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16 **UNITED STATES DISTRICT COURT**
 17 **NORTHERN DISTRICT OF CALIFORNIA**
 18 **SAN JOSE DIVISION**

19 FACEBOOK, INC., a Delaware
 20 corporation,

21 Plaintiff,

22 v.

23 MAXBOUNTY, INC., a Canadian
 24 corporation,

25 Defendant.

Case No. 5:10-cv-4712-JF

**ANSWER TO FIRST AMENDED
 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.

23 **ANSWER:** Denied. MaxBounty has moved to dismiss Facebook's causes of action
24 concerning allegations of fraud for failure to state a claim on which relief can be granted
25 pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer to those allegations is required.
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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 knowledge or information sufficient to form a belief about the truth of the
25 remaining 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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8
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:** Denied. MaxBounty has moved to dismiss Facebook's causes of action
16 concerning allegations of fraud for failure to state a claim on which relief can be granted
17 pursuant to Fed.R.Civ.P. 12(b)(6). Accordingly, no answer to those allegations is required.

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19
20 8. The Court also has personal jurisdiction over Defendant, because Defendant agreed to
21 comply with the Statement and thereby agreed to submit to the personal jurisdiction of the courts
22 located in Santa Clara County, California for the purpose of litigating these claims.

23 **ANSWER:** Denied.

1 **IV. INTRADISTRICT ASSIGNMENT**

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

7 **ANSWER:** Denied.

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10 **V. FACTS AND BACKGROUND**

11 **A. Facebook Background and Services**

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

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

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

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

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7
8 12. In order to access Facebook information and features available to Facebook users, a
9 person must sign up for Facebook using his or her real name, select a unique password and agree to
10 the terms and conditions contained in Facebook's Statement before being granted authorization to
11 access the protected information areas of Facebook.

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

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

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

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24
25 14. Business or other commercial, political or charitable organizations can create "Pages"
26 that allow them to establish a presence on Facebook. Facebook users can also connect their profiles
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1 to Pages. The administrator of the Page must be an authorized representative of the subject of the
2 Page.

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

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

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

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14
15 16. Prior to implementing the "Like!" button, Facebook allowed users to connect their
16 profiles to Facebook Pages by clicking on a similar button labeled "Become a Fan." The "Become a
17 Fan" button operated the same way as the "Like" button: By clicking on the "Become a Fan" button,
18 a link to the Page was displayed on the user's profile under the category "Pages" and the user's
19 name and profile picture appeared on the Page's list of "Fans." The "Become a Fan" feature was
20 discontinued when the "Like" button was implemented for Pages.

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

23
24
25 17. Once a Facebook user connects his or her profile to his or her friends' profiles and
26 desired commercial Pages, Facebook facilitates and enables connected profiles and Pages to
27 communicate with each other. Secure communication among Facebook users is vital to the integrity
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1 of Facebook's computer network as well as to the level of confidence that Facebook users have in
2 using Facebook.

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

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7 18. Facebook users may only be contacted by other registered Facebook users or by
8 Facebook itself.

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

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12
13 19. Each user profile and each Facebook Page has a "Wall," which is an area where
14 registered users with access to the profile or Page may post content, including messages, links,
15 pictures and videos. Each profile and Facebook Page prominently displays the "Facebook"
16 trademark referenced in paragraph 25 of this complaint in the upper left-hand corner of the
17 webpage. The Wall functions as a virtual bulletin board where recent posts are arranged
18 chronologically, with the most recent post appearing on the top.

19 **ANSWER:** MaxBounty lacks knowledge or information sufficient to form a belief about the
20 truth of the allegations.

21
22
23 20. In addition to the user's profile, which contains the Wall, Facebook provides each
24 Facebook user with a "News Feed" or "home" page; this is the first page shown to Facebook users
25 when they log into their Facebook accounts. As with profiles and Pages, the News Feed prominently
26 displays the "Facebook" trademark referenced in paragraph 25 of this complaint in the upper left-
27 hand corner of the webpage. The News Feed displays, among other things, communications from a
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1 user's friends and, activities performed by each of the user's friends and Facebook Pages to which
2 the user has connected his or her profile. For example, a user's News Feed on a given day could
3 include updates posted by the user's friends or Pages to which the user has connected, notices that
4 friends became friends with other Facebook users, notices that a particular friend connected a
5 Facebook Page to his or her profile, notices that new content was added to a Facebook Page's Wall,
6 or notices that a link, photo or video was posted on a profile or Page Wall. The activities that appear
7 on the News Feed are arranged chronologically with the most recent events posted at the top of the
8 feed. This feature enables users to instantly view the activities occurring on the various profiles and
9 Pages to which they are connected without visiting each and every profile or Page.

