recipient’s Wall) are more likely to read a
17 spam Wall message from a compromised user account believing the message to have originated
18 from a known sender.

19 23. Spammers automate the sending of messages by using short computer scripts to
20 automatically send unsolicited Wall messages to every friend of a compromised Facebook
21 account. Automated Wall spamming is designed for maximum visibility and impact and can
22 result in the rapid dissemination of spam.

23 24. As described above, an important aspect of Facebook is that its users generally
24 interact with and receive communications only from their friends. Users have complete control
25 over those with whom they choose to interact. As such, Facebook users do not expect to
26 receive—and should not receive—spam while using Facebook. Facebook does not tolerate or
27 permit use of its services or site for sending spam. As described below, Facebook’s Terms of Use
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1 explicitly prohibit any unsolicited or unauthorized advertising, solicitations, promotional
2 materials, junk mail, spam, chain letters, pyramid schemes, or any other form of solicitation.

3 **B. Facebook Terms of Use**

4 25. Anyone who accesses or uses Facebook's web site at www.facebook.com is
5 subject to Facebook's Terms of Use. These terms set forth acceptable and authorized uses of
6 Facebook's network and prohibit users from conducting certain activities. Facebook's Terms of
7 Use are attached as Exhibit A and can also be found at: <http://www.facebook.com/terms.php>.

8 26. Facebook's Terms of Use prohibit anyone who uses or accesses Facebook's site or
9 services from:

- 10 a. using the website at www.facebook.com or the mobile version thereof (the "Site") in a
11 manner that could damage, disable, overburden or impair the Site;
- 12 b. using any data mining, robots, scraping or similar data gathering or extraction methods on
13 the Site;
- 14 c. using automated scripts to collect information from or otherwise interact with the Site;
- 15 d. uploading, posting, transmitting, sharing or otherwise making available any unsolicited or
16 unauthorized advertising, solicitations, promotional materials, junk mail, spam, chain
17 letters, pyramid schemes or any other form of solicitation;
- 18 e. harvesting or collecting email addresses or other contact information of other users from
19 Facebook by electronic or other means for purposes of sending unsolicited emails or other
20 unsolicited communications;
- 21 f. registering for more than one User account or falsely stating or otherwise misrepresenting
22 oneself;
- 23 g. soliciting personal information from anyone under 18 or soliciting passwords or
24 personally identifying information for commercial or unlawful purposes;
- 25 h. impersonating any person or entity, or falsely stating or otherwise misrepresenting
26 oneself;
- 27 i. using or attempting to use another's account, service or system without authorization from
28 Facebook, or creating a false identity on Facebook; and

1 using the Site for commercial use without the express permission of Facebook.

2 **C. Defendants' Unauthorized Activities**

3 27. All Defendants have either accessed or are registered users of Facebook and are,
4 therefore, subject to Facebook's Terms of Use.

5 28. At least one of the Defendants, Sanford (aka "Spamford") Wallace, is a notorious
6 Internet scam artist who has been involved in various illegal spamming and malware activities
7 since the mid 90s. Indeed, Mr. Wallace has both Federal Trade Commission and civil judgments
8 against him for these activities that total in excess of \$235 million. *Myspace, Inc. v. Wallace*, No.
9 CV 07-1929-ABC, 2008 WL 1766714, *1 (C.D. Cal. April 15, 2008); *F.T.C. v. Seismic Entm't*
10 *Prod., Inc.*, No. Civ. 04-377-JD, 2004 WL 2403124, *1 (D. N.H. Oct. 21, 2004); *CompuServe*
11 *Inc. v. CyberPromotions, Inc.*, 962 F. Supp. 1015 (S.D. Ohio 1997).

12 29. At no time has Facebook granted Defendants permission to conduct any of the
13 illegal commercial activity on Facebook's website complained of herein.

14 30. On information and belief, Defendants fraudulently gained access to legitimate
15 Facebook user accounts, either by misappropriating login information through their "phishing"
16 websites, or other methods. On information and belief, between November 5, 2008 and the
17 present, Defendants have and continue to use automated means to access legitimate Facebook
18 user accounts and send spam Wall messages to other Facebook users.

