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CHRL

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CV 10-05282

HRL

20 ROBYN COHEN, SHANNON
 21 STOLLER, CHRISTOPHER
 MARSHALL, BRYAN SIGLOCK, and
 22 DEBRA LEWIN, individually and on
 23 behalf of others similarly situated,

Plaintiffs,

vs.

27 FACEBOOK, INC., a Delaware
 corporation,

Defendant.

Case No.:

**CLASS ACTION COMPLAINT
 FOR:
 (1) VIOLATION OF STATUTORY
 RIGHT OF PUBLICITY;
 (2) VIOLATION OF COMMON
 LAW RIGHT OF PUBLICITY;
 (3) VIOLATION OF 15 USC
 1125(a)(1)(A)
 (4) VIOLATION OF BUSINESS &
 PROFESSIONS CODE § 17200**

FRCP 23

CLASS ACTION

DEMAND FOR JURY TRIAL

1 Plaintiffs Robyn Cohen , Shannon Stoller, Christopher Marshall, Bryan
2 Siglock, and Debra Lewin file this Class Action Complaint both individually and on
3 behalf of all other similarly situated U.S. residents whose names or likenesses were
4 utilized by Defendant Facebook Inc. (“Facebook”) without their knowledge or
5 consent to advertise Facebook’s “Friend Finder” service (collectively “Plaintiffs”).
6 Plaintiffs aver:

7 **Jurisdiction and Venue**

8 1. This Court has original subject matter jurisdiction over this action
9 under 28 U.S.C. § 1332(d)(2), in that this is a class action, the matter in
10 controversy exceeds the sum of \$5,000,000 and members of the class of plaintiffs
11 are citizens of a state different from the citizenship of Facebook. This Court also
12 has subject matter jurisdiction over this action under 28 U.S.C. § 1338, in that this
13 action arises under the Lanham Act.

14 2. Venue is proper in this judicial district under 28 U.S.C. § 1391(a), in
15 that this is a district in which Facebook resides and in which a substantial part of
16 the events or omissions giving rise the claims averred herein occurred.

17 **IntraDistrict Assignment**

18 3. The San Jose Division is the Division to which this case should be
19 assigned, in that Facebook is located in Palo Alto, Santa Clara County, California.

20 **Summary of Action**

21 4. This is an action for violation of statutory and common law rights of
22 publicity, Section 43(a) of the Lanham Act and Business & Professions Code §
23 17200, arising from, on information and belief, Facebook’s practice of using
24 names, photographs and likenesses of Facebook users to advertise Facebook’s
25 “Friend Finder” service, without the knowledge or consent of such users.

26 5. Facebook operates the world’s leading Internet social networking
27 website, www.facebook.com (“Facebook.com” or the “Website”). With tens of
28

1 millions of unique users visiting the Website every day, Facebook.com is among
2 the top five most visited websites in the United States.

3 6. Facebook invites prospective users to create a user profile page
4 (“Profile”). Profiles typically include photographs of users and their family and
5 friends, and users’ personal information. Facebook encourages Facebook.com users
6 to build a network of “friends” who are also using Facebook. As users build their
7 network of friends on, and spend more time looking at, Facebook.com, users are more
8 likely to encourage others to become Facebook.com users as well. In this fashion,
9 according to Facebook it now enjoys in excess of 500 million active users.

10 7. Facebook has a simple and direct commercial motivation to encourage
11 users to build a network of friends. Users with more friends on Facebook.com are
12 likely to become more engaged in, and therefore spend more time on, Facebook.com.
13 Users who enjoy using Facebook.com to connect to friends may encourage others to
14 become users of Facebook.com, so that they too can find and connect with friends.
15 Facebook sells advertising in the forms of banners that appear on a user’s page, which
16 when clicked, forward the user to the advertiser’s site. The greater Facebook’s user
17 base, and the more time each user spends on the site, the more advertisements
18 Facebook can sell. Also, as the number of Facebook.com users grows, so too does the
19 time each user spends on Facebook.com. As a direct and proximate result, Facebook
20 can sell more advertisements and charge more for those advertisements, thereby
21 increasing the company’s profits.