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

12
13 21. A registered user may share a Facebook Page by clicking on the "Share" button on
14 the Page. Clicking on this button brings up a window where the user can type a short note and then
15 publish the note, a link to the Page and the picture icon of the Page to his or her Wall, which will
16 then appear automatically in the News Feeds of all of that user's friends. The user can also opt to
17 send this note as a direct electronic mail message to targeted friends, or can post it directly on
18 another user's wall. This function enables users to share a link to the Page with a large number of
19 users with minimal effort. Using the "Share" button often causes the user's friends to view the
20 shared Facebook Page.

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

23
24 22. For a period of time, registered users could also target a Facebook Page to only
25 particular friends by clicking on the "Suggest to Friends" button. When a user clicks on the "Suggest
26 to Friends" button, a message containing a link, icon, short description and an optional message is
27 sent to selected friends inviting them to connect to the Page. A Page suggestion often causes the
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1 recipients of the message to view the suggested Facebook Page to determine whether the user would
2 like to connect to the Page. Provided the sending user's privacy settings are not adjusted to prohibit
3 it, the fact that a user suggested a Page is published to the user's Wall and also to the News Feeds of
4 that person's friends.

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

7
8 23. Facebook also provides a messaging service that allows users to send personal
9 electronic mail messages directly to other Facebook users. Such messages are not posted to the
10 user's Wall or News Feed but instead are private between the sender and recipient(s).

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

13
14 24. Facebook provides its users with tools that allow the customization of the ability to
15 share or restrict certain information based on specific friends or friend lists on Facebook's network
16 as well as the ability to have certain Facebook communications delivered to them by other
17 messaging options, such as to have electronic mail messages sent to a user's Facebook account sent
18 to a separate email account.

19 **ANSWER:** MaxBounty lacks knowledge or information sufficient to form a belief about the
20 truth of the allegations.

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

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

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

2 26. 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)



7 Pending Applications: Serial Numbers 77896325 and 77896323



8 Pending Application: Serial Number, 77273570

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

12
13 27. Attached to this Complaint as Exhibit A, and incorporated here by reference, are true
14 and correct copies of the United States Patent and Trademark Office printouts of the online status
15 pages for these trademarks. All of the registrations noted in Exhibit A are valid, subsisting,
16 unrevoked and uncanceled. These registered trademarks are referred to collectively as the
17 "Facebook Trademarks."

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

22
23
24 28. Facebook has continuously used the Facebook Trademarks in interstate commerce in
25 the United States since the date listed in paragraph 25, above, in connection with its goods and
26 services.

1 **ANSWER:** MaxBounty lacks knowledge or information sufficient to form a belief about the
2 truth of the allegations.

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5 29. The Facebook Trademarks are highly distinctive with regard to Facebook’s online
6 networking services.

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

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

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

19
20
21 **C. Facebook’s Statement of Rights and Responsibilities**

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

1 **ANSWER:** MaxBounty lacks knowledge or information sufficient to form a belief about the
2 truth of the allegations.

3
4
5 32. Facebook's Statement includes, among other things, specific terms for Facebook
6 profiles, Pages ("Pages Terms") and for advertising ("Advertising Guidelines").

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

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

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

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

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

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

4 g. uploading malicious code.

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

8
9
10 35. The Statement also addresses the permissible use of Facebook Pages by expressly
11 referencing and incorporating Facebook's Pages Terms, which contain the following restrictions:

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

15 b. Only an authorized representative of the subject of the Page may administer
16 the Page;

17 c. Pages can only post content and information under the "everyone" setting;
18 and

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

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

24 36. Facebook's current Pages Terms are incorporated here by reference and attached as
25 Exhibit C.

26 **ANSWER:** Admitted.

1
2 37. The Statement also includes reference to Facebook's Advertising Guidelines, which
3 apply to all advertisements appearing on Facebook, including advertisements in Facebook Pages.

4 **ANSWER:** Admitted that the statement included reference to Facebook's Advertising
5 Guidelines. MaxBounty lacks knowledge or information sufficient to form a belief as to the
6 remaining allegations.

7
8
9 38. Facebook's Advertising Guidelines include the following restrictions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20
21
22 39. Facebook’s current Advertising Guidelines are incorporated here by reference and
23 attached as Exhibit D.

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

2 40. 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.

7
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9 41. Defendant has engaged, and continues to engage, in advertising activities on the
10 Facebook website and elsewhere.

11 **ANSWER:** Denied.

12
13
14 42. 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. As described on Defendant's website,
17 <http://www.maxbounty.com/faq.cfm>, Defendant is an advertising company that operates an affiliate
18 marketing program, otherwise known as a Cost Per Action (or "CPA") marketing program. Under
19 this program, Defendant recruits individuals (or "affiliates") to create advertisements that drive
20 traffic to Internet websites that have contracted with Defendant. Under the CPA marketing model,
21 the contracting website pays for the traffic these affiliates generate only when some specific action
22 is taken on the website, such as filling out a form or completing a purchase. The advertiser defines
23 this action in advance. As a general rule, the more complex the action required, the higher payment
24 Defendant's affiliates receive per participant.