19 31. These spam messages are generally aimed at deceiving recipients into visiting
20 Defendants' phishing websites in an attempt to acquire additional Facebook users' login
21 credentials. Spam recipients are further directed to third-party commercial websites. On
22 information and belief, Defendants' receive compensation for driving traffic to those sites.

23 32. Facebook has taken extraordinary measures to investigate and stop Defendants'
24 phishing and spam campaign. Defendants have and continue to change their tactics, attempting to
25 evade Facebook's countermeasures.

26 **D. Harm to Facebook**

27 33. Traditional spam messages are easily identified and ignored. Defendants'
28 unauthorized use of compromised Facebook accounts to send spam makes those messages more

1 difficult to identify as spam, because they appear to be personal messages from friends. This
2 taints the Facebook experience for affected Facebook users. As a result, Facebook is suffering
3 significant harm to its reputation and goodwill.

4 34. Facebook has suffered economic damages in excess of \$5,000 attributable to
5 efforts and resources devoted to combat Defendants' spam and phishing activities, to minimize
6 the disruptive impact of Defendants' actions on Facebook and its users, and to locate and identify
7 the Defendants. Facebook's economic damages continue to mount as Facebook is forced to
8 implement new methods and techniques in an effort to identify and block Defendants' ever-
9 changing tactics.

10 35. Facebook will continue to suffer immediate and irreparable harm, damage, and
11 loss for as long as the Defendants continue their illegal actions.

12 **E. Special Circumstances of Defendant Scott Shaw**

13 36. Defendant Scott Shaw filed for Chapter 13 Bankruptcy in the U.S. Bankruptcy
14 Court of Nevada (Las Vegas) on April 14, 2008. *See* Bankruptcy Case #: 08-13640-lbr.

15 37. As part of Defendant Shaw's Bankruptcy Proceedings, the Bankruptcy Code, 11
16 U.S.C., §101 *et seq*, provides for an automatic bankruptcy stay with respect to any action or
17 proceeding that was or could have been commenced before the commencement of Defendant
18 Shaw's bankruptcy case.

19 38. All of the unauthorized activity alleged in this complaint by Defendant Shaw took
20 place more than six months after Defendant Shaw filed for bankruptcy and is therefore not subject
21 to the automatic bankruptcy stay, 11 U.S.C. §362(a)(1),.

22 39. To the extent that any claim or statement herein is alleged or deemed to seek relief
23 from Defendant Shaw in violation of the automatic bankruptcy stay, 11 U.S.C. §362(a)(1), or to
24 seek enforcement against property of the estate (as defined by 11 U.S.C., §541), Plaintiff
25 Facebook does not seek such relief or enforcement at this time and will not seek such relief or
26 enforcement absent an order of the Nevada Bankruptcy Court granting relief from the automatic
27 bankruptcy stay.

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VI. CLAIMS FOR RELIEF

COUNT I – CONTROLLING THE ASSAULT OF NON-SOLICITED PORNOGRAPHY AND MARKETING (“CAN-SPAM”), 15 U.S.C. § 7701, et seq.

40. Plaintiff Facebook realleges and incorporates by reference, as if fully set forth herein, the allegations in all the preceding paragraphs.

41. Defendants’ electronic messages are “commercial electronic mail messages,” as defined in 15 U.S.C. § 7702(2)(A), because their primary purpose is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose).

42. On information and belief, Defendants have and continue to “initiate” commercial electronic mail messages, as defined in 15 U.S.C. 7702(9), because they are originating or transmitting such messages or procuring the origination or transmission of such messages, as defined in 15 U.S.C. 7702(12) and 15 U.S.C. 7704(g)(2).

43. Facebook is an “Internet access service,” as defined in 15 U.S.C. § 7702(11), because it provides a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package if services offered to consumers.

44. Facebook’s website and computers are “protected computer[s],” as defined in 15 U.S.C. § 7702(13), because they are used in interstate or foreign commerce or communication.

45. On information and belief, Defendants have and continue to initiate transmissions of commercial electronic mail messages, through Facebook’s protected computers and to Facebook users, which contain or are accompanied by information headers that are materially false or materially misleading, in violation of 15 U.S.C. 7704(a)(1).

