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 8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**
 10 **SAN JOSE DIVISION**

13 FACEBOOK, INC., a Delaware
 14 corporation,
 15 Plaintiff,
 16 v.
 17 MAXBOUNTY, INC., a Canadian
 corporation.
 18 Defendant.

Case No. 5:10-cv-04712-JF (HRL)

**ANSWER TO COMPLAINT,
 AFFIRMATIVE DEFENSES
 AND DEMAND FOR JURY TRIAL**

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I. INTRODUCTION

1. Defendant MaxBounty, Inc. ("Defendant"), an advertising company that uses its proprietary network of affiliates to drive traffic to its customers' websites, is the mastermind and beneficiary of a scheme that targeted Facebook's networking platform with unauthorized, fraudulent and deceptive Facebook Pages and other communications in order to lure unsuspecting Facebook users away from Facebook and to Defendant's customers' commercial websites. Defendant's advertising schemes also involved inducing or tricking Facebook users into allowing spam to be sent to all of their Facebook friends. Defendant conspired with, instructed, and encouraged its affiliates to carry out these schemes by providing them with assurances that their advertising methods were legitimate, by encouraging and coaching affiliates on ways to increase the effectiveness of their Facebook activities, and by providing technical support and substantial financial gain to the affiliates who agreed to participate in the scheme. Defendant, as the mastermind, was a knowing and active participant in these schemes which also infringed Facebook's trademarks and tarnished Facebook's brand. The direct result of Defendant's actions, for which it handsomely profited, was an almost immediate and viral spreading of these schemes that wreaked havoc throughout a significant portion of Facebook's user base, tarnished Facebook's brand, damaged its goodwill and required it to expend significant efforts to educate its users, respond to their concerns and identify and weed out Defendant's affiliates' deceptive Pages and schemes. Facebook brings this lawsuit to stop Defendant's fraudulent and abusive use of its services and to recover compensatory, statutory, aggravated and punitive damages, disgorgement of the proceeds of Defendant's scheme and Facebook's reasonable costs and attorneys' fees associated with this lawsuit.

ANSWER: MaxBounty has moved to dismiss Facebook's causes of action concerning allegations of fraud for failure to state a claim on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer to those allegations is required. Facebook's remaining allegations of wrongdoing are denied.

1 **II. PARTIES**

2 2. Plaintiff Facebook is a Delaware corporation with its principal place of business in
3 Pale Alto, California.

4 **ANSWER:** Admitted.

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7 3. Defendant MaxBounty, Inc. is a Canadian corporation with its principal place of
8 business in Ottawa, Canada.

9 **ANSWER:** Admitted.

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12 **III. JURISDICTION AND VENUE**

13 4. Court has federal question jurisdiction of this action under 28 U.S.C. § 1331 because
14 the action alleges violations of the Lanham Act (15 U.S.C. §§ 1125(a) and (c)), the CAN-SPAM Act
15 of 2003 (15 U.S.C. § 7701 et seq.) and the Computer Fraud and Abuse Act (18 U.S.C. § 1030). This
16 Court has supplemental jurisdiction over the remaining claims under 28 U.S.C. § 1367.

17 **ANSWER:** Admitted.

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20 5. This Court also has federal jurisdiction of this action under 28 U.S.C. § 1332,
21 because the action is between corporations of different countries and the amount in controversy
22 exceeds \$75,000, excluding costs and interest.

23 **ANSWER:** Admitted that the action is between corporations of different countries.
24 MaxBounty lacks information sufficient to form a belief about the truth of the remaining
25 allegations.

1 6. Venue is proper in this district under 28 U.S.C, § 1391(b)(2) because a substantial
2 part of the events giving rise to the claims raised in this lawsuit occurred in this district and because
3 Defendant agreed to comply with Facebook’s Statement of Rights and Responsibilities
4 ("Statement"), which provides that any dispute arising, out of or related to the Statement shall be
5 resolved by a state or federal court located in Santa Clara County.

6 **ANSWER:** Denied.

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9 7. This Court has personal jurisdiction over Defendant because during all relevant times,
10 Defendant repeatedly, knowingly and intentionally accessed and induced its affiliates to access
11 Facebook servers located in California in furtherance of its deceptive and fraudulent marketing
12 scheme. In the course of its conduct, Defendant had systematic and continuous contacts with
13 California and targeted its wrongful acts at Facebook, which it knew was headquartered in
14 California.

15 **ANSWER:** MaxBounty has moved to dismiss Facebook’s causes of action concerning
16 allegations of fraud for failure to state a claim on which relief can be granted pursuant to
17 Fed.R.Civ.P. 12(b)(6). Accordingly, no answer to those allegations is required. Facebook’s
18 remaining allegations of wrongdoing are denied.

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21 8. The Court also has personal jurisdiction over Defendant, because Defendant agreed to
22 comply with the Statement and thereby agreed to submit to the personal jurisdiction of the courts
23 located in Santa Clara County, California for the purpose of litigating these claims.

24 **ANSWER:** Denied.

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2 **IV. INTRADISTRICT ASSIGNMENT**

3 9. Assignment to the San Jose Division of this Court is appropriate under Civil L.R. 3-2
4 because the claims asserted herein arose in the county of Santa Clara. Facebook is headquartered in
5 the county of Santa Clara and has servers located at several locations in this county. Assignment to
6 the San Jose Division of this Court is also appropriate because the parties have agreed that all claims
7 between them would be resolved in Santa Clara County.

8 **ANSWER:** Denied.
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11 **V. FACTS AND BACKGROUND**

12 **A. Facebook Background and Services**

13 10. Founded in February 2004, Facebook is a "social utility"--a network that helps people
14 communicate more efficiently and effectively with their friends, family and co-workers. The
15 company develops and provides online networking services that facilitate the sharing of information
16 through the "social graph" --the digital mapping of people's real world social connection. Through
17 Facebook's website, the Facebook Platform, Social Plugins and other tools, hundreds of millions of
18 Facebook users enjoy personalized and relevant Internet experiences. As of the filing of this
19 Complaint, more than 500 million active Facebook users spend more than 700 billion minutes per
20 month on <http://www.facebook.com>, making the website the second most trafficked website in the
21 United States. More than 150 million Facebook users also engage with Facebook through external,
22 third-party websites every month. And more than one million websites have implemented tools
23 made available by Facebook that engage users and make their websites more social and relevant.
24 Through Facebook, users can interact with over 900 million objects (individual and community
25 pages, groups and events) and 30 billion pieces of content (web links, news stories, blog posts,
26 notes, photo albums, etc.).
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1 **ANSWER:** MaxBounty lacks information sufficient to form a belief about the truth of the
2 allegations.

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4
5 11. One of the defining features of Facebook is that users are required to use their real
6 identities. Facebook users rely on the fact that users are required to use their actual identifies such
7 that they trust the authenticity of the communications coming from their Facebook friends.

8 **ANSWER:** MaxBounty lacks information sufficient to form a belief about the truth of the
9 allegations.

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11
12 12. In order to access Facebook information and features available to Facebook users, a
13 person must sign up for Facebook using his or her real name, select a unique password and agree to
14 the terms and conditions contained in Facebook's Statement before being granted authorization to
15 access the protected information areas of Facebook.

16 **ANSWER:** MaxBounty lacks information sufficient to form a belief about the truth of the
17 allegations.

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19
20 13. Once a user obtains a Facebook account, the user obtains a "profile" that may be
21 populated with information about the user such as where he or she lives, his or her interests,
22 biography, current and past education and work history. Facebook users may connect their profiles
23 to the profiles of other persons that they "friend" on Facebook. A Facebook friendship is mutual.
24 Both users must agree to be friends before a friend connection is established.

25 **ANSWER:** MaxBounty lacks information sufficient to form a belief about the truth of the
26 allegations.