25 **ANSWER:** Because the Statement and Advertising Guidelines may have changed over time,
26 MaxBounty lacks knowledge or information sufficient to form a belief about the truth of these
27 allegations. Additionally, MaxBounty denies that it "recruits individuals (or 'affiliates') to create
28

1 advertisements.” Admitted that MaxBounty hosts a website at www.maxbounty.com including
2 frequently asked questions. To the extent the allegations are inconsistent with the MaxBounty
3 website, they are denied.
4
5

6 43. Many of Defendant’s Affiliates generate traffic for Defendant’s customers through
7 fraudulent and deceptive means, including false and deceptive promotions posted to Facebook
8 Pages.

9 **ANSWER:** Denied. MaxBounty has moved to dismiss Facebook’s causes of action
10 concerning allegations of fraud and related conspiracy for failure to state a claim on which relief
11 can be granted pursuant to Fed.R.Civ.P. 12(b)(6).
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14 44. For example, one of Defendant’s affiliate’s Pages, which necessarily displayed the
15 Facebook Trademarks, was titled "MACEosmetics.com Earn a \$250 GIFT CARD! Registrant
16 Required", and included the following text: "You Are Invited To Receive This Exclusive Offer For
17 A Limited Time Only! Act Now To Get Your Free \$250 M.A.C. Gift Card! This is only for a
18 limited time, so be sure to enter right now! Get started by following the three steps below." This
19 Page was active on Facebook between at least March and June 2010. "Step 1" required Facebook
20 users to "Become a Fan" of this Page, which would in turn reveal steps 2 and 3. Step 2 asks users to
21 "Invite your friends" to the Page,. noting that "If you do not invite ALL of your friends you may not
22 be eligible [for the gift card]." Step 3 is to "Register for your \$250 gift card", which explains that
23 "After a short Registration process your gift card will be mailed to you shortly."
24

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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2 45. The statements that completing the three steps would result in a free \$250 M.A.C. gift
3 card were false and misleading, Once Facebook users completed these three steps, they were not
4 given a free \$250 M.A.C. gift card, but instead directed to a domain registered to and managed by
5 Defendant that then redirected users to a third party commercial website, in this case Superb-
6 Rewards.net.

7 **ANSWER:** MaxBounty denies that it has been involved in any “false or misleading”
8 activities. It has moved to dismiss Facebook’s causes of action concerning allegations of fraud
9 for failure to state a claim on which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6).
10 Accordingly, no answer to those allegations is required.

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

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.

1 47. As another example, Defendant's affiliates also created a Facebook Page with the
2 title "FREE Apple iPad TESTERS WANTED." This Page, which was active on the Facebook site
3 from at least March 2010 to June 2010, informed Facebook users that in order to become a "tester"
4 and receive a free Apple iPad, the user had to (1) become a fan of the Page, (2) send unsolicited
5 invitations to all of their Facebook friends to visit the Page, and (3) click on a link to a third-party
6 website and provide personal information to that site. This affiliate's Page also contained malicious
7 computer code that the user could cut and paste in order to automatically send invitations to the
8 user's friends. When users completed these three steps they were not given a free iPad but instead
9 their browsers were redirected through Defendant's website to a third-party commercial website,
10 Better-Gifts.net.

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

14
15
16 48. The website at Better-Chris.net, which is nearly identical in content to the website at
17 Superb-Rewards.net described above, collects personal information from Facebook users and
18 markets products and services that are unrelated to the original Facebook Page that users had
19 visited. Defendant receives payment for the traffic that it delivered to Better-chfts.net based on the
20 users who successfully completed the steps to receive their free gift.

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 49. Defendant, through its employees, knowingly assists its affiliates in creating these
27 Pages. For example, one of Defendant's employees Adam Harrison, contacts affiliates who use
28

1 Facebook Pages to generate customer traffic, identifies himself as Defendant's Facebook Affiliate
2 Manager, and encourages and directs these affiliates to make specific changes to their promotional
3 Facebook Pages in order to make them more profitable to Defendant

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 50. Defendant's Employees, including at least Mr. Harrison and likely others, directly
10 encourage certain of its affiliates to generate traffic for its contracting advertisers through fraudulent
11 and deceptive means, including posting false and deceptive promotions on the Facebook site.

12 **ANSWER:** MaxBounty denies that it encourages or participates in any fraudulent, deceptive,
13 or false activities. It has moved to dismiss Facebook's causes of action concerning allegations of
14 fraud for failure to state a claim on which relief can be granted pursuant to Fed.R.Civ.P.
15 12(b)(6). Accordingly, no answer to those allegations is required.

16
17
18 51. In order to accomplish this, Defendant's employees, including at least Mr. Harrison
19 and likely others, mislead its affiliates into believing that Defendant's campaigns are approved by
20 Facebook, provide instruction and support on how to design these unauthorized Facebook
21 campaigns, and provide substantial advance payments to its affiliates that agree to participate in
22 these campaigns.

