

1 COOLEY LLP
 2 MICHAEL G. RHODES (116127)
 (rhodesmg@cooley.com)
 3 MATTHEW D. BROWN (196972)
 (brownmd@cooley.com)
 4 JAMES M. PENNING (229727)
 (jpenning@cooley.com)
 5 101 California Street, 5th Floor
 San Francisco, CA 94111-5800
 Telephone: (415) 693-2000
 6 Facsimile: (415) 693-2222

7 Attorneys for Defendant FACEBOOK, INC.

8

9

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

10

11

12

13

ZETHA NOBLE, individually and on behalf
 of all others similarly situated,
 Plaintiff,
 v.
 FACEBOOK INC., a Delaware corporation,
 Defendants.

Case No. 10-cv-05781-HRL

**NOTICE OF FILING OF FACEBOOK, INC.'S
 ADMINISTRATIVE MOTION TO RELATE
 AND CONSOLIDATE CASES**

Date: January 13, 2011

14

15

16

17

18

19

20

21

PLEASE TAKE NOTICE THAT:

22

23

24

25

26

27

28

On January 13, 2011, Facebook, Inc. ("Facebook") filed, in the lower numbered action pending before the Honorable James Ware, an administrative motion to relate the action in this District captioned *Noble v. Facebook Inc.*, No. 10-cv-05781-HRL, to the action captioned *In re Facebook Privacy Litigation*, Case No. 10-cv-02389-JW, and to consolidate the actions. A copy of Defendant Facebook, Inc.'s Administrative Motion to Relate and Consolidate Cases, the Stipulation in Support of Defendant Facebook, Inc.'s Administrative Motion to Relate and

//

1 Consolidate Cases, and the [Proposed] Order Granting Defendant Facebook, Inc.'s
2 Administrative Motion to Relate and Consolidate Cases are attached hereto.

3 Dated: January 13, 2011

COOLEY LLP

/s/ Matthew D. Brown

Matthew D. Brown

Attorneys for Defendant FACEBOOK, Inc.

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 COOLEY LLP
MICHAEL G. RHODES (116127) (rhodesmg@cooley.com)
2 MATTHEW D. BROWN (196972) (brownmd@cooley.com)
JAMES M. PENNING (229727) (jpenning@cooley.com)
3 101 California Street
5th Floor
4 San Francisco, CA 94111-5800
Telephone: (415) 693-2000
5 Facsimile: (415) 693-2222

6 Attorneys for Defendant FACEBOOK, INC.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE:
FACEBOOK PRIVACY LITIGATION

Case No. 10-CV-02389-JW
**DEFENDANT FACEBOOK, INC.’S
ADMINISTRATIVE MOTION TO RELATE
AND CONSOLIDATE CASES**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE, pursuant to Civil Local Rules 3-12 and 7-11, Federal Rule of Civil Procedure 42(a), and this Court’s Order dated December 21, 2010, that Defendant Facebook, Inc., by and through its undersigned counsel, hereby submits this administrative motion seeking an order as follows:

1. *Noble v. Facebook, Inc.*, No. 10-cv-05781-HRL, is related to *In re Facebook Privacy Litigation*, No. 10-cv-02389-JW, the lower numbered case, pursuant to Civil Local Rule 3-12 and, accordingly, should be reassigned to the Honorable James Ware.

2. *Noble v. Facebook, Inc.*, No. 10-cv-05781-HRL, and *In re Facebook Privacy Litigation*, No. 10-cv-02389-JW, are consolidated for all purposes into one action, and the *Noble* action shall be administratively closed.

///

1 3. All future filings shall be made in, and bear the caption of, *In re Facebook Privacy*
2 *Litigation*, No. 10-cv-02389-JW, which will be the lead case. The existing Consolidated Class
3 Action Complaint in *In re Facebook Privacy Litigation* shall be the operative complaint in the
4 consolidated action.