22 8. Facebook has parlayed the exponentially growing audience of
23 Facebook.com into astonishing growth in advertisements and related revenues. Only
24 five years after its launch in 2004, Facebook reported gross revenues of \$800 million
25 in 2009. While Facebook is not yet publicly traded, Facebook shares were reported to
26 be traded privately at in excess of \$75 per share, resulting in a reported company
27 valuation of some \$33 billion, more than eBay and Dell, and twice that of Yahoo!
28

1 9. Facebook has promulgated a set of lofty “Facebook Principles” on its
2 website in order to promote an aura of outstanding citizenship, including statements
3 that it is “building Facebook to make the world open and transparent,” and that
4 “[p]eople should have the freedom to decide with whom they will share their
5 information, and to set privacy controls to protect those choices.”

6 10. However, as alleged herein, the tantalizing and direct connection
7 between growth in numbers of users and untold wealth has caused Facebook to turn
8 its back on these principles. As alleged herein, Facebook has made cynical and
9 surreptitious business decisions to misappropriate its users’ names, photographs and
10 likeness to promote use of its “Friend Finder” service. “Friend Finder” primarily
11 features a potentially intrusive utility that, on information and belief, uploads users’
12 computer contacts to a database maintained by Facebook. Facebook searches for
13 common uploaded contacts as a basis to suggest new “friends” to its users. On
14 information and belief, Facebook also uses the uploaded contacts to solicit persons
15 who are not yet Facebook users to join.

16 11. To promote the use of its Friend Finder service, Facebook has and
17 continues to post the names and likenesses of a user’s friends on that user’s
18 Facebook.com page, using words to the effect that the user’s friends “found friends
19 using the Friend Finder,” suggesting that the user also “Give it a try!” The friends
20 whose names and likeness are used to promote Friend Finder have not actually
21 consented to use their names and likenesses to endorse Facebook’s Friend Finder
22 service, nor does Facebook disclose to such users that Facebook intended to use their
23 name and likeness to promote the Friend Finder service to others. Furthermore, the
24 friends whose names and likenesses are used to promote the Friend Finder service
25 often never actually used the contacts upload feature.

26 12. The misappropriation of names, photographs and likenesses alleged
27 herein has a direct commercial purpose, namely, to increase Facebook’s user base,
28

1 thereby increasing the intensity of such use, all for the purpose of generating
2 additional revenues.

3 13. In each instance in which Facebook uses the name and likeness of a
4 Facebook.com user to promote the Friend Finder service without consent, Facebook
5 violates users' statutory and common law rights of publicity, creates a false
6 endorsement and, in so doing, commits unfair competition, all in an effort to increase
7 Facebook's already massive user reach and the corresponding advertising revenue.
8 As a consequence of these unauthorized solicitations, Plaintiffs have suffered actual
9 injury-in-fact by having their name and likeness misappropriated without their
10 knowledge or consent as part of Facebook's Friend Finder solicitations

11 **The Parties**

12 14. Plaintiff Robyn Cohen ("Cohen") is an individual residing in Burbank,
13 California. Cohen is a Facebook user who received Facebook's Friend Finder
14 solicitation and whose name and likeness was used without consent to promote
15 Facebook.com's Friend Finder service.

16 15. Plaintiff Shannon Stoller ("Stoller") is an individual residing in Marin
17 County, California. Stoller is a Facebook user who has received Facebook's Friend
18 Finder solicitation and whose name and likeness was used without consent to promote
19 Facebook.com's Friend Finder service.

20 16. Plaintiff Christopher Marshall ("Marshall") is an individual residing in
21 Mission Viejo, California. Marshall is a Facebook user who has received Facebook's
22 Friend Finder solicitation and whose name and likeness was misappropriated in
23 connection with Facebook's Friend Finder service.

24 17. Plaintiff Bryan Siglock ("Siglock") is an individual residing in Tustin,
25 California. Siglock is a Facebook user who has received Facebook's Friend Finder
26 solicitation and whose name and likeness was misappropriated in connection with
27 Facebook's Friend Finder service.

1 18. Plaintiff Debra Lewin ("Lewin") is an individual residing in North
2 Hollywood, California. Lewin is a Facebook user who has received Facebook's
3 Friend Finder solicitation and whose name and likeness was misappropriated in
4 connection with Facebook's Friend Finder service. Collectively, Plaintiffs Cohen,
5 Stoller, Marshall, Siglock and Lewin may be referred to herein as the "named
6 plaintiffs."