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

1
2 52. For example, in March 2010, one of Defendant’s affiliates, Mitchell Fillmore, created
3 Facebook Pages that offered a free IKEA gift card using the same scheme as generally described in
4 the paragraphs 44-48 above. Mr. Fillmore was then contacted by Mr. Harrison, who informed Mr.
5 Fillmore that he was a MaxBounty Affiliate Manager for affiliates who create Pages on Facebook.
6 Mr. Harrison provided Mr. Fillmore with technical help for designing Facebook Pages and for
7 increasing the number of Facebook users who would receive notice and act upon the offers
8 presented in Mr. Fillmore’s Facebook Pages. Mr. Harrison also encouraged Mr. Fillmore to run
9 other Facebook campaigns for other similar offers and to use techniques that were designed to
10 increase the effectiveness of these campaigns.

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

14
15
16 53. Mr. Fillmore followed the advice given by Mr. Harrison, but noticed many of his
17 Facebook Pages were taken down by Facebook not long after they were posted. Mr. Fillmore grew
18 concerned that his campaigns were not permitted by Facebook. When Mr. Fillmore raised these
19 concerns to Mr. Harrison, Mr. Harrison assured Mr. Fillmore that MaxBounty approved of these
20 techniques used by Mr. Fillmore. He also offered Mr. Fillmore a \$30,000 cash advance to continue
21 creating similar Facebook Pages.

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.

1 54. Through Mr. Harrison, and likely through other employees, Defendant encourages
2 and instructs its affiliates on techniques intended to deceptively induce Facebook users to send
3 unsolicited commercial messages (spam) to their friends suggesting that they also visit Defendant's
4 affiliates' Facebook Pages. As described in the paragraphs above, Defendant's affiliates accomplish
5 this by inducing Facebook users to send the messages, by stating on the Facebook Page that users
6 will not receive their free gift unless they send such a message to ALL their Facebook friends, and
7 by tricking Facebook users into executing malicious computer code that causes messages to be
8 automatically sent to all their Facebook friends.

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

13
14
15 55. Defendant knows and keeps track of which affiliates send traffic to its customers'
16 websites as well as the volume of traffic that originates from Facebook. Defendant monitors its
17 affiliates' performance and actively works to improve the effectiveness of campaigns that are run on
18 Facebook.

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 56. Defendant knows or should know that the techniques that it is recommending and
25 encouraging its affiliates to use violate Facebook's Statement, Pages Guidelines and Advertising
26 Guidelines, and are otherwise deceptive.

1 **ANSWER:** Denied. MaxBounty has moved to dismiss Facebook’s causes of action
2 concerning allegations of fraud for failure to state a claim on which relief can be granted
3 pursuant to Fed.R.Civ.P. 12(b)(6).
4
5

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

11 **ANSWER:** Denied. MaxBounty has moved to dismiss Facebook’s causes of action
12 concerning allegations of fraud for failure to state a claim on which relief can be granted
13 pursuant to Fed.R.Civ.P. 12(b)(6).
14
15

16 **E. Harm to Facebook**

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

20 **ANSWER:** MaxBounty has moved to dismiss Facebook’s causes of action concerning
21 allegations of fraud for failure to state a claim on which relief can be granted pursuant to
22 Fed.R.Civ.P. 12(b)(6). Accordingly, no answer to those allegations is required.
23
24

25 59. Facebook has suffered and continues to suffer significant harm to its reputation and
26 goodwill due to Defendant’s actions. Facebook has suffered more than \$5,000 in economic damages
27 attributable to its efforts and resources used to combat Defendant’s affiliates’ spam, to combat
28

1 Defendant's and Defendant's affiliates' unauthorized access to Facebook accounts and servers, to
2 respond to user complaints and provide assistance in preventing Defendant and its affiliates from
3 continued unauthorized use of Facebook's services, and to identify and locate Defendant and its
4 affiliates.

5 **ANSWER:** Denied. MaxBounty has moved to dismiss Facebook's causes of action
6 concerning allegations of fraud for failure to state a claim on which relief can be granted
7 pursuant to Fed.R.Civ.P. 12(b)(6).

8
9
10 60. Defendant has induced, and continues to induce, its affiliates to engage, willfully and
11 maliciously, in unauthorized access to and misappropriation of Facebook computers, servers,
12 systems, networks and data, including network information, and Facebook user information.

13 **ANSWER:** Denied. MaxBounty has moved to dismiss Facebook's causes of action
14 concerning allegations of fraud for failure to state a claim on which relief can be granted
15 pursuant to Fed.R.Civ.P. 12(b)(6).

16
17
18 61. Defendant has encouraged, and continues to encourage, its affiliates to induce
19 Facebook users to use automated means to initiate and send, willfully and maliciously, unsolicited
20 commercial messages, and has done so in order to defraud Facebook users and profit from these
21 illegal and improper spamming campaigns.

22 **ANSWER:** Denied. MaxBounty has moved to dismiss Facebook's causes of action
23 concerning allegations of fraud for failure to state a claim on which relief can be granted
24 pursuant to Fed.R.Civ.P. 12(b)(6).