5 This Court's Order dated December 21, 2010 provides that "[a]ll future related cases shall
6 be automatically consolidated and administratively closed." (*In re Facebook Privacy Litigation*,
7 No. 10-cv-02389-JW, Dkt. No. 72.)

8 This motion is supported by (1) the Memorandum of Points and Authorities below, (2) the
9 Stipulation, filed herewith, entered into by and among (a) Plaintiffs in this consolidated action in
10 this Court, captioned *In re Facebook Privacy Litigation*, No. 10-cv-02389-JW, (b) Zetha Noble,
11 Plaintiff in another action in this Court captioned *Noble v. Facebook Inc.*, No. 10-cv-05781-HRL,
12 and (c) Facebook, Inc., Defendant in each of these actions, and (3) all pleadings and papers on file
13 in the actions.

14 For the Court's convenience, the Consolidated Class Action Complaint in *In re Facebook*
15 *Privacy Litigation* is attached hereto as Exhibit A, and the Complaint in *Noble* is attached hereto
16 as Exhibit B.

17 MEMORANDUM OF POINTS AND AUTHORITIES

18 I. INTRODUCTION

19 This Court has already consolidated several similar actions into *In re Facebook Privacy*
20 *Litigation*. By Order dated August 20, 2010, the Court consolidated the related actions *Gould v.*
21 *Facebook, Inc.*, No. 10-cv-02389-JW, and *Robertson v. Facebook, Inc.*, No. 10-cv-02408-JW,
22 into the single action *In re Facebook Privacy Litigation*, No. 10-cv-02389-JW. (*In re Facebook*
23 *Privacy Litigation*, No. 10-cv-02389-JW, Dkt. No. 23.) By Order dated December 21, 2010, the
24 Court first related the action *Marfeo v. Facebook, Inc.*, No. 10-cv-05301-BZ, to *In re Facebook*
25 *Privacy Litigation*, then consolidated the two actions into one action. (*Id.* Dkt. No. 72.) The
26 Court found that the cases "involve substantially the same transactions and events" insofar as
27 "Plaintiffs in all cases allege that, via 'referrer headers,' Facebook disclosed unique Facebook
28 user identification numbers ('UID'), allowing third parties to obtain private information about

1 users and their activities online.” (*Id.*) The Order provided that “[a]ll future related cases shall be
2 automatically consolidated and administratively closed.” (*Id.*)¹

3 Like *In re Facebook Privacy Litigation*, *Noble* also alleges that Facebook disclosed
4 Facebook user identification numbers (“UID”) via “referrer headers,” allegedly allowing third
5 parties to obtain private information about those users. Under the Court’s December 21, 2010
6 Order and applicable legal standards, *Noble* should be related to and consolidated into *In re*
7 *Facebook Privacy Litigation*, and the *Noble* action should be administratively closed. As
8 reflected in the Stipulation filed herewith, Plaintiffs in all actions support this motion.

9 **II. ARGUMENT**

10 **A. *Noble* Should be Related to *In re Facebook Privacy Litigation***

11 Under Civil Local Rule 3-12, actions are related when: “(1) [t]he actions concern
12 substantially the same parties, property, transaction or event; and (2) [i]t appears likely that there
13 will be an unduly burdensome duplication of labor and expense or conflicting results if the cases
14 are conducted before different Judges.” Here, as in *Gould*, *Robertson*, and *Marfeo*, these criteria
15 are met.

16 *First*, in *Noble* and *In re Facebook Privacy Litigation*, Facebook is the sole defendant.

17 *Second*, the cases allege virtually identical facts. The claims in *Noble* and *In re Facebook*
18 *Privacy Litigation* arise from allegations that Facebook users’ information was shared with third
19 parties via “referrer headers.” Plaintiffs in both cases allege that when Facebook users clicked on
20 third-party advertising links on facebook.com, their browsers sent referrer headers to those third-
21 party advertisers. Plaintiffs allege these referrer headers contained the address of the web page
22 the user had been viewing when he clicked on the ad, which sometimes contained the user’s
23 unique Facebook User ID (“UID”). Allegedly this allowed third parties to obtain information
24 from users’ profile pages.