7 19. On information and belief, Facebook is a corporation organized and
8 existing under the laws of the state of Delaware, with its corporate headquarters and
9 principal place of business located at 1601 S. California Avenue, Palo Alto, California
10 94304.

11 **Facebook.com and Advertising**

12 20. Facebook operates Facebook.com. According to Facebook: "Facebook
13 is a social utility that helps people communicate more efficiently with their
14 friends, family and coworkers. The company develops technologies that facilitate
15 the sharing of information through the social graph, the digital mapping of
16 people's real-world social connections. Anyone can sign up for Facebook and
17 interact with the people they know in a trusted environment."
18 <http://www.facebook.com/press/info.php?factsheet>.

19 21. Facebook invites prospective users to create a Profile on Facebook.com,
20 which includes personal photographs and information. Facebook then encourages
21 Facebook.com users to build a network of "friends" who have also established
22 Facebook.com Profiles. In this fashion a Facebook.com user can connect with
23 classmates, co-workers, colleagues and others. Once a Facebook.com user approves a
24 friend, photographs and information posted by that user is automatically added to the
25 user's Profile.

26 22. In Facebook's own words: "Facebook, the product, is made up of core
27 site functions and applications. Fundamental features to the experience on
28 Facebook are a person's Home page and Profile. The Home page includes News

1 Feed, a personalized feed of his or her friends updates. The Profile displays
2 information about the individual he or she has chosen to share, including interests,
3 education and work background and contact information. Facebook also includes
4 core applications – Photos, Events, Videos, Groups, and Pages – that let people
5 connect and share in rich and engaging ways. Additionally, people can
6 communicate with one another through Chat, personal messages, Wall posts,
7 Pokes, or Status Updates.” *Id.*

8 23. According to Facebook’s self-published Company Timeline,
9 <http://www.facebook.com/press/info.php?timeline>, the site launched in February
10 2004. Facebook’s Timeline claims the following growth in Website users: 1 million
11 by December 2004, 5.5 million by December 2005, 12 million by December 2006, 50
12 million by October 2007, 100 million by August 2008, 350 million by December
13 2009 and 500 million active users by July 2010.

14 24. Facebook has a simple and direct commercial motivation to encourage
15 users to build a network of friends. On information and belief, Facebook’s business
16 model is akin to that of “free TV,” where free content was supported by paid
17 advertising, except that in this instance Facebook does not pay to produce the content
18 on Facebook.com. Instead, the content is contributed by users. Facebook monetizes
19 its viewing audience by placing paid advertisements on the pages of Facebook users.
20 Facebook sells advertising in the forms of banners that appear on a user’s page, which
21 when clicked, forward the user to the advertiser’s site.

22 25. Free TV proprietors earned more advertising revenue when they had
23 more viewers, and when viewers watched TV for longer periods of time. Similarly,
24 on information and belief, Facebook profits both from its total number of users and
25 the relative time each user spends on Facebook. On information and belief,
26 Facebook’s business model is premised on the notion that users with more friends on
27 Facebook.com are likely to become more engaged in, and therefore, spend more time
28 on Facebook.com. Similarly, the Facebook business model presumes that users who

1 enjoy using Facebook.com to connect to friends may encourage others to become
2 users of Facebook.com, so that they too can find and connect with friends.

3 Accordingly, on information and belief, Facebook's revenue is enhanced by both the
4 volume and the intensity of the traffic on its site.

5 26. Facebook maintains pages directed to advertisers, "Facebook Ads," in
6 which Facebook states that it can allow advertisers to "[c]onnect with more than 500
7 million potential customers," "[c]hoose your audience by location, age and interest"
8 and "[t]est simple image and text-based ads and see what works."