1 14. Business or other commercial, political or charitable organizations can create "Pages"
2 that allow them to establish a presence on Facebook. Facebook users can also connect their profiles
3 to Pages. The administrator of the Page must be an authorized representative of the subject of the
4 Page.

5 **ANSWER:** MaxBounty lacks information sufficient to form a belief about the truth of the
6 allegations.

7
8
9 15. Facebook users may connect their profiles to Facebook Pages by clicking on the
10 "Like" button that is located at the top of each Page. By clicking on the Like button, a link to the
11 Page is displayed on the user's profile in a list under the category "Likes," and the user's name and
12 profile picture appear on the Page's list of "Friends" or "People" that Like the Page.

13 **ANSWER:** MaxBounty lacks information sufficient to form a belief about the truth of the
14 allegations.

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16
17 16. Prior to implementing the "Like!" button, Facebook allowed users to connect their
18 profiles to Facebook Pages by clicking on a similar button labeled "Become a Fan." The "Become a
19 Fan" button operated the same way as the "Like" button: By clicking on the "Become a Fan" button,
20 a link to the Page was displayed on the user's profile under the category "Pages" and the user's
21 name and profile picture appeared on the Page's list of "Fans." The "Become a Fan" feature was
22 discontinued when the "Like" button was implemented for Pages.

23 **ANSWER:** MaxBounty lacks information sufficient to form a belief about the truth of the
24 allegations.

1 17. Once a Facebook user connects his or her profile to his or her friends' profiles and
2 desired commercial Pages, Facebook facilitates and enables connected profiles and Pages to
3 communicate with each other. Secure communication among Facebook users is vital to the integrity
4 of Facebook's computer network as well as to the level of confidence that Facebook users have in
5 using Facebook.

6 **ANSWER:** MaxBounty lacks information sufficient to form a belief about the truth of the
7 allegations.

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10 18. Facebook users may only be contacted by other registered Facebook users or by
11 Facebook itself.

12 **ANSWER:** MaxBounty lacks information sufficient to form a belief about the truth of the
13 allegations.

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16 19. Each user profile and each Facebook Page has a "Wall," which is an area where
17 registered users with access to the profile or Page may post content, including messages, links,
18 pictures and videos. Each profile and Facebook Page prominently displays the "Facebook"
19 trademark referenced in paragraph 25 of this complaint in the upper left-hand corner of the
20 webpage. The Wall functions as a virtual bulletin board where recent posts are arranged
21 chronologically, with the most recent post appearing on the top.

22 **ANSWER:** MaxBounty lacks information sufficient to form a belief about the truth of the
23 allegations.

24
25
26 20. In addition to the user's profile, which contains the Wall, Facebook provides each
27 Facebook user with a "News Feed" or "home" page; this is the first page shown to Facebook users
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1 when they log into their Facebook accounts. As with profiles and Pages, the News Feed prominently
2 displays the "Facebook" trademark referenced in paragraph 25 of this complaint in the upper left-
3 hand comer of the webpage. The News Feed displays, among other things, activities performed by
4 each of the user's friends and Facebook Pages to which the user has connected his or her profile. For
5 example, a user's News Feed on a given day could include updates posted by the user's friends or
6 Pages to which the user has connected, notices that friends became friends with other Facebook
7 users, notices that a particular friend connected a Facebook Page to his or her profile, notices that
8 new content was added to a Facebook Page's Wall, or notices that a link, photo or video was posted
9 on a profile or Page Wall. The activities that appear on the News Feed are arranged chronologically
10 with the most recent events posted at the top of the feed. This feature enables users to instantly view
11 the activities occurring on the various profiles and Pages to which they are connected without
12 visiting each and every profile or Page.

13 **ANSWER:** MaxBounty lacks information sufficient to form a belief about the truth of the
14 allegations.

15
16 21. A registered user may share a Facebook Page by clicking on the "Share" button on
17 the Page. Clicking on this button brings up a window where the user can type a short note and then
18 publish the note, a link to the Page and the picture icon of the Page to his or her Wall, which will
19 then appear automatically in the News Feeds of all of that user's friends. This function enables users
20 to share a link to the Page with a large number of users with minimal effort. Using the "Share"
21 button often causes the user's friends to view the shared Facebook Page.

22 **ANSWER:** MaxBounty lacks information sufficient to form a belief about the truth of the
23 allegations.

24
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26 22. For more targeted sharing, registered users may also suggest a Facebook Page to
27 particular friends by clicking on the "Suggest to Friends" button. When a user clicks on the "Suggest
28

1 to Friends" button, a message containing a link, icon, short description and an optional message is
2 sent to selected friends inviting them to connect to the Page. A Page suggestion often causes the
3 recipients of the message to view the suggested Facebook Page to determine whether the user would
4 like to connect to the Page. Provided the sending user's privacy settings are not adjusted to prohibit
5 it, the fact that a user suggested a Page is published to the user's Wall and also to the News Feeds of
6 that person's friends.

7 **ANSWER:** MaxBounty lacks information sufficient to form a belief about the truth of the
8 allegations.

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11 23. Facebook provides its users with tools that allow the customization of the ability to
12 share or restrict certain information based on specific friends or friend lists on Facebook's network
13 as well as the ability to have certain Facebook communications delivered to them by other
14 messaging options, such as email.

15 **ANSWER:** MaxBounty lacks information sufficient to form a belief about the truth of the
16 allegations.

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19 24. Facebook devotes significant resources to combat unauthorized use of its website and
20 service. In addition to Facebook employees that continuously work to monitor and improve
21 Facebook security, Facebook also provides users with tools that help them ensure that their accounts
22 are not used by others.

23 **ANSWER:** MaxBounty lacks information sufficient to form a belief about the truth of the
24 allegations.

1 **B. Facebook's Trademarks Are Famous**

2 25. Facebook is the owner of the entire right, title and interest in and to a number of
3 trademarks and service marks, including the following, for which Facebook owns federal
4 applications or registrations covering a Wide variety of goods and services:

5 **FACEBOOK** Registration: Reg. No. 3801147 (first use for Classes 38, 41, and 42
6 February 28, 2004, first use for Class 9 August 31, 2006)



Pending Applications: Serial Numbers 77896325 and 77896323



9 Pending Application: Serial Number, 77273570

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11 **ANSWER:** Admitted that Facebook is the purported owner of the identified registration and
12 applications.

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15 26. Attached to this Complaint as Exhibit A, and incorporated here by reference, are true
16 and correct copies of the United States Patent and Trademark Office printouts of the online status
17 pages for these trademarks. All of the registrations noted in Exhibit A are valid, subsisting,
18 unrevoked and uncancelled. These registered trademarks are referred to collectively as the
19 "Facebook Trademarks."

20 **ANSWER:** Admitted that Exhibit A includes printouts from the United States Patent and
21 Trademark Office records corresponding to the registration and applications identified in
22 paragraph 25. MaxBounty lacks information sufficient to form a belief about the truth of the
23 remaining allegations.

1 27. Facebook has continuously used the Facebook Trademarks in interstate commerce in
2 the United States since the date listed in paragraph 25, above, in connection with its goods and
3 services.

4 **ANSWER:** MaxBounty lacks information sufficient to form a belief about the truth of the
5 allegations.
6

7
8 28. The Facebook Trademarks are highly distinctive with regard to Facebook’s online
9 networking services.

10 **ANSWER:** MaxBounty lacks information sufficient to form a belief about the truth of the
11 allegations.
12

13
14 29. As a result of Facebook’s widespread use of the Facebook Trademarks worldwide, its
15 prolific presence on third party websites, the continuous and unsolicited media coverage of
16 Facebook, the high degree of consumer recognition of the Facebook Trademarks and the strong and
17 loyal base of customers that regularly use and enjoy Facebook’s services, the Facebook Trademarks
18 are famous within the meaning of Section 43(c) of the United States Trademark Act, 15 U.S.C.
19 §1125(c).