46. On information and belief, Defendants are engaging in a pattern or practice of initiating transmissions, through Facebook’s protected computers to Facebook users, of commercial electronic mail messages with actual knowledge or knowledge fairly implied on the basis of objective circumstances, that the messages’ subject heading are likely to mislead a

1 recipient, acting reasonably under the circumstances, about a material fact regarding the contents
2 or subject matter of the message in violation of 15 U.S.C. 7704(a)(2).

3 47. On information and belief, Defendants are engaging in a pattern or practice of
4 initiating transmission, through Facebook's protected computers to Facebook users, of
5 commercial electronic mail messages that do not contain a functioning return electronic mail
6 address or other Internet-based opt-out mechanism, clearly and conspicuously displayed, in
7 violation of 15 U.S.C. § 7704(a)(3).

8 48. On information and belief, Defendants are engaging in a pattern or practice of
9 initiating transmission of commercial electronic mail messages, through Facebook's protected
10 computers to Facebook users, that do not contain (1) clear and conspicuous identification that the
11 messages were advertisements or solicitations, (2) clear and conspicuous notice of the opportunity
12 to decline to receive further commercial emails from the sender, and (3) a valid physical postal
13 address of the sender in violation of 15 U.S.C. § 7704(a)(5).

14 49. On information and belief, Defendants are initiating the transmission of
15 commercial electronic mail messages (or assisting in originating such messages by providing or
16 selecting addresses to which the message are transmitted) through Facebook's protected
17 computers to Facebook users in violation of 15 U.S.C. § 7704(a). On information and belief,
18 such messages are being sent with actual knowledge (or knowledge fairly implied on the basis of
19 objective circumstances) that the electronic mail addresses were obtained using an automated
20 means from a website or proprietary online service operated by another that includes a notice that
21 the website or online service will not give, sell, or otherwise transfer addresses it maintains to any
22 other party for purposes of initiating or enabling other to initiate electronic mail messages, in
23 violation of 15 U.S.C. § 7704(b)(1).

24 50. On information and belief, Defendants are accessing Facebook's protected
25 computers and computer network without authorization in violation of 15 U.S.C. § 7704(b)(3)
26 and knowingly relaying or retransmitting commercial electronic mail messages from Facebook's
27 protected computers and computer network in violation of 15 U.S.C. § 7704(a).

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1 51. Defendants are adversely affecting Facebook by causing it to expend time and
2 resources to investigate and prevent the unauthorized access and abuse of its computer network,
3 and to protect its users against unsolicited commercial electronic messages. Defendants' actions
4 are also deterring Facebook's existing users and potential new users from using Facebook, and
5 damaging Facebook's good will and reputation with its customers and the community at large.

6 52. Facebook is a provider of Internet access services adversely affected by
7 Defendants' violations of 15 U.S.C. 7704(a)(1); 15 U.S.C. 7704(a)(2), (3), and (5); and on
8 information and belief 7704(b)(1) and (3). Accordingly, Facebook brings this civil action under
9 15 U.S.C. 7706(g).

10 53. Facebook is entitled to an injunction against further violations by the Defendants
11 as provided by 15 U.S.C. § 7706(g)(1)(A). Facebook will continue to suffer immediate and
12 irreparable harm if Defendants' conduct is not enjoined. Facebook has no adequate remedy at
13 law.

14 54. As provided in 15 U.S.C. § 7706(g)(1)(B), Facebook is entitled to the greater of its
15 actual monetary loss or statutory damages as calculated in 15 U.S.C. § 7706(g)(3)(A) in an
16 amount to be proven at trial.

17 55. Facebook is entitled to aggravated damages pursuant to 15 U.S.C. § 7706(g)(3)(C)
18 in an amount equal to three times the amount otherwise available because Defendants committed
19 their violations willfully and knowingly and because Defendants' unlawful activity included one
20 or more of the aggravated violations set forth in 15 U.S.C. § 7704(b).

21 56. Facebook is entitled to reasonable costs, including reasonable attorneys' fees as
22 provided by 15 U.S.C. § 7706(g)(4).