9 www.facebook.com/advertising. The reference to choosing an advertiser's audience
10 relates to the manner in which Facebook uses personal information contributed by a
11 user, such as birthdate, sex, relationship status, likes and interests and other personal
12 information, in a manner that can be used by advertisers to place targeted
13 advertisements only on pages of users with a higher propensity to be interested in the
14 product. For example, Facebook's website touts the example of a photographic
15 company that received fantastic returns on ads placed exclusively on the Facebook
16 pages of women from the ages of 24 to 30 whose relationship status information on
17 the Website indicated that they were engaged. *Id.*

18 27. Facebook.com boasts how personal information contributed by users
19 may be used to the commercial advantage of advertisers: "We capture [personal
20 user] information and share it with you in aggregate so your ad can reach the right
21 audience. **For an advertiser, profile data is a unique opportunity to reach
22 customers like never before.** [Emphasis in original.] Ads on Facebook are
23 seamlessly integrated into the Facebook experience. When users are browsing
24 Facebook and interacting with their friends' profiles, looking at pictures, Groups,
25 Events or Pages, they see ads targeted according to their demographic
26 information, interests and connections. These ads appear in the right-hand column
27 of each page." <http://www.facebook.com/adsmarketing/index.php?sk=targeting>
28

1 28. Facebook asks prospective advertisers to set parameters for how they
2 wish to target their ads, and to bid for ad placements based either on costs per click
3 (CPC) or cost per million impressions (CPM).

4 <http://www.facebook.com/adsmarketing/index.php?sk=cost>

5 29. Facebook.com also references a project it refers to as a “Platform.”
6 While couched in tech-speak, Facebook’s description of the Platform presages yet
7 other ways in which Facebook seeks to monetize the personal information contributed
8 by its users: “Facebook Platform is a development platform that enables companies
9 and engineers to deeply integrate with the Facebook website and gain access to
10 millions of users through the social graph. Facebook is a part of millions of
11 people’s lives all around the world providing unparalleled distribution potential
12 for applications and the opportunity to build a business that is highly relevant to
13 people’s lives. More information can be found at

14 [<http://developers.facebook.com>.”](http://developers.facebook.com)

15 <http://www.facebook.com/press/info.php?factsheet>. The “Platform” appears to be
16 a program through which Facebook charges to provide access to information
17 about Facebook.com partners to commercial partners. For example,
18 Facebook.com says that it has partnered with Levis to create a Levis.com “Friends
19 Store,” in which Facebook.com users can purchase products that their
20 Facebook.com friends have purchased and liked.

21 30. Facebook has parlayed the exponentially growing audience of
22 Facebook.com into astonishing growth in advertisements and corresponding revenues.
23 Only five years after its launch in 2004, Facebook reported gross revenues of \$800
24 million in 2009. While Facebook is not yet publicly traded, Facebook shares were
25 reported to be traded privately at in excess of \$75 per share, resulting in a reported
26 company valuation of some \$33 billion, more than eBay and Dell and twice that of
27 Yahoo!

28

1 **Use of Name and Likeness to Endorse Friend Finder**

2 31. Facebook has promulgated a set of lofty “Facebook Principles” on its
3 website in order to promote an aura of outstanding citizenship, including statements
4 that it is “building Facebook to make the world open and transparent,” and that
5 “[p]eople should have the freedom to decide with whom they will share their
6 information, and to set privacy controls to protect those choices.”

7 32. However, the tantalizing and direct connection between growth in
8 numbers of users and untold wealth has caused Facebook to turn its back on these
9 principles. Specifically, on information and belief, Facebook has made cynical and
10 surreptitious business decisions to misappropriate its users’ names and likeness to
11 promote use of its “Friend Finder” service.

12 33. “Friend Finder” is the name of a service offered by Facebook. While
13 benignly named, the service primarily features a potentially intrusive utility that, on
14 information and belief, uploads users’ entire body of email contacts to a database
15 maintained by Facebook. The page featuring Friend Finder has a dialogue box that
16 defaults to the user’s email address and invites input of the user’s email password,
17 below which there is a hyperlink that says “Learn More.” If one clicks on that link, a
18 box pops up that says “[w]e may use the email addresses you upload through this
19 importer to help you connect with friends, including using this information to generate
20 Suggestions for you and your contacts on Facebook.” What is not disclosed on the
21 Friend Finder page or the pop up box, but is buried in terms that appear on other
22 Facebook.com web pages that are not linked to the Friend Finder page, is that
23 Facebook also reserves the right to use email contacts uploaded through the Friend
24 Finder service to spam non-Facebook members to join Facebook.