1 62. Defendant has been unjustly enriched by its activities at the expense of Facebook and
2 its users.

3 **ANSWER:** Denied.
4
5
6

7 **VI. CLAIMS FOR RELIEF**

8 **FIRST CAUSE OF ACTION – VIOLATION OF CONTROLLING THE ASSAULT OF NON-**
9 **SOLICITED PORNOGRAPHY AND MARKETING ACT OF 2003 (“CAN-SPAM”),**
10 **15 U.S.C. § 7701, et seq.**

11 63. Plaintiff Facebook realleges and incorporates by reference, as if fully set forth
12 herein, the allegations in paragraphs 1 through 62.

13 **ANSWER:** MaxBounty incorporates its responses to paragraph 1-62. It has moved to dismiss
14 this cause of action 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 is required.
16

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

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 65. Facebook’s website and computers operate in interstate and foreign commerce
27 and communication and are therefore protected computers under 15 U.S.C. § 7702(13).
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 66. Electronic messages sent between users on the Facebook site, including direct
7 messages, Wall Posts, Page suggestions, and other communications are “electronic mail
8 messages” as described in 15 U.S.C. § 7702(6).

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 67. Defendant knowingly and willingly participates with Defendant’s affiliates in
15 procuring Facebook users to send, or take actions that cause commercial electronic messages to
16 be sent, to all the Facebook users’ friends on Facebook. Facebook users take such action
17 because they were led to believe they would receive valuable consideration if they send
18 commercial messages to their friends. The electronic messages initiated by Defendant’s
19 affiliates are "commercial" electronic messages because their primary purpose was the
20 commercial advertisement or promotion of a commercial product or service (including content
21 on an Interact website operated for a commercial purpose) as provided in 15 U.S.C.
22 § 7702(2)(A).

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 68. Defendant induces its affiliates to initiate commercial messages on Facebook and
2 thereby procures the origination or transmission of such message as provided in 15 U.S.C. §
3 7702(9).

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 69. Defendant intentionally misleads Facebook users by inducing its affiliates to
10 initiate the transmission of commercial electronic messages through Facebook's computers to
11 Facebook users that contain header information that is materially false or misleading as to the
12 true identity of the initiator of the messages in violation of 15 U.S.C. § 7704(a)(1).

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

16
17
18 70. Defendant, through its affiliates, initiates the transmission of commercial
19 electronic messages, in a pattern or practice, through Facebook's computers to Facebook users
20 that do not contain a functioning return electronic mail address or other Internet-based opt-out
21 mechanism in violation of 15 U.S.C. § 7704(a)(3).

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

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

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

10
11
12 72. Defendant, through its affiliates, initiates the transmission of commercial
13 electronic messages, in a pattern or practice, through Facebook's computers to Facebook users
14 that contain subject headings that are misleading regarding the contents or subject matter of the
15 message and misleading regarding Facebook's connection to the messages in violation of 15
16 U.S.C. § 7704(a)(2).

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 73. Facebook is informed and believes and, based thereon alleges, that Defendant
23 induces its affiliates to initiate the transmission of the misleading Commercial electronic
24 messages with actual knowledge or knowledge fairly implied on the basis of objective
25 circumstances that the messages' subject heading was likely to mislead a recipient acting
26 reasonably under the circumstances.

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 74. Facebook is informed and believes, and based thereon alleges, that Defendant
7 induces its affiliates to initiate the transmission of commercial electronic messages, in a pattern,
8 or practice, through Facebook's computers to Facebook users, that are misleading and unlawful
9 under 15 U.S.C. § 7704(a), as alleged above, or assists in the origination of such messages
10 through the provision or selection of addresses to which the messages are transmitted as defined
11 in 15 U.S.C. § 7704(b)(I).

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 75. Defendant has knowledge of its affiliates' violations of 15 U.S.C. § 7704 and
18 control over its affiliates' actions.

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
24 76. Defendant has knowledge of its affiliates' violations of 15 U.S.C. § 7704, and
25 intends that its affiliates take such actions.

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 77. Defendant causes Facebook harm by causing higher-bandwidth utilization, by
7 causing Facebook to expend significant employee time and sums of money combating the
8 unsolicited commercial messages initiated by Defendant and responding to user complaints, by
9 deterring users and potential users from using Facebook, by damaging Facebook's goodwill and
10 reputation with its customers; and by causing other injuries to 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 78. Facebook is entitled to the greater of its actual monetary loss or statutory damages
17 as provided by 15 U.S.C. § 7706(g)(1)(B), in an amount to be proven at trial.

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 79. Facebook is entitled to an award of aggravated damages in an amount equal to
24 three times the amount otherwise available pursuant to 15 U.S.C. § 7706(g)(3)(C) because
25 Defendant violated CAN-SPAM willfully and knowingly and because Defendant's unlawful
26 activity included one or more of the aggravated violations set forth in 15 U.S.C. § 7704(b).