20 **ANSWER:** MaxBounty lacks information sufficient to form a belief about the truth of the
21 allegations.
22

23
24 **C. Facebook’s Statement of Rights and Responsibilities**

25 30. In order to obtain authorization to access user information maintained by Facebook,
26 users must agree to comply with the requirements set forth in the Statement and incorporated
27 documents. Facebook has established the Statement and associated guidelines in order to limit
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1 access and use of its network to permissible uses. Facebook has determined that this is necessary to
2 protect Facebook users from abuse, protect the privacy of their personal information, protect the
3 Security of the content they have entrusted Facebook with and protect the Facebook brand.

4 **ANSWER:** MaxBounty lacks information sufficient to form a belief about the truth of the
5 allegations.

6 31. Facebook's Statement includes, among other things, specific terms for Facebook
7 profiles, Pages ("Pages Terms") and for advertising ("Advertising Guidelines").

8 **ANSWER:** Admitted that the document identified as the Statement records the terms of the
9 Statement.

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11
12 32. All Facebook users, including Defendant, affirmatively agree to comply with the
13 Statement before Facebook creates an account for thereof allows them access to certain features of
14 the Facebook website. The Statement sets forth acceptable uses Of Facebook and prohibits users
15 from conducting certain activities. A true and correct copy of Facebook's current Statement is
16 incorporated here by reference and attached as Exhibit B.

17 **ANSWER:** Admitted that Exhibit B includes what Facebook identifies as a Statement.
18 MaxBounty lacks information sufficient to form a belief about the truth of the remaining
19 allegations.

20
21
22 33. Facebook's Statement prohibits Facebook users from:
23 a. using Facebook to do anything unlawful, misleading or malicious;
24 b. using Facebook's trademarks without Facebook's written permission;
25 c. sending or otherwise posting unauthorized commercial communications (such
26 as spare) on Facebook; .

1 d. collecting users' content or information or otherwise accessing Facebook
2 using automated means without Facebook's permission;

3 e. using Facebook in any unlawful manner or in any Other manner that could
4 damage, disable, overburden or impair the Facebook website;

5 f. facilitating and encouraging violations of the Statement by others; and

6 g. uploading malicious code.

7 **ANSWER:** The document identified as the Statement records the terms of the Statement. To
8 the extent the allegation is inconsistent with those terms, or incomplete, or if the Statement has
9 changed over time, it is denied.
10

11
12 34. The Statement also addresses the permissible use of Facebook Pages by expressly
13 referencing and incorporating Facebook's Pages Terms, which contain the following restrictions:

14 a. Pages may only be used to promote a business or other commercial, political
15 or charitable organization or endeavor (including nonprofit organizations, political campaigns, bands
16 and celebrities);

17 b. Only an authorized representative of the subject of the Page may administer
18 the Page;

19 c. Pages can only post content and information under the "everyone" setting;
20 and

21 d. If the Page contains any form of advertising, then Section 11 of the
22 Statement, and also the Advertising Guidelines apply to the Page and its administrator.

23 **ANSWER:** The document identified as the Statement records the terms of the Statement. To
24 the extent the allegation is inconsistent with those terms, or incomplete, or if the Statement has
25 changed over time, it is denied.
26
27
28

1 35. Facebook's current Pages Terms are incorporated here by reference and attached as
2 Exhibit C.

3 **ANSWER:** Admitted.
4

5
6 36. The Statement also includes reference to Facebook's Advertising Guidelines, which
7 apply to all advertisements appearing on Facebook, including advertisements in Facebook Pages.

8 **ANSWER:** Admitted.
9

10
11 37. Facebook's Advertising Guidelines include the following restrictions:

12 a. Advertisers cannot create or manage multiple Facebook accounts for
13 advertising purposes unless given permission by Facebook to do so;

14 b. Advertisements that contain a URL or domain in the body must link to that
15 Same URL or domain;

16 c. Advertisements must not be false, misleading, fraudulent or deceptive;

17 d. Advertisements cannot be deceptive Or fraudulent about any offer made;

18 e. Advertisements must clearly represent the company, product or brand that is
19 being advertised;

20 f. Products or services promoted in the advertisement must be directly available
21 on the landing page;

22 g. Advertisements must not include unsubstantiated claims, including but not
23 limited to prices, discounts or product availability;

24 h. If an advertisement includes a price, discount or "free" offer, (1) the
25 destination URL for the ad must link to a page that clearly and accurately offers the exact deal the
26 advertisement has displayed, and (2) the advertisement must clearly state what action or set of
27 actions is required to qualify for the offer;
28

1 i. Advertisements may not contain, promote or reference "get rich quick" and
2 other money making opportunities that offer compensation for little or no investment, including
3 "work from home" opportunities positioned as alternatives to part-time or full-time employment or
4 promises of monetary gain with no strings attached;

5 j. Advertisements cannot contain, facilitate or promote "spam" or other
6 advertising or marketing content that violates applicable laws, regulations or industry standards;

7 k. If obtaining the benefit of the advertisement requires the user to subscribe to a
8 service, the service and offer requirements must both be stated in the advertisement and on the
9 Facebook Page;

10 l. If obtaining the benefit of the advertisement requires a recurring subscription,
11 the benefit to be obtained must be consistent with what is promoted in the advertisement copy;

12 m. With respect to subscription services, the promoted website must clearly and
13 accurately display the price and billing interval on the landing page as well as on any page that
14 prompts a user for personally identifiable information or billing information (including a mobile
15 phone number or credit card number); and

16 n. If the service is a subscription, the website must provide a prominent opt-in
17 checkbox or other clear mechanism indicating that the user knowingly accepts the price and
18 subscription service.

19 **ANSWER:** Facebook's Advertising Guidelines record the terms of the Advertising
20 Guidelines. To the extent the allegation is inconsistent with those terms, or incomplete, or if the
21 Statement has changed over time, it is denied.

22
23
24 38. Facebook's current Advertising Guidelines are incorporated here by reference and
25 attached as Exhibit D.

26 **ANSWER:** Admitted.
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1 **D. Defendant's Unauthorized and Fraudulent Activities**

2 39. Defendant is a registered Facebook user, operating a Facebook Page in support of its
3 business, and during all relevant times has been and is bound by its express agreement to abide by
4 Facebook's Statement, Pages Terms, and Advertising Guidelines.

5 **ANSWER:** Admitted that MaxBounty has a Facebook Group page. The remainder of the
6 allegation is denied.

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9 40. Upon information and belief, Defendant has engaged, and continues to engage, in
10 advertising activities on the Facebook website and elsewhere.

11 **ANSWER:** Denied.

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14 41. At no time has the Defendant received permission from Facebook to conduct any
15 commercial activity on Facebook's website that exceeds the authorization provided in the Statement
16 and incorporated Advertising Guidelines.

17 **ANSWER:** Because the Statement and Advertising Guidelines may have changed over time,
18 MaxBounty lacks information sufficient to form a belief about the truth of these allegations.

19
20
21 42. As described on Defendant's website, <http://www.maxbounty.com/faq.cfm>,
22 Defendant is an advertising company that operates an affiliate marketing program, otherwise known
23 as a Cost Per Action (or "CPA") marketing program. Under this program, Defendant recruits
24 individuals (or "affiliates") to create advertisements that drive traffic to Internet websites that have
25 contracted with Defendant. Under the CPA marketing model, the contracting website pays for the
26 traffic these affiliates generate only when some specific action is taken on the website, such as
27 filling out a form or completing a purchase. The advertiser defines this action in advance. As a
28

1 general rule, the more complex the action required, the higher payment Defendant's affiliates
2 receive per participant.

3 **ANSWER:** MaxBounty denies that it "recruits individuals (or 'affiliates') to create
4 advertisements." Admitted that MaxBounty hosts a website at www.maxbounty.com including
5 frequently asked questions. To the extent the allegations are inconsistent with the MaxBounty
6 website, they are denied.