23 **COUNT II – COMPUTER FRAUD AND ABUSE ACT, 18 U.S.C. § 1030, *et seq.***

24 57. Plaintiff Facebook realleges and incorporates by reference, as if fully set forth
25 herein, the allegations in all the preceding paragraphs.

26 58. Facebook's website and computers are protected computers as defined in
27 18 U.S.C. § 1030(e)(2)(B), because they are used in interstate or foreign commerce or
28 communication.

1 59. On information and belief, Defendants are accessing Facebook's protected
2 computers without authorization, as detailed in Facebook's Terms of Use. On information and
3 belief, Defendants "exceed[ed] authorized access" to Facebook, as defined in 18 U.S.C.
4 1030(e)(5), by accessing Facebook's protected computers with authorization and using that access
5 to obtain or alter information that they are not entitled to obtain or alter.

6 60. On information and belief, Defendants are intentionally accessing Facebook's
7 computers without authorization, or exceeding authorized access, and obtaining information from
8 Facebook's protected computers involving interstate or foreign communications in violation of 18
9 U.S.C. 1030(a)(2).

10 61. On information and belief, Defendants are knowingly, and with intent to defraud,
11 accessing Facebook's protected computers without authorization or exceeding authorized access,
12 and furthering their intentional fraud by obtaining more than \$5,000 in value in violation of 18
13 U.S.C. 1030(a)(4).

14 62. On information and belief, Defendants are knowingly, and without authorization,
15 accessing protected Facebook computers and causing the transmission of a programs,
16 information, code, or commands that are intentionally causing damage and loss to Facebook of at
17 least \$5000 in a single year in violation of 18 U.S.C. 1030(a)(5)(A)(i).

18 63. On information and belief, Defendants are intentionally accessing Facebook's
19 protected computers without authorization and recklessly causing damage and loss to Facebook
20 of at least \$5000 in a single year in violation of 18 U.S.C. 1030(a)(5)(A)(ii).

21 64. On information and belief, Defendants are intentionally accessing Facebook's
22 protected computers without authorization and causing damage resulting in a loss to Facebook of
23 at least \$5000 in a single year in violation of 18 U.S.C. 1030(a)(5)(A)(iii).

24 65. On information and belief, Defendants knowingly and with intent to defraud, are
25 trafficking in passwords or similar information, such as login information, through which a
26 protected computer may be accessed without authorization affecting interstate commerce in
27 violation of 18 U.S.C. 1030(a)(6).

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1 66. On information and belief, Defendants are, in addition to committing the above
2 violations, attempting to commit the above offenses in violation of 18 U.S.C. 1030(b).

3 67. Facebook has suffered and continues to suffer damages and loss by Defendants'
4 violations, including being forced to expend time and resources to investigate and prevent the
5 unauthorized access and abuse of its computer network, and to protect its users against unsolicited
6 commercial electronic messages. Defendants' actions are also deterring Facebook's existing
7 users and potential new users from using Facebook, and damaging Facebook's good will and
8 reputation with its customers and the community at large.

9 68. Facebook brings this action pursuant to 18 U.S.C. § 1030(g) and seeks
10 compensatory and other equitable relief in an amount to be proven at trial.

11 69. Facebook has suffered and continues to suffer irreparable and incalculable harm
12 and injuries as a result of Defendants' violations. The harm will continue unless Defendants are
13 enjoined from further unauthorized use of Facebook's protected computers. Facebook has no
14 adequate remedy at law.

15 **COUNT III – CALIFORNIA COMPREHENSIVE COMPUTER DATA ACCESS
16 AND FRAUD ACT, CALIFORNIA PENAL CODE § 502(c)**

17 70. Plaintiff Facebook realleges and incorporates by reference, as if fully set forth
18 herein, the allegations contained in all the preceding paragraphs.

19 71. Facebook owns computers, computer systems, computer networks, computer
20 programs and proprietary data.

21 72. On information and belief, Defendants are knowingly accessing and without
22 permission altering, damaging, deleting, destroying, or otherwise using Facebook's data,
23 computers, computer systems or computer network to (1) devise or execute a scheme to defraud
24 and deceive or (2) wrongfully control or obtain money, property, or data in violation of Cal. Penal
25 Code § 502(c)(1).