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

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 **SECOND CAUSE OF ACTION – COMPUTER FRAUD AND ABUSE ACT,**
14 **18 U.S.C. § 1030, *et seq.***

15 81. Plaintiff Facebook realleges and incorporates by reference, as if fully set forth herein,
16 the allegations in paragraphs 1 through 62.

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 82. Facebook's computers are involved in interstate and foreign commerce and
23 communication and arc protected computers under 18 U.S.C. § 1030(e)(2).

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

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

10
11
12 84. Defendant knowingly and with intent to defraud provides inducement in the form of
13 misleading information, technical support, and monetary payments to its affiliates to access
14 Facebook's computers without authorization or in excess authorization as defined by Facebook's
15 Statement, Pages Terms and Advertising Guidelines, and by means of such inducement, furthered
16 its intended fraud and obtained payment from affiliate marketers in violation of 18 U.S.C. §
17 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 85. Through the activities described in paragraphs 81-84, Defendant conspires with its
24 affiliates to violate 18 U.S.C. § 1030(a)(4) in violation of 18 U.S.C. § 1030(b).

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 86. Defendant's conduct caused a loss to Facebook during a one-year period in excess of
2 \$5,000.

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 87. Defendant's conduct has also 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:** 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 88. Facebook has been damaged by Defendant's actions, including by being forced to
17 expend resources to investigate and prevent the unauthorized access and abuse of its computer
18 network. Facebook seeks compensatory and other equitable relief under 18 U.S.C. § 1030(g) in an
19 amount to be proven at trial.

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 **THIRD CAUSE OF ACTION – FRAUD**

26 89. Plaintiff Facebook realleges and incorporates by reference, as if fully set forth herein,
27 the allegations in paragraphs 1 through 62.

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 90. Facebook is informed and believes and, based thereon, alleges that Defendant
7 intended to and in fact did defraud Facebook.

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 91. Defendant's affiliates represent to Facebook and its users that the Facebook Pages
14 they develop contain content related to the subject of the Page and that the Pages comply with
15 Facebook's Statement, Pages Terms and Advertising Guidelines. These representations are in fact
16 false and Defendant and its affiliates know that the representations were false.

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 92. Defendant's affiliates initiate spam on the Facebook network and create and use
23 fraudulent and deceptive campaigns using Facebook Pages that promise free goods and services that
24 neither Defendant nor its affiliates provide or intend to provide. Each of these activities is
25 prohibited by the Statement and by Facebook's Advertising Guidelines, which are incorporated into
26 the Statement.

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 93. Defendant is aware that its affiliates are defrauding Facebook and Facebook's users
7 and intends that its affiliates take such actions. Defendant authorizes and is aware that its
8 employees, including Mr. Harrison, contact affiliates who are successful in using Facebook Pages to
9 generate customer traffic, including Mr. Fillmore, in order to provide encouragement and technical
10 suggestions on ways to further profit from traffic originating from 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 94. Defendant's employees review and approve affiliates' Pages that violate Facebook's
17 Terms.

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 95. Defendant receives increased revenue from its customers as a result of these
24 deceptive acts.

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
2 96. Defendant receives increased revenue from its customers as a result of these
3 deceptive acts.

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 97. Defendant directly conceals or suppresses material facts by representing that it is in
10 compliance with Facebook’s Statement when it in fact encourages its affiliates to use the Facebook
11 Platform in ways that are expressly prohibited by the Statement.

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 98. Defendant induces its affiliates to make false representations to Facebook with the
18 intent to defraud and induce Facebook into permitting Defendant’s affiliates to use Facebook’s
19 platform and services and to defraud and induce Facebook users to visit the sites that pay Defendant
20 for traffic.

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.

1 99. When Facebook hosts Defendant’s affiliates’ Pages on the Facebook platform,
2 Facebook does not know that Defendant’s affiliates’ representations are false but instead reasonably
3 relies on Defendant’s affiliates’ representations that their use complies with Facebook’s Statement.

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
8 100. At the time Facebook users click on the links, the users do not know that the
9 Defendant’s affiliates’ representations were false and instead believe they are true.

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
15 101. Facebook and its users act in justifiable reliance upon the truth of the Defendant’s and
16 Defendant’s affiliates’ representations.

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
22 102. In justifiable reliance upon Defendant’s and Defendant’s affiliates’ agreement to
23 abide by the Statement and associated Guidelines, Facebook allowed Defendant and its affiliates to
24 create and maintain Pages on Facebook.

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.

1 103. Facebook has suffered and continues to suffer significant harm to its reputation and
2 goodwill as a result of its reliance on Defendant's and Defendant's affiliates' representations and
3 conduct. Facebook has already suffered significant economic damages attributable to the effort and
4 resources used to combat the Spam procured by Defendant's affiliates, to identify and remove the
5 Facebook Pages created by Defendant's affiliates, to combat Defendant's affiliates' unauthorized
6 access to Facebook accounts and servers, to address the harm to its reputation and goodwill, and to
7 identify and locate Defendant and certain of Defendant's affiliates.