7
8
9 43. Upon information and belief, Defendant pays its affiliates per action completed for its
10 third party advertisers, provides suggestions for offers and technical support, and reviews and edits
11 the text of its affiliates' promotional Facebook Pages before they are distributed.

12 **ANSWER:** MaxBounty has moved to dismiss Facebook's causes of action concerning
13 allegations of fraud and related conspiracy for failure to state a claim on which relief can be
14 granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer to those allegations is
15 required.

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19 44. Upon information and belief, Defendant directly encourages certain of its affiliates to
20 generate traffic for its contracting advertisers through fraudulent and deceptive means, including
21 advertising false and deceptive promotions on the Facebook site. In order to accomplish this
22 Defendant misleads its affiliates into believing that its campaigns are approved by Facebook,
23 provides technical support to its affiliates on how to create the Facebook campaigns, and provides
24 substantial advance payments to its affiliates that agree to participate in Defendant's Facebook
25 campaigns.

26 **ANSWER:** MaxBounty has moved to dismiss Facebook's causes of action concerning
27 allegations of fraud and related conspiracy for failure to state a claim on which relief can be
28

1 granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer to those allegations is
2 required.

3
4 45. Upon information and belief, Defendant's technical support includes content
5 suggestions and other tools that help and encourage its affiliates create fraudulent and deceptive
6 Facebook Pages.

7 **ANSWER:** MaxBounty has moved to dismiss Facebook's causes of action concerning
8 allegations of fraud and related conspiracy for failure to state a claim on which relief can be
9 granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer to those allegations is
10 required.

11
12 46. For example, one of Defendant's affiliate's Pages, which necessarily displayed the
13 Facebook Trademarks, was titled "MACEosmetics.com Earn a \$250 GIFT CARD! Registrant
14 Required", and included the following text: "You Are Invited To Receive This Exclusive Offer For
15 A Limited Time Only! Act Now To Get Your Free \$250 M.A.C. Gift Card! This is only for a
16 limited time, so be sure to enter right now! Get started by following the three steps below." "Step 1"
17 required Facebook users to "Become a Fan" of this Page, which would in turn reveal steps 2 and 3.
18 Step 2 asks users to "Invite your friends" to the Page, noting that "If you do not invite ALL of your
19 friends you may not be eligible [for the gift card]." Step 3 is to "Register for your \$250 gift card",
20 which explains that "After a short Registration process your gift card will be mailed to you shortly."

21 **ANSWER:** MaxBounty has moved to dismiss Facebook's causes of action concerning
22 allegations of fraud for failure to state a claim on which relief can be granted pursuant to
23 Fed.R.Civ.P. 12(b)(6). Accordingly, no answer to those allegations is required.

24
25
26 47. The statements that completing the three steps would result in a free \$250 M.A.C. gift
27 card were false and misleading, Upon information and belief, once Facebook users completed these
28

1 three steps, they were not given a free \$250 M.A.C. gift card, but instead directed to a domain
2 registered to and managed by Defendant that then redirected users to a third party commercial
3 website, in this case Superb-Rewards.net.

4 **ANSWER:** MaxBounty has moved to dismiss Facebook's causes of action concerning
5 allegations of fraud for failure to state a claim on which relief can be granted pursuant to
6 Fed.R.Civ.P. 12(b)(6). Accordingly, no answer to those allegations is required.

7
8
9 48. Upon information and belief, the website at Superb-Rewards.net collected personal
10 information from Facebook users and tricked Facebook users into spending money on commercial
11 products and services that were unrelated to the original "free \$250 M.A.C. gift card" promise on
12 Defendant's affiliate's Facebook Page. The landing page at Superb-Rewards.net explains that to
13 receive a gift card, the user must complete three additional steps, including to sign up for 13
14 "sponsor offers", which for the most part are offers for membership to various subscription-based
15 services for music, movies, coffee, newspapers, magazines, and other services many of which
16 required payment of significant monthly fees~ Defendant received payment for the traffic that it
17 delivers to Superb-Rewards.net based on the users who successfully completed the steps to receive a
18 free gift.

19 **ANSWER:** MaxBounty has moved to dismiss Facebook's causes of action concerning
20 allegations of fraud for failure to state a claim on which relief can be granted pursuant to
21 Fed.R.Civ.P. 12(b)(6). Accordingly, no answer to those allegations is required.

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24 49. Upon information and belief, in order to spread the impact of its scheme as widely as
25 possible on Facebook, Defendant encourages its affiliates to deceptively induce Facebook users to
26 send unsolicited commercial messages (spam) to their friends suggesting that they also visit
27 Defendant's affiliates' Facebook Pages. As described in the previous paragraph, Defendant's
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1 affiliates accomplish this by both encouraging users to send messages themselves, by stating on the
2 Page that users will not receive their free gift unless they send such a message to ALL their
3 Facebook friends, and by tricking Facebook users into executing malicious computer code that
4 caused messages to be automatically sent to all their Facebook friends.

5 **ANSWER:** MaxBounty has moved to dismiss Facebook's causes of action concerning
6 allegations of fraud for failure to state a claim on which relief can be granted pursuant to
7 Fed.R.Civ.P. 12(b)(6). Accordingly, no answer to those allegations is required.

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10 50. For example, one of Defendant's affiliates created a Facebook Page with the title
11 "FREE Apple iPad TESTERS WANTED." This Page informed Facebook users that in order to
12 become a "tester" and receive a free Apple iPad, the user had to (1) become a fan of the Page, (2)
13 send unsolicited invitations to all of their Facebook friends to visit the Page, and (3) click on a link
14 to a third-party website and provide personal information to that site. This affiliate's Page also
15 contained malicious computer code that the user could cut and paste in order to automatically send
16 invitations to the user's friends. Upon information and belief, when users completed these three
17 steps they were not given a free iPad but instead their browsers were redirected through Defendant's
18 website to a third-party commercial website, Better-Gifts.net.

19 **ANSWER:** MaxBounty has moved to dismiss Facebook's causes of action concerning
20 allegations of fraud for failure to state a claim on which relief can be granted pursuant to
21 Fed.R.Civ.P. 12(b)(6). Accordingly, no answer to those allegations is required.

22
23
24 51. Upon information and belief, the website at Better-Chris.net, which is nearly identical
25 in content to the website at Superb-Rewards.net described above, collects personal information from
26 Facebook users and markets products and services that are unrelated to the original Facebook Page
27
28

1 that users had visited. Defendant receives payment for the traffic that it delivered to Better-chfts.net
2 based on the users who successfully completed the steps to receive their free gift.

3 **ANSWER:** MaxBounty has moved to dismiss Facebook’s causes of action concerning
4 allegations of fraud for failure to state a claim on which relief can be granted pursuant to
5 Fed.R.Civ.P. 12(b)(6). Accordingly, no answer to those allegations is required.
6

7
8 52. Defendant’s affiliates’ Facebook Pages and deceptive advertising campaigns violate
9 Facebook’s Advertising Guidelines in multiple ways, including but not limited to: failing to provide
10 notice of paid subscription offers; failing to offer the same products on the Facebook Pages that are
11 offered to the user on the commercial website landing pages; and inducing Facebook users to send
12 unsolicited commercial messages (spam) to other Facebook users.

13 **ANSWER:** MaxBounty has moved to dismiss Facebook’s causes of action concerning
14 allegations of fraud for failure to state a claim on which relief can be granted pursuant to
15 Fed.R.Civ.P. 12(b)(6). Accordingly, no answer to those allegations is required.
16

17
18 **E. Harm to Facebook**

19 53. Defendant’s misleading and deceptive advertising scheme has tainted the Facebook
20 experience for the affected Facebook users and caused many of them real economic loss in the form
21 of undisclosed subscription fees.

