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

15 IN RE: FACEBOOK PRIVACY
16 LITIGATION

17 Case No. 10-CV-02389-JW

18 **FACEBOOK, INC.’S REQUEST FOR
 19 JUDICIAL NOTICE IN SUPPORT OF
 20 MOTION TO DISMISS FIRST AMENDED
 21 CONSOLIDATED CLASS ACTION
 22 COMPLAINT**

23 Date: October 17, 2011
 24 Time: 9:00 a.m.
 25 Courtroom: 15 (18th Floor)
 26 Judge: Hon. James Ware
 27 Trial Date: Not Yet Set

28 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE THAT pursuant to Federal Rule of Evidence 201, Defendant Facebook, Inc. (“Facebook”) hereby requests that the Court take judicial notice of the following documents in support of its Motion to Dismiss the First Amended Consolidated Class Action Complaint (“FAC”). All referenced exhibits are attached to the supporting Declaration of Ana Yang Muller, filed herewith:

Exhibit A: Facebook’s Statement of Rights and Responsibilities.

Exhibit B: Facebook’s Privacy Policy.

Exhibit C: Facebook’s Privacy Guide.

1 **POINTS AND AUTHORITIES IN SUPPORT OF JUDICIAL NOTICE**

2 The documents listed above (Exhibits A-C to the Declaration of Ana Yang Muller) are
3 proper subjects for judicial notice and the Court should consider them when ruling on Facebook’s
4 Motion to Dismiss the First Amended Consolidated Class Action Complaint.

5 **I. LEGAL STANDARD**

6 When ruling on a motion to dismiss, a court may consider any matter that is subject to
7 judicial notice. *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986); *Tellabs, Inc.*
8 *v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). Judicial notice is appropriate for facts
9 “not subject to reasonable dispute” that are either generally known within the jurisdiction of the
10 trial court or are “capable of accurate and ready determination by resort to sources whose
11 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Courts in this District have
12 held that “as a general matter, websites and their contents may be proper subjects for judicial
13 notice” provided that the party provides the court with a copy of the relevant web page. *Caldwell*
14 *v. Caldwell*, No. C 05-4166, 2006 WL 618511, at *4 (N.D. Cal. Mar. 13, 2006); *see also Frances*
15 *Kenny Family Trust v. World Sav. Bank FSB*, No. C 04-03724 WHA, 2005 WL 106792, at *1
16 (N.D. Cal. Jan. 19, 2005) (finding content on plaintiffs’ website to be proper matter for judicial
17 notice).

18 Moreover, the Ninth Circuit has recognized that in ruling on a motion to dismiss, “in order
19 to ‘[p]revent [] plaintiffs from surviving a Rule 12(b)(6) motion by deliberately omitting . . .
20 documents upon which their claims are based,’ a court may consider a writing referenced in a
21 complaint but not explicitly incorporated therein if the complaint relies on the document and its
22 authenticity is unquestioned.” *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007) (citing
23 *Parrino v. FHP, Inc.*, 146 F.3d 699, 706 (9th Cir. 1998) (later superseded by statute)
24 (incorporating by reference insurance terms of service and administrative documents because the
25 claim necessarily relied on plaintiff having been a member of the insurance plan); *Wietschner v.*
26 *Monterey Pasta Co.*, 294 F. Supp. 2d 1102, 1108-09 (N.D. Cal. 2003) (judicially noticing press
27 releases cited in the complaint). This allows the court to consider the full text of a document that
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1 the plaintiff’s complaint relies on but only partially references. *See, e.g., In re Copper Mountain*
2 *Sec. Litig.*, 311 F. Supp. 2d 857, 864 (N.D. Cal. 2004).

3 **II. THE COURT SHOULD TAKE JUDICIAL NOTICE OF EXHIBITS A, B, AND C**

4 The accuracy of each of the referenced exhibits is not subject to reasonable dispute and
5 can be readily determined from sources whose accuracy cannot reasonably be questioned. All of
6 the exhibits are explicitly referenced by Plaintiffs in their FAC, with references to the website
7 address (technically called the Uniform Resource Locator (“URL”)) where each document may
8 be located. (FAC ¶¶ 27, 28, 29.) Moreover, the FAC relies on these documents, explicitly
9 alleging that each Facebook user must “agree to [the] Privacy Policy upon registering with the
10 site” and “affirm that they have ‘read and agree[d] to’ Facebook’s Terms of Use (a hyperlink to
11 the document entitled Statement of Rights and Responsibilities)” (FAC ¶ 33.) The FAC
12 alleges that Facebook violated the “Privacy Policy and [] the representations quoted above”
13 (FAC ¶ 34.) The “representations quoted above” that the FAC refers to include portions of the
14 Statement of Rights and Responsibilities, Privacy Policy, and Privacy Guide quoted by Plaintiffs,
15 among others. (*See, e.g.,* FAC ¶¶ 27, 28, 29.) The FAC does not question the authenticity of the
16 cited documents and in fact relies on their accuracy to make Plaintiffs’ allegations. *See Swartz*,
17 476 F.3d at 763 (where the complaint relies on a portion of a document and does not question its
18 authenticity, the court may take judicial notice of the entire document). Therefore, because the
19 FAC relies on the documents contained in Exhibits A, B, and C, whose authenticity is not subject
20 to dispute and can be readily determined from sources whose accuracy cannot reasonably be
21 questioned, Defendants’ Request for Judicial Notice should be granted as to each exhibit.

22 **III. CONCLUSION**

23 For the foregoing reasons, Defendant respectfully requests that the Court take judicial
24 notice of Exhibits A, B, and C.

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Dated: July 15, 2011

COOLEY LLP

/s/ Matthew D. Brown

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