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17 Attorneys for Plaintiff
 18 FACEBOOK, INC.

19 **UNITED STATES DISTRICT COURT**
 20 **NORTHERN DISTRICT OF CALIFORNIA**
 21 **SAN JOSE DIVISION**

22 FACEBOOK, INC., a Delaware
 23 corporation,

24 Plaintiff,

25 v.

26 JEREMI FISHER; PHILIP POREMBSKI;
 27 RYAN SHIMEALL; and JOHN DOES 1-
 28 25, individuals; and CHOKO SYSTEMS
 LLC; HARM, INC.; PP WEB SERVICES
 LLC, iMEDIA ONLINE SERVICES LLC,
 and JOHN DOES 26-50, corporations,

Defendants.

Case No. C 09-05842 JF

**DECLARATION OF JOSEPH P.
 CUTLER IN SUPPORT OF PLAINTIFF
 FACEBOOK, INC.'S APPLICATION
 FOR DEFAULT JUDGMENT AGAINST
 DEFENDANTS PHILIP POREMBSKI
 AND PP WEB SERVICES, LLC**

1 1. My name is Joseph P. Cutler, and I am one of the attorneys representing Facebook,
2 Inc. ("Facebook") in this action. I make this declaration based upon personal knowledge and am
3 competent to testify to the facts set forth herein.

4 2. Defendants Philip Porembski and PP Web Services, LLC are not minors,
5 incompetent persons, in military service or otherwise exempted from default judgment under the
6 Soldiers' and Sailors' Civil Relief Act of 1940. Defendant Porembski represented to me that he
7 was the sole owner of PP Web Services, LLC.

8 3. As counsel for Facebook, I have personally spoken with Defendant Porembski as
9 an individual and as representative of PP Web Services, LLC and warned him repeatedly of
10 Facebook's intention to seek default judgment if he refused to appear and answer. On several
11 different occasions, Defendant Porembski stated that he did not intend to appear in court or
12 answer the Complaint.

13 4. As part of the discovery process in this case, Facebook obtained, pursuant to the
14 Court's Amended Order Granting Plaintiff's Request for Order Directing Release of Computer, a
15 mirror image of two hard drives contained in Defendant Philip Porembski's abandoned computer.
16 The computer was in the custody of the Sacramento Sheriff's Department at the time, and was
17 released to a third party vendor who created mirror images of the hard drives and delivered them
18 to my Firm. A mirror image of the hard drives provided to my Firm was provided to Facebook
19 for analysis by their security staff.

20 5. Inspections performed by our own forensic investigators and Facebook's security
21 staff, who both analyzed the contents of the hard drives obtained from the Sacramento Sheriff's
22 Department, identified evidence on the hard drives recovered from Defendant Porembski's
23 abandoned computer that is consistent with and directly supports the allegations made in the
24 complaint that Porembski possessed stolen Facebook login information and used computer scripts
25 to the automate his spamming attacks on Facebook.

26 6. Attached as Exhibit A is a true and correct copy of the court order given in
27 *Facebook v. Guerbuez*, No. C08-03889-JF-HRL (N.D. Cal. 2008).

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7. Attached as Exhibit B is a true and correct copy of the court order given in *Facebook v. Wallace*, No. C-09-00798-JF (N.D. Cal. 2009).

8. Attached as Exhibit C is a true and correct copy of the court order given in *MySpace Inc. v. Wallace*, No. CV-07-1929-ABC-AGR (C.D. Cal. May 12, 2008).

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

EXECUTED at Seattle, Washington this 26th day of August.

/s/ _____
Joseph P. Cutler

EXHIBIT A

1 I. NEEL CHATTERJEE (STATE BAR NO. 173985)
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E-Filed 11/21/08

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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
15

16 FACEBOOK, INC.,

17 Plaintiff,

18 v.

19 ADAM GUERBUEZ; ATLANTIS BLUE
20 CAPITAL; AND DOES 1-25,

21 Defendants.

Case No. C08 03889 JF HRL

**[PROPOSED] ORDER GRANTING
FACEBOOK, INC.'S APPLICATION
FOR DEFAULT JUDGMENT BY
COURT AGAINST ADAM
GUERBUEZ AND ATLANTIS BLUE
CAPITAL**

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1 Plaintiff Facebook, Inc.'s ("Facebook") Application For Default Judgment Against
2 Defendants Adam Guerbuez and Atlantis Blue Capital came before the Court on
3 11/21/08, in Courtroom 3, the Honorable Jeremy Fogel presiding. Having
4 reviewed the moving and opposing papers and supporting declarations filed with the Court, and
5 having heard the arguments of counsel,

6 IT IS HEREBY ORDERED THAT:

7 Default judgments are entered against defendants Adam Guerbuez and Atlantis Blue
8 Capital as follows:

9 Statutory damages in the amount of \$ 436,638,600 against Adam Guerbuez and
10 Atlantis Blue Capital, jointly and severally, for violations of the CAN-SPAM Act.

11 Aggravated Statutory damages in the amount of \$ 436,638,600 against Adam
12 Guerbuez and Atlantis Blue Capital, jointly and severally, for aggravated violations of the CAN-
13 SPAM Act.