26 73. On information and belief, Defendants are knowingly accessing and without
27 permission taking, copying, or using data from Facebook's computers, computer systems or
28 computer network in violation of California Penal Code § 502(c)(2).

1 74. On information and belief, Defendants knowingly and without permission are
2 using or causing to be used Facebook's computer services in violation of Cal. Penal Code
3 § 502(c)(3).

4 75. On information and belief, Defendants are knowingly accessing and without
5 permission adding, altering, damaging, deleting, or destroying any data, computer software, or
6 computer programs which reside or exist on Facebook's computers, computer systems or
7 computer network in violation of Cal. Penal Code § 502(c)(4).

8 76. On information and belief, Defendants are knowingly and without permission
9 disrupting or causing the disruption of Facebook's computer services in violation of
10 Cal. Penal Code § 502(c)(5).

11 77. On information and belief, Defendants are knowingly and without permission
12 providing or assisting in providing a means of accessing Facebook's computers, computer system,
13 or computer network in violation of this section in violation of Cal. Penal Code § 502(c)(6).

14 78. On information and belief, Defendants knowingly and without permission are
15 accessing or causing to be accessed Facebook's computers, computer systems, and/or computer
16 network in violation of California Penal Code § 502(c)(7).

17 79. Facebook suffered and continues to suffer damage and loss as a result of
18 Defendants' violations identified above, including being forced to expend time and resources to
19 investigate and prevent the unauthorized access and abuse of its computer network, and to protect
20 its users against unsolicited commercial electronic messages. Defendants' actions are also
21 deterring Facebook's existing users and potential new users from using Facebook, and damaging
22 Facebook's good will and reputation with its customers and the community at large.

23 80. Facebook brings this action pursuant to Cal. Penal Code § 502(e)(1) and seeks
24 compensatory damages, in an amount to be proven at trial, and injunctive or other equitable relief.

25 81. Facebook has suffered irreparable and incalculable harm and injuries from
26 Defendants' violations. The harm will continue unless Defendants are enjoined from further
27 violations of this section. Facebook has no adequate remedy at law.
28

1 82. Facebook is entitled to punitive or exemplary damages pursuant to
2 Cal. Penal Code § 502(e)(4) because Defendants' violation were willful and, on information and
3 belief, Defendants are guilty of oppression, fraud, or malice as defined in Cal. Civil Code § 3294.

4 83. Facebook is entitled to reasonable attorneys' fees as provided in
5 Cal. Penal Code § 502(e)(2).

6 **COUNT IV – CALIFORNIA ANTI-PHISHING ACT, CALIFORNIA BUSINESS AND**
7 **PROFESSIONS CODE § 22948, et seq.**

8 84. Plaintiff Facebook realleges and incorporates by reference, as if fully set forth
9 herein, the allegations in all the preceding paragraphs.

10 85. Facebook is engaged in the business of providing Internet access to the public,
11 owns a web page and a trademark.

12 86. Facebook is adversely affected by Defendants' violations of California Business
13 and Professions Code § 22948, et seq.

14 87. On information and belief, Defendant, by means of a webpage, email or other use
15 of the Internet, is soliciting, requesting, or taking action to induce another person to provide
16 identifying information, including account passwords, by representing himself to be a business
17 without authority or approval in violation of Cal. Bus. & Prof. Code § 22948.2.

18 88. Facebook has suffered and continues to suffer damages and loss by Defendants'
19 violations, including being forced to expend time and resources to investigate and prevent the
20 unauthorized access and abuse of its computer network, and to protect its users against unsolicited
21 commercial electronic messages. Defendants' actions are also deterring Facebook's existing
22 users and potential new users from using Facebook, and damaging Facebook's good will and
23 reputation with its customers and the community at large.

24 89. Facebook brings this action pursuant to Cal. Bus. & Prof. Code § 22948.3 and
25 seeks the greater of actual damages or \$500,000, in an amount to be proven at trial.

26 90. Facebook has suffered irreparable and incalculable harm and injuries from
27 Defendants' violations. The harm will continue unless Defendants are enjoined from further
28 violations of this section. Facebook has no adequate remedy at law.