25
26
27 ¹ In an Order dated December 10, 2010, this Court consolidated into a single action, *In re Zynga*
28 *Privacy Litigation*, No. 10-cv-04680-JW, eight actions that had been related to *In re Facebook*
Privacy Litigation. (*In re Facebook Privacy Litigation*, No. 10-cv-02389-JW, Dkt. No. 69.)

1 *Third, Noble* alleges many of the same causes of action asserted in *In re Facebook*
 2 *Privacy Litigation*, including violations of the California Unfair Competition Law (California
 3 Business and Professions Code § 17200), Computer Crime Law (California Penal Code § 502),
 4 Consumers Legal Remedies Act (California Civil Code § 1750), and California Civil Code
 5 §§ 1572 and 1573, as well as bringing claims for breach of contract and unjust enrichment.

6 *Finally*, the complaints in the cases allege substantially similar and overlapping class
 7 definitions. The putative class in *In re Facebook Privacy Litigation* is:

8 [A]ll Facebook users in the United States who, at any time after
 9 May 28, 2006 clicked on a third-party advertisement displayed on
 10 Facebook.com.

11 The putative class in *Noble* is:

12 All Facebook users in the United States who clicked on a third-
 13 party advertisement displayed on Facebook.com between February
 14 4, 2004 and May 21, 2010.

15 Given the similarity of parties, factual allegations, legal claims, and putative class
 16 definitions, there would be an unduly burdensome duplication of labor and expense as well as a
 17 significant danger of conflicting results if the cases are not related. Accordingly, pursuant to
 18 Civil Local Rule 3-12, *Noble* should be deemed related to *In re Facebook Privacy Litigation* and
 19 reassigned to the Honorable James Ware. Plaintiffs in both actions agree that the actions should
 20 be related and have entered a Stipulation with Facebook supporting this motion.

21 **B. *Noble* Should Be Consolidated Into *In re Facebook Privacy Litigation***

22 Under Federal Rule of Civil Procedure 42(a), a court may consolidate two or more actions
 23 if they “involve a common question of law and fact.” “The district court has broad discretion
 24 under . . . Rule [42(a)] to consolidate cases pending in the same district.” *Investors Research Co.*
 25 *v. U.S. Dist. Ct. for Central Dist. of Cal.*, 877 F.2d 777, 777 (9th Cir. 1989). This Court’s Order
 26 dated December 21, 2010 provides that “[a]ll future related cases shall be automatically
 27 consolidated and administratively closed.” (*In re Facebook Privacy Litigation*, No. 10-cv-02389-
 28 JW, Dkt. No. 72.)

 “[T]he main question for a court in deciding whether to consolidate is whether there is a
 common question of law or fact.” *Indiana State Dist. Council of Laborers & HOD Carriers*

1 *Pension Fund v. Gecht*, No. C 06-7274 EMC, 2007 WL 902554, at *1 (N.D. Cal. Mar. 22, 2007).
 2 “The purpose of consolidation is to avoid the unnecessary costs or delays that would ensue from
 3 proceeding separately with claims or issues sharing common aspects of law or fact.” *Siegall v.*
 4 *Tibco Software, Inc.*, No. C 05-2146 SBA, 2006 WL 1050173, at *2 (N.D. Cal. Feb. 24, 2006).
 5 Further, consolidation serves “to avoid inconsistent adjudications.” *Team Enters., LLC v. W. Inv.*
 6 *Real Estate Trust*, No. 08-cv-00872 LJO, 2008 WL 4712759, at *1 (E.D. Cal. Oct. 23, 2008).