22 **ANSWER:** MaxBounty has moved to dismiss Facebook’s causes of action concerning
23 allegations of fraud for failure to state a claim on which relief can be granted pursuant to
24 Fed.R.Civ.P. 12(b)(6). Accordingly, no answer to those allegations is required.
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1 54. Facebook has suffered and continues to suffer significant harm to its reputation and
2 goodwill due to Defendant's actions. Facebook has suffered more than \$5,000 in economic damages
3 attributable to its efforts and resources used to combat Defendant's affiliates' spam, to Combat
4 Defendant's and Defendant's affiliates' unauthorized access to Facebook accounts and servers, to
5 respond to user complaints and provide assistance in preventing Defendant and its affiliates from
6 continued unauthorized use of Facebook's services, and to identify and locate Defendant and its
7 affiliates.

8 **ANSWER:** MaxBounty has moved to dismiss Facebook's causes of action concerning
9 allegations of fraud for failure to state a claim on which relief can be granted pursuant to
10 Fed.R.Civ.P. 12(b)(6). Accordingly, no answer to those allegations is required.
11

12
13 55. Upon information and belief, Defendant has induced, and continues to induce, its
14 affiliates to engage, willfully and maliciously, in unauthorized access to and misappropriation of
15 Facebook computers, servers, systems, networks and data, including network information, and
16 Facebook user information.

17 **ANSWER:** MaxBounty has moved to dismiss Facebook's causes of action concerning
18 allegations of fraud for failure to state a claim on which relief can be granted pursuant to
19 Fed.R.Civ.P. 12(b)(6). Accordingly, no answer to those allegations is required.
20

21 56. Upon information and belief, Defendant has encouraged, and continues to encourage,
22 its affiliates to induce Facebook users to use automated means to initiate and send, willfully and
23 maliciously, unsolicited commercial messages, and has done so in order to defraud Facebook users
24 and profit from these illegal and improper spamming and advertising campaigns.

25 **ANSWER:** MaxBounty has moved to dismiss Facebook's causes of action concerning
26 allegations of fraud for failure to state a claim on which relief can be granted pursuant to
27 Fed.R.Civ.P. 12(b)(6). Accordingly, no answer to those allegations is required.
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57. Defendant has been unjustly enriched by its activities at the expense of Facebook and its users.

ANSWER: Denied.

1
2 **VI. CLAIMS FOR RELIEF**

3 **FIRST CAUSE OF ACTION – VIOLATION OF CONTROLLING THE ASSAULT OF NON-**
4 **SOLICITED PORNOGRAPHY AND MARKETING ACT OF 2003 (“CAN-SPAM”),**
5 **15 U.S.C. § 7701, et seq.**

6 58. Plaintiff Facebook realleges and incorporates by reference, as if fully set forth
7 herein, the allegations in paragraphs 1 through 57.

8 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
9 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
10 required.

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

16 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
17 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
18 required.

19
20
21 60. Facebook’s website and computers operate in interstate and foreign commerce
22 and communication and are therefore protected computers under 15 U.S.C. § 7702(13).

23 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
24 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
25 required.

1 61. Upon information and belief, Defendant knowingly and willingly participates
2 with Defendant's affiliates in procuring Facebook users to send, or take actions that cause
3 commercial electronic messages to be sent, to all the Facebook users' friends on Facebook. The
4 Facebook users takes such action because they were led to believe they would receive valuable
5 consideration if they send commercial messages to their friends. The electronic messages
6 initiated by Defendant's affiliates are "commercial" electronic messages because their primary
7 purpose was the commercial advertisement or promotion of a commercial product or service
8 (including content on an Interact website operated for a commercial purpose) as provided in 15
9 U.S.C. § 7702(2)(A).

10 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
11 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
12 required.

13
14
15 62. Upon information and belief, Defendant induces its affiliates to initiate
16 commercial messages on Facebook and thereby procures the origination or transmission of such
17 message as provided in 15 U.S.C. § 7702(9).

18 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
19 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
20 required.

21
22
23 63. Defendant intentionally misleads Facebook users by inducing its affiliates to
24 initiate the transmission of commercial electronic messages through Facebook's computers to
25 Facebook users that contain header information that is materially false or misleading as to the
26 true identity of the initiator of the messages in violation of 15 U.S.C. § 7704(a)(1).
27
28

1 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
2 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
3 required.

4
5
6 64. Defendant, through its affiliates, initiates the transmission of commercial
7 electronic messages, in a pattern or practice, through Facebook's computers to Facebook users
8 that do not contain a functioning return electronic mail address or other Internet-based opt-out
9 mechanism in violation of 15 U.S.C. § 7704(a)(3).

10 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
11 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
12 required.

13
14
15 65. Defendant, through its affiliates, initiates the transmission of commercial
16 electronic messages, in a pattern or practice, through Facebook's computers to Facebook users
17 that do not contain clear and conspicuous identification that the messages are advertisements or
18 solicitations, clear and conspicuous notice of the opportunity to decline to receive further
19 commercial emails from the sender or a valid physical postal address of the sender in violation
20 of 15 U.S.C. § 7704(a)(5).

21 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
22 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
23 required.

24
25
26 66. Defendant, through its affiliates, initiates the transmission of commercial
27 electronic messages, in a pattern or practice, through Facebook's computers to Facebook users
28

1 that contain subject headings that are misleading regarding the contents or subject matter of the
2 message and misleading regarding Facebook's connection to the messages in violation of 15
3 U.S.C. § 7704(a)(2).

4 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
5 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
6 required.

7
8
9
10 67. Facebook is informed and believes and, based thereon alleges, that Defendant
11 induces its affiliates to initiate the transmission of the misleading Commercial electronic
12 messages with actual knowledge or knowledge fairly implied on the basis of objective
13 circumstances that the messages' subject heading was likely to mislead a recipient acting
14 reasonably under the circumstances.

15 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
16 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
17 required.

18
19
20 68. Facebook is informed and believes, and based thereon alleges, that Defendant
21 induces its affiliates to initiate the transmission of commercial electronic messages, in a pattern,
22 or practice, through Facebook's computers to Facebook users, that are misleading and unlawful
23 under 15 U.S.C. § 7704(a), as alleged above, or assists in the origination of such messages
24 through the provision or selection of addresses to which the messages are transmitted as defined
25 in 15 U.S.C. § 7704(b)(I).

1 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
2 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
3 required.

4
5
6 69. Upon information and belief, Defendant has knowledge of its affiliates' violations
7 of 15 U.S.C. § 7704 and control over its affiliates' actions.

8 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
9 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
10 required.

11
12
13 70. Upon information and belief, Defendant conspires with its affiliates to violate 15
14 U.S.C. § 7704.

15 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
16 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
17 required.

18
19 71. Defendant causes Facebook harm by causing higher-bandwidth utilization, by
20 causing Facebook to expend significant employee time and sums of money combating
21 Defendant's spare and responding to user complaints, by deterring users and potential users
22 from using Facebook, by damaging Facebook's goodwill and reputation with its customers; and
23 by causing other injuries to Facebook.

24 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
25 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
26 required.

1 72. Facebook is entitled to the greater of its actual monetary loss or statutory damages
2 as provided by 15 U.S.C. § 7706(g)(1)(B), in an amount to be proven at trial.

3 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
4 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
5 required.

6
7
8 73. Facebook is entitled to an award of aggravated damages in an amount equal to
9 three times the amount otherwise available pursuant to 15 U.S.C. § 7706(g)(3)(C) because
10 Defendant violated CAN-SPAM willfully and knowingly and because Defendant’s unlawful
11 activity included one or more of the aggravated violations set forth in 15 U.S.C. § 7704(b).

12 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
13 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
14 required.

15
16
17 74. Facebook is entitled to reasonable costs, including reasonable attorneys’ fees as
18 provided by 15 U.S.C. § 7706(g)(4).

19 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
20 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
21 required.