14 Reasonable attorneys fees pursuant to the CAN-SPAM Act, § 7706(g)(4) in an amount to
15 be established through declarations complying with Local Rule 54-6(b)(2) and (b)(3), to be filed
16 with the Court no later than 12/12/08; plus costs of suit.

17 A permanent injunction against defendants, as follows:

18 The Court ENJOINS defendants Adam Guerbuez and Atlantis Blue Capital and their
19 agents, servants, employees, attorneys, affiliates, distributors, successors and assigns, and any
20 other persons acting in concert or participation with them from:

21 a. Using or accessing, whether directly or indirectly, Facebook's data,
22 information, computers, computers systems, computer networks, or Facebook users' accounts,
23 information or profiles for any reason whatsoever;

24 b. assisting or inducing others to use or access, whether directly or indirectly,
25 Facebook's data, information, computers, computers systems, computer networks, or Facebook
26 users' accounts, information or profiles for commercial purposes or to send commercial
27 messages;

28 c. accessing the physical property, structures or buildings of Facebook or

1 Facebook's employees;

2 d. retaining, using, accessing, collecting, compiling, retrieving or disclosing,
3 whether directly or indirectly, Facebook's data or information, or Facebook users' accounts,
4 information or profiles;

5 e. assisting or inducing others to retain, use, access, collect, compile, retrieve,
6 or disclose, whether directly or indirectly, Facebook's data or information, or Facebook users'
7 accounts, information or profiles;

8 f. using Facebook's computers, computers systems, computer networks or
9 Facebook users' accounts, information or profiles to send, directly or indirectly, commercial
10 emails, Wall post bulletins, or messages of any kind;

11 g. creating, maintaining or using a Facebook account or profile;

12 h. using any Facebook trademark or logo, or any design or feature that is
13 intended to resemble a Facebook trademark or logo; and

14 i. violating, or assisting or inducing others to violate, Facebook's Terms of
15 Use.

16 IT IS SO ORDERED.

17 Dated: 11/21/08, 2008


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21 Honorable Jeremy Fogel
22 United States District Judge
23 Northern District of California
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EXHIBIT B

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E-Filed 10/29/2009

10 Attorneys for Plaintiff
FACEBOOK, INC.

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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION
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17 FACEBOOK, INC., a Delaware
corporation,

18 Plaintiff,

19 v.

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

23 Defendants.
24

Case No. C-09-00798-JF

**[PROPOSED] ORDER GRANTING
FACEBOOK, INC.'S APPLICATION FOR
DEFAULT JUDGMENT AGAINST
DEFENDANT SANFORD WALLACE**

25 Plaintiff Facebook, Inc.'s ("Facebook") Application for Default Judgment Against
26 Defendant Sanford Wallace came before the Court on September 18, 2009, in Courtroom 3.
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1 the Honorable Jeremy Fogel presiding. Having reviewed the moving and any opposing papers
2 and supporting declarations filed with the Court, and having heard the arguments of counsel,

3 **IT IS HEREBY ORDERED THAT:**

4 Default judgment is entered against Defendant Sanford as follows:

5 Statutory damages in the amount of \$ 710,737,650 against Sanford
6 Wallace for violations of the CAN-SPAM Act.

7 Aggravated statutory damages in the amount of \$ 0
8 against Sanford Wallace for aggravated violations of the CAN-SPAM Act.

9 Statutory damages in the amount of \$ 500,000 against Sanford
10 Wallace for violations of California Business and Professions Code § 22948.

11 Aggravated statutory damages in the amount of \$ 0
12 against Sanford Wallace for aggravated violations of California Business and Professions Code §
13 22948.

14 The Court PERMANENTLY ENJOINS Defendant Sanford Wallace and his agents,
15 servants, employees, attorneys, affiliates, distributors, successors and assigns, and any other
16 persons acting in concert or participation with them from:

17 a. Accessing or attempting to access any of Facebook’s website, networks,
18 data, information, user information, profiles, computers, and/or computer systems:

19 b. Soliciting, requesting, or taking any action to induce Facebook users to
20 provide identifying information or representing that such solicitation, request, or action is being
21 done with Facebook’s authorization or approval;

22 c. Retaining any copies, electronic or otherwise, of any Facebook
23 information, including login information and/or passwords, obtained through illegitimate and/or
24 unlawful actions;

25 d. Engaging in any activity that alters, damages, deletes, destroys, disrupts,
26 diminishes the quality of, interferes with the performance of, or impairs the functionality of
27 Facebook’s computers, computer system, computer network, data, website, or services;

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1 e. Entering or accessing the physical premises or facilities of Facebook or its
2 counsel or contacting any Facebook employee;

3 f. Using Facebook, including its computers, computer systems, computer
4 networks or Facebook users' accounts, information, or profiles to send, directly or indirectly,
5 commercial emails, Wall post bulletins, or messages of any kind;


6 g. Creating, maintaining, or using a Facebook account or profile;

7 h. Using any Facebook trademark or logo, or any design or feature that is
8 intended to resemble a Facebook trademark or logo; and

9 i. Violating, or assisting or inducing others to violate, Facebook's Terms of
10 Use, Development Terms of Service, Facebook Code of Conduct, or Facebook's Statement of
11 Rights and Responsibilities.