7 The court should consolidate *Noble* into *In re Facebook Privacy Litigation* for all
 8 purposes. As discussed above, these cases involve common questions of law and fact: *First*,
 9 Facebook is the sole defendant in both *Noble* and *In re Facebook Privacy Litigation*. *Second*, all
 10 of the claims in each case arise from allegations that users’ Facebook UIDs were transmitted to
 11 third-party advertisers via “referrer headers” when users clicked on third-party advertisements on
 12 facebook.com. *Third*, the cases raise related and overlapping legal issues and causes of action.
 13 *Finally*, the cases allege substantially similar and overlapping class definitions.

14 Consolidation will neither prejudice nor inconvenience the parties or the Court. Indeed,
 15 given the virtually identical factual allegations and legal claims in *Noble* and *In re Facebook*
 16 *Privacy Litigation*, consolidating these cases will avoid the significant possibility of inconsistent
 17 results. Consolidation will also promote efficiency and economy by streamlining discovery,
 18 reducing duplicative motions and filings related to class certification proceedings, discovery
 19 matters, and other issues, and otherwise substantially reducing unnecessary and duplicative
 20 burden and expense.

21 **III. CONCLUSION**

22 For the foregoing reasons, Facebook’s motion should be granted.

23 Dated: January 13, 2011

COOLEY LLP

25 /s/ Matthew D. Brown

26 Matthew D. Brown
 27 Attorneys for Defendant FACEBOOK, INC.

28

EXHIBIT A

1 KASSRA P. NASSIRI (215405)
(knassiri@nassiri-jung.com)
2 CHARLES H. JUNG (217909)
(cjung@nassiri-jung.com)
3 NASSIRI & JUNG LLP
47 Kearny Street, Suite 700
4 San Francisco, California 94108
Telephone: (415) 762-3100
5 Facsimile: (415) 534-3200

6 EDELSON MCGUIRE LLP
SEAN REIS (184044) (sreis@edelson.com)
7 30021 Tomas Street, Suite 300
Rancho Santa Margarita, CA 92688
8 Telephone: (949) 450-2124
9 Facsimile: (949) 459-2123

MICHAEL J. ASCHENBRENER
(maschenbrener@edelson.com)(*pro hac vice*)
BENJAMIN H. RICHMAN
(brichman@edelson.com)(*pro hac vice*)
350 North LaSalle Street, Suite 1300
Chicago, Illinois 60654
Telephone: (312) 589-6370
Facsimile: (312) 589-6378

11 Attorneys for Plaintiffs and the Putative Class

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

15
16
17
18
19 IN RE: FACEBOOK PRIVACY LITIGATION
20
21

Case No. 10-cv-02389-JW

CLASS ACTION

**CONSOLIDATED CLASS
ACTION COMPLAINT**

ACTION FILED: 05/28/10

JURY TRIAL DEMANDED

22 Plaintiffs David Gould and Mike Robertson (“Plaintiffs”) bring this suit on behalf of
23 themselves and all others similarly situated, and make the following allegations on information and
24 belief, except as to allegations pertaining to Plaintiffs, which are based on their personal knowledge:
25

26 **I. INTRODUCTION**

27 1. Plaintiffs bring this class action complaint against Facebook, Inc. (“Facebook”) for
28 sharing its users’ sensitive personally identifiable information (“PII”), including users’ real names,

1 with Facebook’s advertising partners, in violation of Facebook’s own privacy policy, Facebook’s
2 specific and prominent promises to users, accepted industry standards, and federal law.

3
4 2. Facebook’s own policies state that “We never share your personal information with
5 our advertisers” and “[w]e do not give your content of information to advertisers without your
6 consent.” Facebook touts these statements in multiple areas of its site including its privacy policy
7 and multiple “blog” statements.

8 3. Unbeknownst to Facebook users, and in violation of Facebook’s own stated policies
9 and privacy laws, Facebook intentionally and knowingly transmitted PII, including users’ real
10 names, to third party advertisers without user consent.