25 34. On information and belief, to promote the use of its Friend Finder
26 service, Facebook has, and continues to, post the names and likenesses of a user’s
27 friends on that user’s Facebook.com page, using words to the effect that the user’s
28

1 friends “found friends using the Friend Finder,” and suggesting that the user also
2 “Give it a try!” One such ad appears as follows:

3
4 Nick – try the automatic Friend Finder

close



Benattir, Carly and Gregory found many of their friends using the
automatic Friend Finder. Give it a try >

8 35. On information and belief, the persons whose names and likeness are
9 used to promote Friend Finder have not actually consented to use of their names and
10 likenesses to endorse Facebook’s Friend Finder service. On information and belief,
11 Facebook did not disclose to such persons that Facebook intended to use his/her name
12 and likeness to promote the Friend Finder service to others.

13 36. Additionally, on information and belief, the friends whose names and
14 likenesses are used to promote the Friend Finder service often never actually used the
15 contacts upload feature. A number of users have posted complaints on Facebook.com
16 and other pages, saying that the names, photographs and likenesses of people who
17 never used the service were wrongfully used to promote Friend Finder. The named
18 plaintiffs neither consented to use of their name, photograph or likeness in connection
19 with the Friend Finder service, nor did they actually use the service.

20 37. On information and belief, the misappropriation of names, photographs
21 and likenesses alleged herein has a direct commercial purpose, namely, to increase
22 Facebook’s user base, and to increase the intensity of such use, all for the purpose of
23 generating additional revenues.

24 38. In each instance in which Facebook uses the name and likeness of a
25 Facebook.com user to promote the Friend Finder service without consent, Facebook
26 violates such users’ statutory and common law rights of publicity, creates a false
27 endorsement and, in so doing, commits unfair competition, all all in an effort to
28 increase Facebook’s already massive reach and related advertising revenue. As a

1 consequence of these unauthorized solicitations, Plaintiffs have suffered injury-in-fact
2 by having their name and likeness misappropriated without their knowledge or
3 consent as part of Facebook's Friend Finder solicitations.

4 Class Averments

5 39. Class Definition. The named plaintiffs bring this action on behalf of
6 themselves individually and on behalf of all other similarly situated (collectively
7 "Plaintiffs") as a class action pursuant to Rule 23 of the Federal Rules of Civil
8 Procedure. The Class that the named plaintiffs seek to represent is: **All Facebook**
9 **users whose names, photographs and/or likenesses have been used without**
10 **consent on Facebook.com for the purpose of advertising Facebook's Friend**
11 **Finder service, commencing November 22, 2006 and continuing through the date**
12 **of the filing of this Class Action Complaint ("the Class Period.")**

13 40. Plaintiffs reserve the right to modify the definition of the Class after
14 further discovery.

15 41. This class action satisfies the requirements enumerated in FRCP Rule
16 23. The class is so numerous that joinder of all members is impracticable. There are
17 questions of law or fact common to the class. The claims of the representative parties
18 are typical of the claims or defenses of the class. The representative parties will fairly
19 and adequately protect the interests of the class.

20 42. Numerosity. The class is so numerous that joinder of all members is
21 impracticable. Facebook claims some 500 million users. Assuming that Facebook
22 has used the names and likeness of .1% of its users without consent – an estimate
23 that is likely low by many orders of magnitude – there would be 500,000
24 plaintiffs. In all likelihood, the number of class members is in the millions.

25 43. Commonality. There are questions of law or fact common to the class.
26 In each case, the question will be whether Facebook used the name, photograph or
27 likeness of a user without their consent, and whether such use violated the claims
28 asserted herein.