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, plaintiff Facebook prays for the following relief:¹

3 A. For injunctive relief, as follows: A permanent injunction enjoining and restraining
4 Defendants, and all persons or entities acting in concert with them during the pendency of this
5 action and thereafter perpetually, from:

- 6 1. initiating or procuring transmission of unsolicited commercial electronic
7 messages on or through Facebook's computers, Facebook's website,
8 Facebook's networks, or to Facebook users;
- 9 2. accessing or attempting to access Facebook's website, networks, data,
10 information, user information, profiles, computers and/or computer
11 systems;
- 12 3. soliciting, requesting, or taking any action to induce Facebook users to
13 provide identifying information, or representing that such solicitation,
14 request, or action is being done with Facebook's authorization or approval;
- 15 4. retaining any copies, electronic or otherwise, of any Facebook information,
16 including login information and/or passwords, obtained through
17 illegitimate and/or unlawful actions;
- 18 5. engaging in any activity that alters, damages, deletes, destroys, disrupts,
19 diminishes the quality of, interferes with the performance of, or impairs the
20 functionality of Facebook's computer, computer system, computer
21 network, data, website or services;
- 22 6. engaging in any unlawful activities alleged in this complaint;
- 23 7. entering or accessing any the physical premises or facilities of Facebook
24 or its counsel; and

25
26 ¹ With regard to Defendant Scott Shaw, Facebook seeks only the injunctive relief described in
27 paragraph A at this time, as Facebook does not intend to interfere with the property of the bankruptcy
28 estate and will not do so without leave of court. However, Facebook reserves the right to pursue the
remaining forms of relief from Defendant Shaw after first petitioning the U.S. Bankruptcy Court for the
District of Nevada and obtaining leave to do so.

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8. engaging in any activity that violates Facebook's Terms of Use and/or encouraging, inducing or facilitating violations of Facebook's Terms of Use by anyone;

B. An order requiring Defendants to account for, hold in constructive trust, pay over to Facebook, and otherwise disgorge all profits derived by Defendants from their unlawful conduct and unjust enrichment, as permitted by law;

C. An award to Facebook of damages, including but not limited to, compensatory, statutory, exemplary, aggravated, and punitive damages, as permitted by law and in such amounts to be proven at trial;

D. An award to Facebook of reasonable costs, including reasonable attorneys' fees;

E. For pre-and post-judgment interest as allowed by law; and

F. For such other relief as the Court may deem just and proper.

DATED: February 24, 2009

PERKINS COIE LLP

By: 

Attorneys for Plaintiff
FACEBOOK, INC.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), plaintiff demands a trial by jury as to all issues so triable in this action.

DATED: February 24, 2009

PERKINS COIE LLP

By:  _____

Attorneys for Plaintiff
FACEBOOK, INC.

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EXHIBIT A



Terms of Use

Date of Last Revision: September 23, 2008

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

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

Eligibility

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

Registration Data; Account Security

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

Proprietary Rights in Site Content; Limited License

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

Trademarks

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



User Conduct

You understand that except for advertising programs offered by us on the Site (e.g., Facebook Flyers, Facebook Marketplace), the Service and the Site are available for your personal, non-commercial use only. You represent, warrant and agree that no materials of any kind submitted through your account or otherwise posted, transmitted, or shared by you on or through the Service will violate or infringe upon the rights of any third party, including copyright, trademark, privacy, publicity or other personal or proprietary rights; or contain libelous, defamatory or otherwise unlawful material.