11 **II. PARTIES**

12 4. Plaintiff David Gould is a resident of South Lake Tahoe, California. He is a
13 registered user of Facebook’s services and has been since at least 2008. During the relevant time
14 period, Plaintiff Gould clicked on at least one third-party advertisement displayed on Facebook.com.

15 5. Plaintiff Mike Robertson is a resident of Marin County, California. He is a registered
16 user of Facebook’s services and has been since at least 2008. During the relevant time period,
17 Plaintiff Robertson clicked on at least one third-party advertisement displayed on Facebook.com.

18 6. Defendant Facebook, Inc. (hereinafter, “Facebook”) is a Delaware corporation that
19 maintains its headquarters in Santa Clara County, California. Facebook conducts business
20 throughout California and the nation.

21 **III. JURISDICTION AND VENUE**

22 7. This Court has personal jurisdiction over Facebook because (a) a substantial portion
23 of the wrongdoing alleged in this complaint took place in this state, (b) Facebook is authorized to do
24 business here, has sufficient minimum contacts with this state, and/or otherwise intentionally avails
25 itself of the markets in this state through the promotion, marketing and sale of products and services
26 in this state, to render the exercise of jurisdiction by this Court permissible under traditional notions
27 of fair play and substantial justice.

28 8. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act
of 2005, 28 U.S.C. §§ 1332(a) and 1332(d) because the amount in controversy exceeds

1 \$5,000,000.00 exclusive of interest and costs, and more than two-thirds of the users of the putative
2 class are citizens of states different than that of Facebook. Additionally, the Court has subject matter
3 jurisdiction pursuant to 28 U.S.C. § 1331.

4 9. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c). A substantial
5 portion of the events and conduct giving rise to the violations of law complained of herein occurred
6 in this District. Facebook's principal executive offices and headquarters are located in Santa Clara
7 County, California.

8
9 **IV. INTRADISTRICT ASSIGNMENT**

10 10. Intradistrict assignment to the San Jose Division is proper because the principal
11 offices of defendant Facebook are located in Santa Clara County.

12 **V. STATEMENT OF FACTS**

13 **A. About Facebook**

14 11. Facebook is the world's largest social networking website, with over 500 million
15 registered users worldwide.

16 12. According to Facebook, its "mission is to give people the power to share and make
17 the world more open and connected." (www.facebook.com/facebook?v=info%ref=pf) To
18 accomplish that mission, Facebook allows anyone with access to a computer and Internet connection
19 to register for its services free of charge.

20 13. One of the few requirements Facebook places on its registrants is that they provide
21 their actual names, rather than merely create a "screen name" or "user name," as is commonplace
22 with other website registrations.

23 14. Once registered, a Facebook user may post a multitude of information to their own
24 personal "Facebook profile" page, including their birth date, place of birth, current and past
25 addresses, present and past employment, relationship status, personal pictures, videos, and more.
26 Facebook presents users with pre-made forms in which users may enter this type of personal
27 information.

28 15. Each Facebook user has a user ID number which uniquely identifies that user. Many
users also have usernames which uniquely identify them. If a person knows a Facebook user's user

1 ID or username, that person can see the user's Facebook page and see the user's real name, gender,
2 picture, friends, networks, wall posts, photos, and more.

3
4 16. In many ways, Facebook is accomplishing its stated mission. Facebook users share
5 an unprecedented amount of personal information through the service. While users may share this
6 information in order to connect with other Facebook users, they are also sharing this information
7 with Facebook itself. And all this personal information is valuable to Facebook because it is
8 valuable to advertisers.

9 **B. Advertising on Facebook**

10 17. Because users share so much information through Facebook, Facebook is able to use
11 that information to help its advertisers target their ads to finely-tailored audiences.