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
13 104. Through the actions described in the preceding paragraphs, Defendant aids and abets
14 its affiliates' fraud. Defendant has actual knowledge of its affiliates' fraud and provides substantial
15 assistance in furtherance of the fraud by assigning affiliates who are generating a significant amount
16 of Facebook traffic to specific Facebook Affiliate Managers like Adam Harrison, who reviews
17 affiliates' Pages and give suggestions for deals and content designed to maximize traffic to
18 defendant's customers' websites.

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
23 105. Through the actions described in the preceding paragraphs, Defendant enters into
24 conspiracy with its affiliates to defraud Facebook by knowingly entering into an agreement to pay
25 its affiliates for traffic generated through deceptive Facebook Pages.

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
6 106. 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**

14 107. Plaintiff Facebook realleges and incorporates by reference, as if fully set forth herein,
15 the allegations in paragraphs 1 through 62.

16 **ANSWER:** MaxBounty realleges and incorporates by reference, as if set forth fully herein,
17 the answers of paragraphs 1-62.

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

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

24
25
26 109. At all times relevant to this dispute, users of Facebook’s site and services have been
27 required to agree to Facebook’s Statement in order to access Facebook’s site and services.

1 **ANSWER:** MaxBounty lacks knowledge or information sufficient to form a belief about the
2 truth of the allegations.

3
4
5 110. Defendant affirmatively accepted and agreed to Facebook's Statement and knew or
6 should have known that all Facebook users were required to accept and agree to Facebook's
7 Statement in order to access Facebook's site and services.

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

10
11
12 111. Facebook's Statement prohibits users of Facebook from sending or otherwise posting
13 unauthorized commercial Communications (such as spare) on Facebook, from inducing other
14 Facebook users to breach the terms of this Statement, from misleading Facebook users and from
15 violating Facebook's Pages Terms and Advertising Guidelines.

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

18
19
20 112. Defendant intends to induce its affiliates to violate Facebook's Statement and send
21 spare to Facebook users.

22 **ANSWER:** Denied.

23
24
25 113. Defendant intends to induce Facebook users to breach the Statement by encouraging
26 its affiliates to induce such users to utilize automated scripts that sent spare to their friends.

27 **ANSWER:** Denied.

1 114. When Facebook users utilize Defendant’s affiliates’ automated scripts to send spare
2 to their friends, they breach Facebook’s Statement.

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

5
6
7 115. Through the actions described in the preceding paragraphs, Defendant entered into a
8 conspiracy with its affiliates to intentionally interfere with Facebook’s contracts with its users.

9 **ANSWER:** Denied.

10
11
12 116. As a result of this breach, hundreds of thousands of Facebook users receive unwanted
13 commercial communications disguised as personal messages from their friends that they otherwise
14 would not have received.

15 **ANSWER:** Denied.

16
17
18 117. The breaches induced by Defendant directly and proximately harmed Facebook.
19 Facebook has suffered and continues to suffer significant harm to its reputation and goodwill.

20 **ANSWER:** Denied.

21
22
23 118. Facebook is entitled to injunctive relief, compensatory damages and punitive
24 damages in an amount to be determined at trial.

25 **ANSWER:** Denied.

1 **FIFTH CAUSE OF ACTION – BREACH OF CONTRACT**

2 119. Plaintiff Facebook realleges and incorporates by reference, as if fully set forth herein,
3 the allegations in paragraphs 1 through 62.

4 **ANSWER:** MaxBounty realleges and incorporates by reference, as if set forth fully herein,
5 the answers of paragraphs 1-62.

6
7
8 120. Use of Facebook’s site and services, the creation of Facebook Pages on the Facebook
9 network and the placement of advertisements on Facebook Pages are governed by and subject to
10 Facebook’s Statement, Pages Terms and Advertising Guidelines.

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

13
14
15 121. At all times relevant to this dispute, users of Facebook’s site and services have been
16 required to agree to Facebook’s Statement in order to access Facebook’s site and services, create
17 Facebook Pages on the Facebook network and place advertisements on Facebook Pages.

18 **ANSWER:** MaxBounty lacks knowledge or information sufficient to form a belief about the
19 truth of the allegations.

20
21
22 122. Defendant affirmatively accepted and agreed to Facebook’s Statement.

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

25
26
27 123. Facebook’s Statement is binding on Defendant.

1 **ANSWER:** This allegation is a legal conclusion for which no answer is required.
2
3

4 124. Facebook has performed all conditions, covenants and promises required of it in
5 accordance with its Statement.

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

10 125. Defendant, through its actions as described above, knowingly, willfully, repeatedly
11 and systematically breached Facebook's Statement, Pages Terms and Advertising Guidelines
12 through its conduct as alleged in this Complaint.

13 **ANSWER:** Denied.
14
15

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

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

1 127. Defendant’s breaches of Facebook’s Statement, Pages Terms and Advertising
2 Guidelines directly and proximately caused and continue to cause Facebook irreparable and
3 incalculable harm and injury.

4 **ANSWER:** Denied.