1 44. Further, common issues of law and fact predominate. The common
2 legal and factual questions, which do not vary from class member to class member,
3 and which may be determined without reference to the individual circumstances of
4 any class member include, but are not limited to the following:

5 a. Whether Facebook utilized Plaintiffs' names and likenesses in
6 connection with its Friend Finder solicitations;

7 b. Whether Facebook informed Plaintiffs it was using their names
8 and likenesses in this manner;

9 c. Whether Facebook obtained Plaintiffs' consent for the use of their
10 names and likenesses in connection with its Friend Finder solicitations;

11 d. Whether Facebook's Friend Finder solicitations violated
12 Plaintiffs' statutory and common law rights of publicity;

13 e. Whether Facebook's Friend Finder solicitations created a false
14 endorsement;

15 f. Whether Plaintiffs are entitled to recover the greater of seven
16 hundred fifty dollars (\$750) per violation or the actual damages suffered by
17 them as a result of the unauthorized use of their names and likenesses;

18 g. Whether Plaintiffs are entitled to treble their damages arising
19 from Facebook's alleged false endorsement;

20 h. Whether Facebook's Friend Finder solicitations constitute
21 unlawful, unfair and/or fraudulent business acts or practices in violation of
22 California Business & Professions Code sections 17200 *et seq.*;

23 i. Whether Plaintiffs and the class are entitled to recover restitution
24 based upon Facebook's unlawful, unfair and/or fraudulent business acts or
25 practices; and

26 j. Whether Facebook should be enjoined from continuing the
27 unlawful, unfair and/or fraudulent business acts or practices, including but not
28

1 limited to false advertising, relating to the representations made about
2 Plaintiffs' use, endorsement or sponsorship of the Friend Finder application.

3 45. The issues to be jointly tried – when compared with those which may
4 require separate adjudication – are sufficiently numerous and substantial to make the
5 class action advantageous to the judicial process and the litigants. Because it is
6 Facebook's alleged pattern and practice of utilizing its users' names and likenesses to
7 advertise its Friend Finder service – without letting class members know or obtaining
8 their consent – that is at issue, any individual issues or testimony will merely
9 corroborate evidence gathered from Facebook in this regard. Thus, the joint issues are
10 more numerous and substantial than the individual issues, if any, to be tried. As such,
11 the class action format will be advantageous both to the judicial process and the
12 litigants.

13 46. **Typicality.** The claims of the named plaintiffs herein are the same as
14 those of the proposed class. Each named Plaintiff, and each class member, has
15 claims arising from Facebook's use of their name, photograph or likeness without
16 consent, in a fashion violative of statutory and common law rights of publicity, the
17 Lanham Act and the California unfair competition law.

18 47. **Fairness of Representation.** The named plaintiffs have no interests
19 which are adverse to, or which conflict with the interests of prospective class
20 members, and thus the named plaintiffs are able to fairly and adequately represent and
21 protect the interests of the defined class. The named plaintiffs have raised viable right
22 of publicity and unfair business practice claims of the type reasonably expected to be
23 raised by members of the class, and will vigorously pursue those claims. If necessary,
24 the named plaintiffs may seek leave of the Court to amend this Complaint to include
25 additional named class representatives to represent the class or additional claims as
26 may be appropriate. The named plaintiffs are represented by experienced, qualified
27 and competent counsel who are committed to prosecuting this action. As such, the
28 named plaintiffs can – and will – adequately represent the class.

1 48. **Prosecution of Separate Actions not Desirable.** Given the relatively
2 small \$750 statutory penalty provided for violations of Civil Code Section 3344, and
3 relative uncertainties in framing actual damages, the claims of the individual members
4 of the class likely are not large enough to warrant bringing individual actions.
5 Accordingly, utilization of the class action mechanism is the most economically
6 feasible means of protecting class plaintiffs' important rights.

7 49. A class action is superior to other available methods for the fair and
8 efficient adjudication of this controversy since individual litigation of all class
9 members claims is impracticable. Even if every class member could afford individual
10 litigation, the court system could not. Without the class action format, it would be
11 unduly burdensome to the courts in which individual litigation of numerous cases
12 would otherwise need to proceed. Individualized litigation would also present the
13 potential for varying, inconsistent or contradictory judgments and would magnify the
14 delay and expense to all parties and to the court system resulting from multiple trials
15 of the same factual issues. By contrast, the conduct of this action as a class action,
16 with respect to some or all of the issues presented herein, presents few management
17 difficulties, conserves the resources of the parties and of the court system, and protects
18 the rights of each class member. Plaintiffs anticipate no difficulty in the management
19 of this action as a class action.