22
23 **SECOND CAUSE OF ACTION – COMPUTER FRAUD AND ABUSE ACT,**

24 **18 U.S.C. § 1030, *et seq.***

25 75. Plaintiff Facebook realleges and incorporates by reference, as if fully set forth herein,
26 the allegations in paragraphs 1 through 57.

1 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
2 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
3 required.

4
5
6 76. Facebook's computers are involved in interstate and foreign commerce and
7 communication and are protected computers under 18 U.S.C. § 1030(e)(2).

8 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
9 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
10 required.

11
12
13 77. Upon information and belief, Defendant knowingly and with intent to defraud
14 induces its affiliates to access Facebook's computers without authorization or in excess of
15 authorization as defined by Facebook's Statement, Pages Terms and Advertising Guidelines, and by
16 means of such conduct, furthers its intended fraud and obtained payment from affiliate marketers in
17 violation of 18 U.S.C. § 1030(a)(4).

18 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
19 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
20 required.

21
22
23 78. Upon information and belief, Defendant knowingly and with intent to defraud
24 provides inducement in the form of misleading information, technical support, and monetary
25 payments to its affiliates to access Facebook's computers without authorization or in excess
26 authorization as defined by Facebook's Statement, Pages Terms and Advertising Guidelines, and by
27
28

1 means of such inducement, furthered its intended fraud and obtained payment from affiliate
2 marketers in violation of 18 U.S.C. § 1030(a)(4).

3 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
4 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
5 required.

6
7
8 79. Upon information and belief, through the activities described in paragraphs 75-78,
9 Defendant conspires with its affiliates to violate 18 U.S.C. § 1030(a)(4) in violation of 18 U.S.C. §
10 1030(b).

11 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
12 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
13 required.

14
15 80. Defendant's conduct caused a loss to Facebook during a one-year period in excess of
16 \$5,000.

17 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
18 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
19 required.

20
21
22 81. Defendant's conduct has also caused irreparable and incalculable harm and injuries to
23 Facebook and, unless enjoined, will cause further irreparable and incalculable injury for which
24 Facebook has no adequate remedy at law.

25 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
26 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
27 required.

1 82. Facebook has been damaged by Defendant’s actions, including by being forced to
2 expend resources to investigate and prevent the unauthorized access and abuse of its computer
3 network. Facebook seeks compensatory and other equitable relief under 18 U.S.C. § 1030(g) in an
4 amount to be proven at trial.

5 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
6 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
7 required.

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1 **THIRD CAUSE OF ACTION – FRAUD**

2 83. Plaintiff Facebook realleges and incorporates by reference, as if fully set forth herein,
3 the allegations in paragraphs 1 through 57.

4 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
5 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
6 required.

7
8
9 84. Facebook is informed and believes and, based thereon, alleges that Defendant
10 intended to and in fact did defraud Facebook.

11 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
12 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
13 required.

14
15
16 85. Upon information and belief, Defendant induces its affiliates to represent to Facebook
17 and its users that the Facebook Pages they develop contain content related to the subject of the Page
18 and that the Pages comply with Facebook’s Statement, Pages Terms and Advertising Guidelines by
19 providing encouragement, technical support, and substantial payments to its affiliates for creation of
20 such Pages.

21 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
22 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
23 required.

24
25 86. These representations are in fact false and Defendant knows that the representations
26 were false.

1 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
2 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
3 required.

4
5
6 87. Defendant's affiliates, with assistance and encouragement from Defendant, create
7 Facebook Pages advertising Products or services that are not in fact delivered or even available as
8 advertised.

9 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
10 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
11 required.

12
13
14 88. Defendant knows that its affiliates are creating Facebook Pages that advertise
15 products or services that are not in fact delivered or even available as advertised for the purpose of
16 directing Facebook users to websites that have agreed to pay Defendant for traffic or upon
17 completion of certain actions.

18 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
19 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
20 required.

21
22
23 89. Defendant induces its affiliates to make these representations with the intent to
24 defraud and induce Facebook into permitting Defendant's affiliates to use Facebook's platform and
25 services and to defraud and induce Facebook users to visit the Sites that pay Defendant for traffic.

26 **ANSWER:** Denied.
27
28

1
2 90. Through the actions described in paragraphs 83-89 Defendant entered into a
3 conspiracy with its affiliates to defraud Facebook.

4 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
5 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
6 required.

7
8
9 91. When Facebook hosts Defendant's affiliates' Pages on the Facebook platform,
10 Facebook does not know that Defendant's affiliates' representations are false but instead reasonably
11 relies on Defendant's affiliates' representations that their use complies with Facebook's Statement.
12 At the time Facebook users click on the links, the users do not know that the Defendant's affiliates'
13 representations were false and instead believe they are true.

14 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
15 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
16 required.

17
18 92. Facebook and its users act in justifiable reliance upon the truth of the Defendant's and
19 Defendant's affiliates' representations.

20 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
21 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
22 required.

23
24
25 93. Upon information and belief, Defendant conceals or suppresses material facts by
26 telling Facebook that it is complying with Facebook's Statement when it in fact encourages its
27 affiliates to use the Facebook Platform in ways that are expressly prohibited by the Statement. For
28

1 example, Defendant encourages its affiliates and knows that its affiliates create and use Facebook
2 Pages that promise free goods and services that neither Defendant nor its affiliates could provide or
3 intend to provide, and use unauthorized methods to initiate spam on the Facebook network. Each of
4 these activities is prohibited by the Statement and Facebook's Advertising Guidelines, which are
5 incorporated into the Statement.

6 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
7 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
8 required.

9
10
11 94. In justifiable reliance upon Defendant's and Defendant's affiliates' agreement to
12 abide by the Statement and associated Guidelines, Facebook allowed Defendant and its affiliates to
13 create and maintain Pages on Facebook and to advertise on Facebook.

14 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
15 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
16 required.

17
18
19 95. Facebook has suffered and continues to suffer significant harm to its reputation and
20 goodwill as a result of its reliance on Defendant's and Defendant's affiliates' representations and
21 conduct. Facebook has already suffered significant economic damages attributable to the effort and
22 resources used to combat the Spam procured by Defendant's affiliates, to identify and remove the
23 Facebook Pages created by Defendant's affiliates, to combat Defendant's affiliates' unauthorized
24 access to Facebook accounts and servers, to address the harm to its reputation and goodwill, and to
25 identify and locate Defendant and certain of Defendant's affiliates.

1 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
2 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
3 required.

4
5
6 96. Facebook is entitled to injunctive relief, compensatory damages and punitive
7 damages in an amount to be determined at trial.

8 **ANSWER:** MaxBounty has moved to dismiss this cause of action for failure to state a claim
9 on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer is
10 required.

11
12
13 **FOURTH CAUSE OF ACTION – TORTIOUS INTERFERENCE WITH CONTRACT**

14 97. Plaintiff Facebook realleges and incorporates by reference, as if fully set forth herein,
15 the allegations in paragraphs 1 through 57.

16 **ANSWER:** MaxBounty realleges and incorporates by reference, as if set forth fully herein,
17 the answers of paragraphs 1-57.

18
19
20 98. Use of Facebook’s site and services is governed by and subject to Facebook’s
21 Statement.

22 **ANSWER:** MaxBounty lacks information sufficient to form a belief about the truth of the
23 allegations.

1 99. At all times relevant to this dispute, users of Facebook’s site and services have been
2 required to agree to Facebook’s Statement in order to access Facebook’s site and services.

3 **ANSWER:** MaxBounty lacks information sufficient to form a belief about the truth of the
4 allegations.

5
6
7
8 100. Defendant affirmatively accepted and agreed to Facebook’s Statement and knew or
9 should have known that all Facebook users were required to accept and agree to Facebook’s
10 Statement in order to access Facebook’s site and services.

11 **ANSWER:** Because the Statement may have changed over time, MaxBounty lacks
12 information sufficient to form a belief about the truth of the allegations.