12 18. This targeting may help explain Facebook's success in generating advertisement
13 impressions. According to comScore's Ad Metrix services, Facebook now serves more ad
14 impressions than any other online entity. comScore reports that in the first quarter of 2010,
15 Facebook served up approximately 16.2% of all display ad impressions on the Internet.¹

16 19. In fact, the information Facebook possesses allows its advertisers to target their ads
17 based on age, city of residence, gender, and interests, such as mountain biking, for example. This
18 allows a local mountain bike store to only pay for ads that Facebook serves to 20 to 30-year old men
19 in Moab, Utah who have expressly shared with Facebook an interest in mountain biking.

20 20. The only thing better for the advertiser would be to know the true identity of that 20-
21 something male mountain biker. But Facebook's own Privacy Policy prohibits this. Facebook
22 specifically states:

23 **How We Use Your Information**

24 **To serve personalized advertising to you.** We don't share your information
25 with advertisers without your consent. (An example of consent would be if
26 you asked us to provide your shipping address to an advertiser to receive a
27 free sample.) We allow advertisers to choose the characteristics of users who
28 will see their advertisements and we may use any of the non-personally
identifiable attributes we have collected (including information you may have

¹ http://www.comscore.com/Press_Events/Press_Releases/2010/5/Americans_Received_1_Trillion_Display_Ads_in_Q1_2010_as_Online_Advertising_Market_Rebounds_from_2009_Recession.

1 decided not to show to other users, such as your birth year or other sensitive
2 personal information or preferences) to select the appropriate audience for
3 those advertisements. For example, we might use your interest in soccer to
show you ads for soccer equipment, but we do not tell the soccer equipment
company who you are...

4 Facebook's Privacy Policy, <http://www.facebook.com/policy.php> (last visited May 31, 2010)
5 (emphasis in original).

6 21. Facebook makes similar representations in its Privacy Guide:

7 **We never share your personal information with our advertisers.**
8 Facebook's ad targeting is done entirely anonymously. If advertisers select
9 demographic targeting for their ads, Facebook automatically matches those
ads to the appropriate audience. Advertisers only receive anonymous data
reports.

10 Controlling How You Share, <http://www.facebook.com/privacy/explanation.php> (last visited May
11 31, 2010)(emphasis in original).

12 22. Facebook makes similar representations in its Statement of Rights and
13 Responsibilities:

14 About Advertisements on Facebook

15 Our goal is to deliver ads that are not only valuable to advertisers, but also
16 valuable to you. In order to do that, you agree to the following:

17 1. You can use your privacy settings to limit how your name and profile
18 picture may be associated with commercial or sponsored content served by us.
You give us permission to use your name and profile picture in connection
19 with that content, subject to the limits you place.

20 2. We do not give your content or information to advertisers without your
consent.

21 Statement of Rights and Responsibilities, <http://www.facebook.com/terms.php> (last visited on May
22 31, 2010).

23 23. Facebook management made similar statements on the Facebook Blog. Facebook's
24 Director of Corporate Communications and Public Policy posted the following on April 5, 2010:

25 Still others asked to be opted-out of having their information shared with
26 advertisers. This reflects a common misconception about advertising on
27 Facebook. We don't share your information with advertisers unless you tell us
28 to (e.g. to get a sample, hear more, or enter a contest). Any assertion to the
contrary is false. Period. Instead, we enable advertisers to target anonymized
demographics and attributes. That is, a company selling boats can target
people between 40 and 50 years old who expressed an interest in boating.

1 However, we never provide the advertiser any names or other information
2 about the people who are shown, or even who click on, the ads.

3 The Facebook Blog, <http://blog.facebook.com/blog.php?post=379388037130> (last visited May 31,
4 2010).

5 24. In response to widespread concern about the privacy of user information, on February
6 16, 2009, Facebook's CEO, Mark Zuckerberg, reiterated that personal information would not be
7 shared without user consent:

8 Our philosophy is that people own their information and control who they
9 share it with. When a person shares information on Facebook, they first need
10 to grant Facebook a license to use that information so that we can show it to
11 the other people they've asked us to share it with. Without this license, we
12 couldn't help people share that information ... In reality, we wouldn't share
13 your information in a way that you wouldn't want. The trust you place in us
14 as a safe place to share information is the most important part of what makes
15 Facebook work.