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

- harvest or collect email addresses or other contact information of other users from the Service or the Site by electronic or other means for the purposes of sending unsolicited emails or other unsolicited communications;
- use the Service or the Site in any unlawful manner or in any other manner that could damage, disable, overburden or impair the Site;
- use automated scripts to collect information from or otherwise interact with the Service or the Site;
- upload, post, transmit, share, store or otherwise make available any content that we deem to be harmful, threatening, unlawful, defamatory, infringing, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, invasive of privacy or publicity rights, hateful, or racially, ethnically or otherwise objectionable;
- upload, post, transmit, share, store or otherwise make available any videos other than those of a personal nature that: (i) are of you or your friends, (ii) are taken by you or your friends, or (iii) are original art or animation created by you or your friends;
- register for more than one User account, register for a User account on behalf of an individual other than yourself, or register for a User account on behalf of any group or entity;
- impersonate any person or entity, or falsely state or otherwise misrepresent yourself, your age or your affiliation with any person or entity;
- upload, post, transmit, share or otherwise make available any unsolicited or unauthorized advertising, solicitations, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;
- upload, post, transmit, share, store or otherwise make publicly available on the Site any private information of any third party, including, addresses, phone numbers, email addresses, Social Security numbers and credit card numbers;
- solicit personal information from anyone under 18 or solicit passwords or personally identifying information for commercial or unlawful purposes;
- upload, post, transmit, share or otherwise make available any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- intimidate or harass another;
- upload, post, transmit, share, store or otherwise make available content that would constitute, encourage or provide instructions for a criminal offense, violate the rights of any party, or that would otherwise create liability or violate any local, state, national or international law;
- use or attempt to use another's account, service or system without authorization from the Company, or create a false identity on the Service or the Site.
- upload, post, transmit, share, store or otherwise make available content that, in the sole judgment of Company, is objectionable or which restricts or inhibits any other person from using or enjoying the Site, or which may expose Company or its users to any harm or liability of any type.

Without limiting any of the foregoing, you also agree to abide by our Facebook Code of Conduct that provides further information regarding the authorized conduct of users on Facebook.

User Content Posted on the Site

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

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

Facebook Mobile Services



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

Copyright Complaints

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

Repeat Infringer Policy

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

Third Party Websites and Content

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

Share Service

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

Use of Share Links by Online Content Providers

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

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

In order for an Online Content Provider to include a Share Link on its pages, the Third Party Site must not contain

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

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

Facebook Marketplace

All listings posted on or through the Facebook Marketplace service and all transactions conducted in connection therewith are subject to and governed by the Facebook Marketplace Guidelines (the "Guidelines") as well as these Terms of Use. When you use Facebook Marketplace in any manner you are agreeing to abide by and be subject to the Guidelines and the other applicable rules set forth in these Terms of Use. The Guidelines are subject to change without prior notice at any time, in the Company's sole discretion, so you should review the Guidelines each time you use Facebook Marketplace. Parties to a transaction are solely responsible for all interactions with each other, for arranging for payment and the exchange of the goods or services purchased if applicable, and for the results and performance of any transaction or relationship entered into through Facebook Marketplace. You acknowledge that Facebook is not responsible or liable for any action or inaction of any party to a transaction, for any failure to perform, to pay any amounts due, or to deliver any merchandise or services as promised, or for any other aspect of the transaction. Any fees or payments collected by Facebook applicable to Facebook Marketplace are set forth on the Site, and all terms and conditions applicable to such fees are set forth in the Facebook Terms of Sale. However, please note that the Terms of Sale do not apply to your purchases of products or services from third parties through Facebook Marketplace, as those transactions are strictly between you and the other party to the transaction. ALL USE OF FACEBOOK MARKETPLACE IS PROVIDED "AS IS" AND AT YOUR OWN RISK.

Facebook Platform Applications

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

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

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

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

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

Facebook Connect

Facebook Connect ("Connect") enables participating third party websites to work just like Facebook Platform applications. Once you allow a third party website to connect with Facebook, you will be able to use your Facebook login information to log into that website. The third party website will be able to: generate and publish news feed and other stories about actions you take on their website; access Facebook information related to you (including your profile information, friends, and privacy settings) so you can use your Facebook information on the third party site; and allow you to interact with your friends on the website. In order to make Connect possible,



you agree to allow Facebook to check your Facebook cookies when you are visiting participating third party websites, and allow Facebook to receive information concerning the actions you take on those third party websites. In addition, once you allow a participating third party website to connect with Facebook, you agree to allow Facebook and such third party website to generate and publish news feed and other stories about actions you take on the website without any additional permission. In the event you no longer want the third party website to publish stories about you, you can always disable this feature by changing your application settings.