13
14
15 101. Facebook’s Statement prohibits users of Facebook from sending or otherwise posting
16 unauthorized commercial Communications (such as spare) on Facebook, from inducing other
17 Facebook users to breach the terms of this Statement, from misleading Facebook users and from
18 violating Facebook’s Pages Terms and Advertising Guidelines.

19 **ANSWER:** Facebook’s Statement records the current terms of the Statement. To the extent
20 the allegation is inconsistent with those terms, or has changed over time, it is denied.

21
22
23 102. Defendant intends to induce its affiliates to violate Facebook’s Statement and send
24 spare to Facebook users.

25 **ANSWER:** Denied.

1 103. Defendant intends to induce Facebook users to breach the Statement by encouraging
2 its affiliates to induce such users to utilize automated scripts that sent spare to their friends.

3 **ANSWER:** Denied.
4
5

6 104. When Facebook users utilize Defendant’s affiliates’ automated scripts to send spare
7 to their friends, they breach Facebook’s Statement.

8 **ANSWER:** MaxBounty lacks information sufficient to form a belief about the truth of the
9 allegations.
10
11

12 105. Through the actions described in paragraphs 97-104, Defendant entered into a
13 conspiracy with its affiliates to intentionally interfere with Facebook’s contracts with its users.

14 **ANSWER:** Denied.
15
16

17 106. As a result of this breach, hundreds of thousands of Facebook users receive unwanted
18 commercial communications from their friends that they otherwise would not have received.

19 **ANSWER:** Denied.
20
21

22 107. The breaches induced by Defendant directly and proximately harmed Facebook.
23 Facebook has suffered and continues to suffer significant harm to its reputation and goodwill.

24 **ANSWER:** Denied.
25
26
27
28

1 108. Facebook is entitled to injunctive relief, compensatory damages and punitive
2 damages in an amount to be determined at trial.

3 **ANSWER:** Denied.

4
5
6 **FIFTH CAUSE OF ACTION – BREACH OF CONTRACT**

7 109. Plaintiff Facebook realleges and incorporates by reference, as if fully set forth herein,
8 the allegations in paragraphs 1 through 57.

9 **ANSWER:** MaxBounty realleges and incorporates by reference, as if set forth fully herein,
10 the answers of paragraphs 1-57.

11
12
13 110. Use of Facebook’s site and services, the creation of Facebook Pages on the Facebook
14 network and the placement of advertisements on Facebook Pages are governed by and subject to
15 Facebook’s Statement, Pages Terms and Advertising Guidelines.

16 **ANSWER:** MaxBounty lacks information sufficient to form a belief about the truth of the
17 allegations.

18
19
20 111. At all times relevant to this dispute, users of Facebook’s site and services have been
21 required to agree to Facebook’s Statement in order to access Facebook’s site and services, create
22 Facebook Pages on the Facebook network and place advertisements on Facebook Pages.

23 **ANSWER:** MaxBounty lacks information sufficient to form a belief about the truth of the
24 allegations.

25
26 112. Defendant affirmatively accepted and agreed to Facebook’s Statement.
27
28

1 **ANSWER:** Because the Statement may have changed over time, MaxBounty lacks
2 information sufficient to form a belief about the truth of the allegations.

3
4
5 113. Facebook's Statement is binding on Defendant.

6 **ANSWER:** This allegation is a legal conclusion for which no answer is required.
7
8

9 114. Facebook has performed all conditions, covenants and promises required of it in
10 accordance with its Statement.

11 **ANSWER:** MaxBounty lacks information sufficient to form a belief about the truth of the
12 allegations.
13
14

15 115. Defendant, through its actions as described above, knowingly, willfully, repeatedly
16 and systematically breached Facebook's Statement, Pages Terms and Advertising Guidelines
17 through its conduct as alleged in this Complaint.

18 **ANSWER:** Denied.
19
20

21 116. Upon information and belief, Defendant induces its affiliates to breach Facebook's
22 Statement, Advertising Guidelines and Pages Terms in direct violation of its own obligations under
23 the Statement. Defendant's affiliates' breaches include, but are not limited to, initiation of spare
24 messages, using automated scripts on Facebook's network, confusing, misleading, surprising and
25 defrauding Facebook users, placing advertisements on Facebook that contain URLs that do not end
26 at that same landing page, placing false, misleading, fraudulent and deceptive advertisements on
27 Facebook, and offering recurring subscriptions without permission or proper notice.
28

1 **ANSWER:** Denied.

2
3
4 117. Defendant's breaches of Facebook's Statement, Pages Terms and Advertising
5 Guidelines directly and proximately caused and continue to cause Facebook irreparable and
6 incalculable harm and injury.

7 **ANSWER:** Denied.

8
9
10 118. Facebook is entitled to injunctive relief, compensatory damages and punitive
11 damages in an amount to be determined at trial.

12 **ANSWER:** Denied.

13
14
15 **SIXTH CAUSE OF ACTION – FEDERAL TRADEMARK DILUTION**
16 **15 U.S.C. § 1125(c)**

17 119. Plaintiff Facebook realleges and incorporates by reference, as if fully set forth herein,
18 the allegations in paragraphs 1 through 57.

19 **ANSWER:** MaxBounty realleges and incorporates by reference, as if set forth fully herein,
20 the answers of paragraphs 1-57.

21
22 120. As a result of the enormous publicity afforded the Facebook Trademarks and the
23 strong and loyal base of customers that enjoy Facebook's services, the Facebook Trademarks have a
24 high degree of consumer recognition, are widely recognized by the general consuming public of the
25 United States as a designation of Facebook's goods and services and are famous.

26 **ANSWER:** MaxBounty lacks information sufficient to form a belief about the truth of the
27 allegations.
28

1
2
3 121. The Facebook Trademarks became famous before Defendant began its infringing
4 activities.

5 **ANSWER:** MaxBounty lacks information sufficient to form a belief about the truth of the
6 allegations.

7
8
9 122. Defendant is liable for contributory infringement because it intentionally induces its
10 affiliates to use and cause to be displayed the Facebook Trademarks in the course of their
11 unauthorized activities. Defendant's affiliates' unauthorized use of the Facebook Trademarks causes
12 dilution by tarnishment of the distinctive quality of the Facebook Trademarks when Facebook users
13 associate the negative experience of participating in Defendant's affiliates' deceptive Facebook
14 Pages scheme with the goods and services normally offered by Facebook under those same marks.

15 **ANSWER:** Denied.

16
17
18 123. Facebook is informed and believes and, based thereon, alleges that Defendant intends
19 to induce its affiliates to create an association with the Facebook Trademarks and to trade on the
20 widespread recognition of the Facebook Trademarks.

21 **ANSWER:** Denied.

22
23
24 124. Defendant's affiliates' unauthorized use of the Facebook Trademarks is achieved
25 with Defendant's notice and full knowledge that such use is not authorized or licensed by Facebook.

26 **ANSWER:** Denied.

1
2 125. Despite having knowledge or reason to know of Defendant’s affiliates’ infringement
3 of Facebook’s marks, Defendant continues to allow Defendant’s affiliates to promote and advertise
4 its advertisers’ products and services.

5 **ANSWER:** Denied.

6
7
8 126. Through the actions described in paragraphs 119-125, Defendant entered into a
9 conspiracy with its affiliates to dilute Facebook’s trademarks.

10 **ANSWER:** Denied.

11
12
13 127. Defendant’s affiliates unauthorized use of the Facebook Trademarks is in direct
14 violation of Facebook’s Statement, Pages Terms, and Advertising Guidelines.

15 **ANSWER:** Denied.

16
17
18 128. Defendant’s aforesaid acts are in knowing and willful violation of Facebook’s rights
19 under section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

20 **ANSWER:** Denied.

21
22
23 129. The distinctive nature of the Facebook Trademarks is of enormous value, and
24 Facebook is suffering and will continue to suffer irreparable harm if Defendant’s wrongful conduct
25 is allowed to continue.