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

9 **ANSWER:** Denied.

10
11 **SIXTH CAUSE OF ACTION – FEDERAL TRADEMARK DILUTION**
12 **15 U.S.C. § 1125(c)**

13 129. Plaintiff Facebook realleges and incorporates by reference, as if fully set forth herein,
14 the allegations in paragraphs 1 through 62.

15 **ANSWER:** MaxBounty realleges and incorporates by reference, as if set forth fully herein,
16 the answers of paragraphs 1-62.

17
18
19 130. As a result of the enormous publicity afforded the Facebook Trademarks and the
20 strong and loyal base of customers that enjoy Facebook’s services, the Facebook Trademarks have a
21 high degree of consumer recognition, are widely recognized by the general consuming public of the
22 United States as a designation of Facebook’s goods and services and are famous.

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

1 131. The Facebook Trademarks became famous before Defendant began its infringing
2 activities.

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

5
6
7 132. Defendant is liable for contributory infringement because it intentionally induces its
8 affiliates to use and cause to be displayed the Facebook Trademarks in the course of their
9 unauthorized activities. Defendant’s affiliates’ unauthorized use of the Facebook Trademarks causes
10 dilution by tarnishment of the distinctive quality of the Facebook Trademarks when Facebook users
11 associate the negative experience of participating in Defendant’s affiliates’ deceptive Facebook
12 Pages scheme with the goods and services normally offered by Facebook under those same marks.

13 **ANSWER:** Denied.

14
15
16 133. Facebook is informed and believes and, based thereon, alleges that Defendant intends
17 to induce its affiliates to create an association with the Facebook Trademarks and to trade on the
18 widespread recognition of the Facebook Trademarks.

19 **ANSWER:** Denied.

20
21
22 134. Defendant’s affiliates’ unauthorized use of the Facebook Trademarks is achieved
23 with Defendant’s notice and full knowledge that such use is not authorized or licensed by Facebook.

24 **ANSWER:** Denied.

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

4 **ANSWER:** Denied.

7 136. Through the actions described in the preceding paragraphs, Defendant entered into a
8 conspiracy with its affiliates to dilute Facebook’s trademarks.

9 **ANSWER:** Denied.

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

14 **ANSWER:** Denied.

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

19 **ANSWER:** Denied.

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

25 **ANSWER:** Denied.

1 140. 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
8 141. 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
14 142. 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.

21
22 **SEVENTH CAUSE OF ACTION – FALSE DESIGNATION OF ORIGIN**
23 **15 U.S.C. § 1125(a)**

24 143. Plaintiff Facebook realleges and incorporates by reference, as if fully set forth herein,
25 the allegations in paragraphs 1 through 62.

26 **ANSWER:** MaxBounty realleges and incorporates by reference, as if set forth fully herein,
27 the answers of paragraphs 1-62.
28

1 144. In connection with Defendant's services, Defendant has induced its affiliates to use in
2 commerce, without Facebook's authorization or consent, the Facebook Trademarks.

3 **ANSWER:** Denied.

4
5
6 145. Defendant's affiliates' unauthorized use of the Facebook Trademarks is likely to
7 cause confusion, mistake or deception among the consuming public regarding the affiliation,
8 connection or association of Defendant, its affiliates and its customers with Facebook.

9 **ANSWER:** Denied.

10
11
12 146. Through the actions described in the preceding paragraphs, Defendant has entered
13 into a conspiracy with its affiliates to misappropriate the Facebook Trademarks.

14 **ANSWER:** Denied.

15
16
17 147. Defendant's affiliates' unauthorized use of the Facebook Trademarks is likely to
18 cause confusion, mistake or deception among the consuming public that Facebook has authorized,
19 approved or in some way Sponsored Defendant's and its affiliates' services.

20 **ANSWER:** Denied.

21
22 148. Defendant's affiliates' unauthorized use of the Facebook Trademarks constitutes the
23 use of a false designation of origin and false description or representation of fact, all in violation of
24 15 U.S.C. § 1125(a).

25 **ANSWER:** Denied.

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

5 **ANSWER:** Denied.

6
7
8 150. Defendant's conduct has also 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
14 151. 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.

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 uses 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 Date: May 13, 2011

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21 *Attorneys for Defendant, MaxBounty, Inc.*

CERTIFICATE OF ELECTRONIC SERVICE

1
2 I hereby certify that on May 13, 2011, I electronically filed the foregoing document with
3 the Clerk of the Court for the Northern District of California using the ECF System which will
4 send notification to the following registered participants of the ECF System as listed on the
Court's Notice of Electronic Filing: Joseph Perry Cutler, James R. McCullagh, and Brian Patrick
Hennessy.

5 I also certify that I have mailed by United States Postal Service the paper to the following
6 non-participants in the ECF System: NONE.

7
8 By: /s/ Thomas A. Lewry
tlewry@brookskushman.com
9 **BROOKS KUSHMAN P.C.**

Attorneys for Defendant, MaxBounty, Inc.