16 The Facebook Blog, <http://blog.facebook.com/blog.php?post=54434097130> (last visited October 6,
17 2010).

18 25. While Facebook advertisers are able to engage in very targeted advertising,
19 Facebook, through these and other representations, promises not to share any user's specific identity
20 or personal information with any advertisers.

21 26. Facebook requires its users to agree to this Privacy Policy upon registering with the
22 site. As a user creates a Facebook account, Facebook presents hyperlinks with text requiring users to
23 affirm that they "have read and agree to" Facebook's Terms of Use (a hyperlink to the document
24 entitled Statement of Rights and Responsibilities) and Facebook's Privacy Policy.

25 **C. Facebook Violates Its Privacy Policy**

26 27. In direct violation of its own Privacy Policy and of the representations quoted above,
27 Facebook shares users' information with third-party advertisers without users' knowledge or
28 consent.

29 28. When a Facebook user clicks on an advertisement posted on Facebook's website,
30 Facebook sends a "Referrer Header" to the corresponding advertiser. The Referrer Header reveals
31 the specific web page address the user was viewing prior to clicking the advertisement. Through the
32 design of the Facebook website, Facebook's web page addresses, and Facebook's advertisement

1 system, Facebook has caused users' browsers to send Referrer Header transmissions that report the
2 user ID or username of the user who clicked an ad, as well as the page the user was viewing just
3 prior to clicking on the ad.

4 29. When a Facebook advertiser receives a Referrer Header reporting the user who
5 clicked an ad, the advertiser can obtain substantial additional information about the user, such as the
6 user's name, gender, picture, friends, networks, wall posts, photos, and more. The advertiser's staff
7 can simply navigate to the user's profile to obtain this information. Alternatively, an advertiser can
8 design software to automatically collect and store this data as to each user who clicks an ad.
9 However the advertiser elects to obtain this information, Facebook does nothing to prevent the
10 advertiser from using the information for whatever purpose the advertiser chooses.

11 30. Thus, Facebook advertisers are able to gain even more detailed user information: not
12 just anonymous user demographics, but specific information about individual users including real
13 name, gender, friends, interests, and more. Facebook's systems send this information to advertisers
14 despite Facebook's Privacy Policy and its other representations as to users' privacy vis-à-vis
15 advertisers.

16 **D. The Scope and Duration of Facebook's Nonconsensual Transmissions**

17 31. On information and belief, Facebook began the affected transmissions no later than
18 February 2010 when Facebook implemented a website "upgrade" that began to embed ever more
19 detailed data within Referrer Headers. In particular, Facebook caused Referrer Headers to include
20 not just the URL of a web page a person was viewing (e.g. a person viewing the profile of Facebook
21 user John Doe) but also confirmation of the specific identify of the person viewing a web page (e.g.
22 that it is John Doe himself who is viewing his own profile). Nor did Facebook limit its revelation of
23 user identities to users viewing their own profiles. For example, if one Facebook user viewed
24 another user's profile, the resulting Referrer Headers would report both the username or user ID of
25 the person whose profile was viewed, and the username or user ID of the person viewing that profile
26 (e.g., John Doe was viewing the profile of Jane Doe). Similar information was revealed as users
27 browsed photos or used other Facebook functions. Clicking an ad in any of these circumstances
28

1 caused the advertiser to receive the entire web address of the page the user was visiting, including
2 the user's Facebook username.