26 **ANSWER:** Denied.

1 130. Facebook is entitled to injunctive relief against Defendant, as well as all other
2 remedies available under the Lanham Act, including, but not limited to, damages in an amount to be
3 proven at trial consisting of, among other things, disgorgement of Defendants' profits, diminution in
4 the value of the goodwill associated with the Facebook Trademarks, and costs and attorneys' fees.

5 **ANSWER:** Denied.

6
7
8 131. Defendant's conduct has caused irreparable and incalculable harm and injuries to
9 Facebook and, unless enjoined, will cause further irreparable and incalculable injury for which
10 Facebook has no adequate remedy at law.

11 **ANSWER:** Denied.

12
13
14 132. Defendant's wrongful use of the Facebook Trademarks is deliberate, willful,
15 fraudulent and without any extenuating circumstances and constitutes a willful intent to trade on
16 Facebook's reputation or to cause dilution of the famous Facebook Trademarks. It is an exceptional
17 case within the meaning of Lanham Act § 35, 15 U.S.C. § 1117. Facebook is therefore entitled to
18 recover three times the amount of its actual damages, attorneys' fees and costs incurred in this
19 action and prejudgment interest.

20 **ANSWER:** Denied.

1 **SEVENTH CAUSE OF ACTION – FALSE DESIGNATION OF ORIGIN**
2 **15 U.S.C. § 1125(a)**

3 133. Plaintiff Facebook realleges and incorporates by reference, as if fully set forth herein,
4 the allegations in paragraphs 1 through 57.

5 **ANSWER:** MaxBounty realleges and incorporates by reference, as if set forth fully herein,
6 the answers of paragraphs 1-57.

7
8 134. In connection with Defendant’s services, Defendant has induced its affiliates to use in
9 commerce, without Facebook’s authorization or consent, the Facebook Trademarks.

10 **ANSWER:** Denied.

11
12
13 135. Defendant’s affiliates’ unauthorized use of the Facebook Trademarks is likely to
14 cause confusion, mistake or deception among the consuming public regarding the affiliation,
15 connection or association of Defendant, its affiliates and its customers with Facebook.

16 **ANSWER:** Denied.

17
18
19 136. Through the actions described in paragraphs 133-135, Defendant has entered into a
20 conspiracy with its affiliates to misappropriate the Facebook Trademarks.

21 **ANSWER:** Denied.

22
23
24 137. Defendant’s affiliates’ unauthorized use of the Facebook Trademarks is likely to
25 cause confusion, mistake or deception among the consuming public that Facebook has authorized,
26 approved or in some way Sponsored Defendant’s and its affiliates’ services.

27 **ANSWER:** Denied.
28

1
2 138. Defendant's affiliates' unauthorized use of the Facebook Trademarks constitutes the
3 use of a false designation of origin and false description or representation of fact, all in violation of
4 15 U.S.C. § 1125(a).

5 **ANSWER:** Denied.

6
7
8 139. Plaintiff is entitled to injunctive relief against Defendant, as well as all other remedies
9 available under the Lanham Act, including, but not limited to, damages in an amount to be proven at
10 trial consisting of, among other things, disgorgement of Defendant's profits, and diminution in the
11 value of the goodwill associated with the Facebook Trademarks, and costs and attorney's fees.

12 **ANSWER:** Denied.

13
14
15 140. Defendant's conduct has also caused irreparable and incalculable harm and injuries to
16 Facebook and, unless enjoined, will cause further irreparable and incalculable injury for which
17 Facebook has no adequate remedy at law.

18 **ANSWER:** Denied.

19
20
21 141. Defendant's wrongful use of the Facebook Trademarks is deliberate, willful,
22 fraudulent and without any extenuating circumstances and constitutes a willful intent to trade on
23 Facebook's reputation or to cause dilution of the famous Facebook Trademarks. It is an exceptional
24 ease within the meaning of Lanham Act § 35, 15 U.S.C. § 1117. Facebook is therefore entitled to
25 recover three times the amount of its actual damages, attorneys' fees and costs incurred in this
26 action and prejudgment interest.

27 **ANSWER:** Denied.

AFFIRMATIVE DEFENSES

1
2 1. The Complaint fails to state a claim upon which relief may be granted.

3 2. The CAN-SPAM Act, (15 U.S.C. §7701 et seq.) is not enforceable against
4 MaxBounty for the allegations set forth in the Complaint.

5 3. The Computer Fraud and Abuse Act (18 U.S.C. §1030, et seq.) is not enforceable
6 against MaxBounty for the allegations set forth in the Complaint.

7 4. MaxBounty has not committed fraud, induced its customers to commit fraud, or
8 conspired with its customers to commit fraud with respect to any advertisement on
9 Facebook.com.

10 5. Facebook’s Statement is not a legally binding contract.

11 6. MaxBounty has not breached Facebook’s Statement.

12 7. MaxBounty has not caused or otherwise induced its customers to breach any
13 contract with Facebook.com.

14 8. The Facebook Trademarks are not protectable or enforceable against MaxBounty.

15 9. The Facebook Trademarks are functional and descriptive.

16 10. The Facebook Trademarks are not distinctive.

17 11. The Plaintiff’s alleged misuses of the Facebook Trademarks are fair uses.

18 12. MaxBounty is not using Facebook Trademarks to cause a likelihood of confusion
19 as to the source of their service or any affiliation with or endorsement by Plaintiff.

20 13. MaxBounty has not conspired with or induced its customers to use Facebook
21 Trademarks to cause a likelihood of confusion as to the source of their service or any affiliation
22 with or endorsement by Plaintiff.

23 14. MaxBounty has not diluted or conspired to dilute Facebook Trademarks.

24 15. Plaintiff’s alleged claims may be barred, in whole or in part, by the defenses of
25 estoppel, unclean hands, waiver, or acquiescence.

26 16. Plaintiff’s alleged claims may be barred by applicable statutes of limitation or
27 repose, and/or the defenses of laches.

1 17. MaxBounty has not caused harm to Plaintiff, and Plaintiff is entitled to nothing
2 from MaxBounty.

3 18. MaxBounty reserves the right to add additional defenses that may become evident
4 during discovery or trial of this matter.

5
6 **WHEREFORE**, MaxBounty asks the Court to:

7 A. Dismiss the Complaint with prejudice;

8 B. Award MaxBounty its costs and attorneys' fees; and

9 C. Grant MaxBounty all other relief to which it is entitled and that the Court deems
10 just and proper.

1 **DEMAND FOR TRIAL BY JURY**

2 MaxBounty demands a jury trial as to all issues so triable in this action pursuant to Fed.
3 R. Civ. P. 38(b).

4
5 Dated: November 30, 2010

Respectfully submitted,

6
7 By: /s/ Mark B. Mizrahi
8 Mark B. Mizrahi
9 mmizrahi@brookskushman.com
10 **BROOKS KUSHMAN P.C.**

11 *Attorneys for Defendant, MaxBountry, Inc.*

1 **CERTIFICATE OF ELECTRONIC SERVICE**

2
3 I hereby certify that on November 30, 2010, I electronically filed the foregoing document
4 with the Clerk of the Court for the Northern District of California using the ECF System which
5 will send notification to the following registered participants of the ECF System as listed on the
6 Court's Notice of Electronic Filing: Joseph Perry Cutler and Brian Patrick Hennessy.

7
8 I also certify that I have mailed by United States Postal Service the paper to the following
9 non-participants in the ECF System:
10

11 James M. McCullagh
12 Perkins Cole LLP
13 1201 Third Avenue
14 Suite 4800
15 Seattle, WA 98101

16
17 By: /s/ Mark B. Mizrahi
18 Mark B. Mizrahi
19 mmizrahi@brookskushman.com
20 **BROOKS KUSHMAN P.C.**

21
22 *Attorneys for Defendant, MaxBountry, Inc.*
23
24
25
26
27
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