20 50. Additionally, the prosecution of separate actions by individual class
21 members may create a risk of adjudications with respect to them that would, as a
22 practical matter, be dispositive of the interests of the other class members not parties
23 to such adjudication or that would substantially impair or impede the ability of such
24 nonparty class members to protect their interests. The prosecution of individual
25 actions by class members could establish inconsistent results.

26 51. Defendant has engaged in misappropriation of Plaintiffs' names and
27 likenesses and unlawful, unfair and fraudulent conduct, which has affected the class,
28 thereby making appropriate injunctive relief because the conduct described herein is

1 capable of repetition and will continue unless permanently restrained and enjoined by
2 this Court.

3 **First Claim for Relief**

4 **Violation of Cal. Civ. Code § 3344**

5 52. Plaintiffs incorporate by reference in this claim for relief the
6 averments of Paragraphs 1 through 51 above.

7 53. Facebook has knowingly used Plaintiffs' names, photographs and
8 likenesses for purposes of advertising or soliciting Facebook's Friend Finder service,
9 without Plaintiffs' prior consent.

10 54. As a result of its unlawful use of the names, photographs and
11 likenesses of the Plaintiffs, Facebook is liable for any damages sustained by
12 Plaintiffs as a result thereof, in an amount equal to the greater of seven hundred fifty
13 dollars (\$750) per violation , or the actual damages suffered by Plaintiffs as a result of
14 the unauthorized use.

15 55. As a result of this conduct, Facebook is also liable for any profits from
16 the unauthorized uses that are attributable to the use and are not taken into account in
17 computing the actual damages.

18 56. On information and belief, the conduct of Facebook, as alleged herein,
19 constitutes fraud, malice and oppression. On information and belief, Facebook
20 engaged in such conduct with the intention of harming Plaintiffs and in conscious
21 disregard of their rights, all so as to entitle Plaintiffs to punitive damages in an amount
22 according to proof at trial, and as set forth in Civil Code section 3344.

23 57. Plaintiffs also seek attorney's fees and costs as set forth in Civil
24 Procedure Code section 3344.

25 **Second Claim for Relief**

26 **Violation of Common Law Right of Publicity**

27 58. Plaintiffs incorporate by reference in this claim for relief the
28 averments of Paragraphs 1 through 51 above.

1 Accordingly, both restitution and injunctive relief are proper and necessary pursuant
2 to Section 17203 of California's Business & Professions Code.

3 76. Plaintiffs' efforts in securing the requested relief will result "in the
4 enforcement of an important right affecting the public interest" for "(a) significant
5 benefit, whether pecuniary or nonpecuniary, [which will be] conferred on a . . . large
6 class of persons, (b) the necessity and financial burden of private enforcement . . . are
7 such as to make the award [of attorneys' fees] appropriate and such fees should not in
8 the interest of justice be paid out of the recovery, if any." Civ. Proc. Code section
9 1021.5. Accordingly, Plaintiffs request that the Court award attorneys' fees pursuant
10 to Section 1021.5.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs pray for the following relief:

- 13 A. Certification of this action as a class action.
- 14 B. An award of \$750 for each violation of each class member's statutory
15 right of publicity.
- 16 C. An award of actual damages to each class member, in an amount to
17 be proven at time of trial, in no event less than \$100,000,000 in total.
- 18 D. Trebling of Plaintiffs' actual damages.
- 19 E. Judgment for such sum as the Court finds just, according to the
20 circumstances of the case.
- 21 F. An award of restitution to each class member.
- 22 G. Injunctive relief barring Facebook from continuing the unlawful
23 activity alleged herein.
- 24 H. An award of Plaintiffs' reasonable attorneys' fees and litigation costs.
- 25
- 26
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1 I. Such other and further relief as may be warranted by the evidence
2 and which this Court may deem just and proper.

3
4 Dated: November 22, 2010

SPILLANE WEINGARTEN LLP
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Alex M. Weingarten
Eric B. Carlson

7 INITIATIVE LEGAL GROUP APC
8 Marc Primo
9 Darrel Menthe
10 Gene Williams
11 Mark Pifko

12 By: 

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13 Attorneys for Plaintiffs and Class Members
14

15 **DEMAND FOR JURY TRIAL**

16 Plaintiffs demand trial of this action before a jury.
17

18 Dated: November 22, 2010

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