12
13 **IT IS SO ORDERED**

14
15 Dated: October 29, 2009

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17 The Honorable Jeremy Fogel
18 United States District Judge
19 Northern District of California

20 Presented by:

21 **PERKINS COIE LLP**

22 By /s/
23 David Chiappetta

24 Attorneys for Plaintiff *Facebook, Inc.*
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EXHIBIT C

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11 Attorneys for Plaintiff
 12 MYSPACE, INC.

13 **UNITED STATES DISTRICT COURT**
 14 **CENTRAL DISTRICT OF CALIFORNIA**

15 MYSPACE, INC., a Delaware
 16 Corporation,

17 Plaintiff,

18 vs.

19 SANFORD WALLACE D/B/A
 20 FREEVEGASCLUBS.COM, REAL-
 21 VEGAS-SINS.COM, and FEEBLE
 22 MINDED PRODUCTIONS, an
 23 individual; WALTER RINES, an
 24 individual; ONLINE TURBO
 25 MERCHANT, INC., a corporation;
 26 and ODYSSEUS MARKETING,
 27 INC., a corporation,

28 Defendants.

CASE NO. CV-07-1929 ABC (AGR_x)

**AMENDED ORDER GRANTING
 PLAINTIFF MYSPACE, INC.'S
 MOTION FOR DEFAULT
 JUDGMENTS AGAINST
 DEFENDANTS SANFORD
 WALLACE AND WALTER RINES**

Filed concurrently with:
 Notice of Errata

Date: May 12, 2008
 Time: 10:00 a.m.
 Ctrm: 680
 Judge: Hon. Audrey B. Collins

1 Plaintiff MySpace, Inc.'s ("MySpace") Motion For Default Judgments Against
2 Defendants Sanford Wallace And Walter Rines came before the Court on May 12, 208,
3 in courtroom 680, the Honorable Audrey B. Collins presiding. Having reviewed the
4 moving and opposing papers and supporting declarations filed with the Court, and having
5 heard the arguments of counsel, IT IS HEREBY ORDERED AND ADJUDGED THAT:

6 Default judgments are entered against defendants Sanford Wallace and Walter
7 Rines as follows:

8 A. [To be checked by the Court]

9 X Statutory damages in the amount of \$160,390,200 against Wallace and
10 \$223,777,500 against Rines, for violations of the CAN-SPAM Act (\$160,390,200 in joint
11 and several liability and an additional \$63,387,300 against Rines).

12 [OR]

13 _____ Liquidated damages in the amount of \$70,731,700 against Wallace and
14 \$81,296,250 against Rines, for violations of MySpace's TOU Contract (\$81,296,250 in
15 joint and several liability and an additional \$10,564,550 against Rines); plus punitive
16 damages in the amount of \$25,000,000 for unfair competition.

17 B. Statutory damages in the amount of \$1,500,000 are awarded against
18 defendants for violations of California's anti-phishing statute, Cal. Bus. & Prof. Code §
19 22948.2.

20 C. Attorneys' fees awarded against defendants in an amount that equals to
21 \$4,509,150, as calculated pursuant to the formula prescribed by Local Rule 55-3 (\$5,600
22 plus 2% of the amount over \$100,000); plus costs of suit.

23 D. A permanent injunction against defendants, as follows:

24 The Court ENJOINS defendants Sanford Wallace and Walter Rines (collectively
25 "defendants") and their agents, servants, employees, representatives, and all other
26 persons or entities acting on defendants' behalf or in concert or participation with
27 defendants, from:

1 (1) accessing or using the MySpace.com website, MySpace Internet messaging
2 service and/or any other services offered by or through MySpace (the "MySpace
3 Service") to directly or indirectly send or transmit any electronic communications, emails
4 or instant messages to any MySpace user or MySpace account or to post comments or
5 bulletins;

6 (2) establishing or maintaining MySpace profiles or accounts;

7 (3) using the MySpace Service for a commercial purpose;

8 (4) referring to MySpace in connection with any unsolicited commercial
9 electronic communication, email or instant message, in any way that falsely or
10 fraudulently suggests that such message was approved by, generated by, or is in any way
11 affiliated with MySpace;

12 (5) using any MySpace logo or using any graphic, interface, or other
13 presentation that approximates or resembles the MySpace.com log-in page to mislead
14 users into believing that they are logging onto their MySpace.com accounts rather than
15 providing defendants with their username and password;

16 (6) inducing a MySpace user to provide MySpace identifying information,
17 including MySpace account information such as a username and/or password, without
18 first informing the user the defendants are not affiliated with or sanctioned by MySpace
19 and without obtaining fully informed, knowing, and voluntary consent through a separate
20 affirmative step by the user;

21 (7) using any automated scripts, bots, or other executable programs in
22 connection with any MySpace account or the MySpace Service or providing such
23 programs to third parties for use on the MySpace Service; and
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