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

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

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

Facebook Pages

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

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

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

Terms of Sale

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

User Disputes

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

Privacy

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

Disclaimers

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

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



interactions between users of the Site, whether online or offline.

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

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

Limitation on Liability

IN NO EVENT WILL COMPANY OR ITS DIRECTORS, EMPLOYEES OR AGENTS BE LIABLE TO YOU OR ANY THIRD PERSON FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING FOR ANY LOST PROFITS OR LOST DATA ARISING FROM YOUR USE OF THE SITE OR THE SERVICE, ANY PLATFORM APPLICATIONS OR ANY OF THE SITE CONTENT OR OTHER MATERIALS ON, ACCESSED THROUGH OR DOWNLOADED FROM THE SITE, EVEN IF THE COMPANY IS AWARE OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE COMPANY'S LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU TO COMPANY FOR THE SERVICE DURING THE TERM OF MEMBERSHIP, BUT IN NO CASE WILL THE COMPANY'S LIABILITY TO YOU EXCEED \$1000. YOU ACKNOWLEDGE THAT IF NO FEES ARE PAID TO COMPANY FOR THE SERVICE, YOU SHALL BE LIMITED TO INJUNCTIVE RELIEF ONLY, UNLESS OTHERWISE PERMITTED BY LAW, AND SHALL NOT BE ENTITLED TO DAMAGES OF ANY KIND FROM COMPANY, REGARDLESS OF THE CAUSE OF ACTION.

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

Termination

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

Governing Law; Venue and Jurisdiction

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

Arbitration

YOU AND COMPANY AGREE THAT, EXCEPT AS MAY OTHERWISE BE PROVIDED IN REGARD TO SPECIFIC SERVICES ON THE SITE IN ANY SPECIFIC TERMS APPLICABLE TO THOSE SERVICES, THE SOLE AND EXCLUSIVE FORUM AND REMEDY FOR ANY AND ALL DISPUTES AND CLAIMS RELATING IN ANY WAY TO OR ARISING OUT OF THESE TERMS OF USE, THE SITE AND/OR THE SERVICE (INCLUDING YOUR VISIT TO OR USE OF THE SITE AND/OR THE SERVICE) SHALL BE FINAL AND BINDING ARBITRATION, except that: (a) to the extent that either of us has in any manner infringed upon or violated or threatened to infringe upon or violate the other party's patent, copyright, trademark or trade secret rights, or you have otherwise violated any of the user conduct rules set forth above or in the Code of Conduct then the parties acknowledge that arbitration is not an adequate remedy at law and that injunctive or other appropriate relief may be sought; and (b) no disputes or claims relating to any transactions you enter into with a third party through the Facebook Marketplace may be arbitrated.

Arbitration under this Agreement shall be conducted by the American Arbitration Association (the "AAA") under its Commercial Arbitration Rules and, in the case of consumer disputes, the AAA's Supplementary Procedures for Consumer Related Disputes (the "AAA Consumer Rules") (collectively the "AAA Rules"). The location of the

arbitration and the allocation of costs and fees for such arbitration shall be determined in accordance with such AAA Rules and shall be subject to the limitations provided for in the AAA Consumer Rules (for consumer disputes). If such costs are determined to be excessive in a consumer dispute, the Company will be responsible for paying all arbitration fees and arbitrator compensation in excess of what is deemed reasonable. The arbitrator's award shall be binding and may be entered as a judgment in any court of competent jurisdiction.

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

Indemnity

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

Submissions

You acknowledge and agree that any questions, comments, suggestions, ideas, feedback or other information about the Site or the Service ("Submissions"), provided by you to Company are non-confidential and shall become the sole property of Company. Company shall own exclusive rights, including all intellectual property rights, and shall be entitled to the unrestricted use and dissemination of these Submissions for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

Definitions and Constructions

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

Other

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

Questions

Please visit our [Help page](#) or these links for more information.

- [Facebook Copyright Policy](#)
- [Facebook Terms of Sale](#)
- [Facebook Marketplace Guidelines](#)
- [Facebook Platform Application Guidelines](#)
- [Platform Application Terms of Use](#)
- [Facebook Developer Terms of Service](#)