3 32. This unauthorized disclosure of a person's identity and what Facebook page they
4 were viewing could have the effect of revealing to advertisers confidential and sometimes highly
5 sensitive information, including a user's private interests. For example, if a Facebook user who was
6 gay and struggling to come out of the closet was viewing the Facebook page of a gay support group,
7 and then clicked on an ad, the advertiser would know the exact identity of that person, and that s/he
8 was viewing the Facebook page of a gay support group just before navigating to their site.

9 33. These transmissions continued until the publication of a May 21, 2010 article in the
10 *Wall Street Journal*² and a May 21, 2010 posting to the website of Professor Benjamin Edelman of
11 the Harvard Business School³ exposed Facebook's practices. Facebook's staff failed to reveal its
12 practice during the three months in which its millions of users suffered these problems. According
13 to the *Wall Street Journal* publication, *after* being contacted by the *Journal*, Facebook admitted that
14 it had been passing data to ad companies that could allow those companies to tell if a particular user
15 was clicking an ad. Facebook finally ceased the nonconsensual transmissions only after they were
16 discovered by outsiders.

17 **E. The Scope and Duration of Facebook's Nonconsensual Transmissions**

18 34. Software engineers are generally familiar with the risk of Referrer Header "leakage"
19 of information companies intended to keep confidential and/or are obliged to keep confidential.

20 35. The HTTP Referrer function is a standard web browser function, provided by
21 standard web browsers since the HTTP 1.0 specification in May 1996.⁴ The current version of the
22 publicly-available HTTP specification, RFC 2616,⁵ provides for HTTP Referrer Headers in its
23 provision 14.36.⁶ It is well known that if a site places confidential information, such as username or
24

25 ² <http://online.wsj.com/article/SB10001424052748704513104575256701215465596.html>.

26 ³ <http://www.benedelman.org/news/052010-1.html>

27 ⁴ <http://www.w3.org/Protocols/rfc1945/rfc1945>

28 ⁵ <http://www.w3.org/Protocols/rfc2616/rfc2616.html>

⁶ <http://www.w3.org/Protocols/rfc2616/rfc2616-sec14.html#sec14.36>

1 user ID, in a URL, then the site risks releasing this information whenever a user clicks a link to leave
 2 the site, e.g. by clicking on an advertisement. Indeed, the HTTP specification specifically flags this
 3 risk; in section 15.1.3, the HTTP specification advises developers of substantially the same problem:
 4 “Authors of services which use the HTTP protocol SHOULD NOT use GET based forms for the
 5 submission of sensitive data, because this will cause this data to be encoded in the REQUEST-
 6 URI.”⁷

7
 8 36. Facebook’s software engineers knew or should have known that private user
 9 information would be divulged as a result of Facebook’s website re-design. Facebook was put on
 10 specific notice of the problem with their Referrer Headers when, in August 2009, Balachander
 11 Krishnamurthy and Craig E. Wills published an article titled, “On the Leakage of Personally
 12 Identifiable Information Via Online Social Networks.”⁸ In this article, the authors detail the problem
 13 of Facebook and other sites sharing with advertisers information that the sites previously promised to
 14 protect. The authors specifically sent this article to Facebook. Facebook confirmed its knowledge
 15 of the Krishnamurthy *et al.* article in September 2009.⁹

16 VI. CLASS ACTION ALLEGATIONS

17 37. Plaintiff brings this action on behalf of himself and all other persons in the following
 18 similarly-situated class: ***all Facebook users in the United States who, at any time after May 28,***
 19 ***2006 clicked on a third-party advertisement displayed on Facebook.com*** (the “Class”). Excluded
 20 from the Class are Facebook, its officers and directors, legal representatives, successors or assigns,
 21 any entity in which Facebook has or had a controlling interest, the judge to whom this case is
 22 assigned and the judge’s immediate family.

23 38. Every member of the proposed Class is a party to Facebook’s Terms and Conditions
 24 and Privacy Policy as alleged herein.

25
 26
 27 ⁷ <http://www.w3.org/Protocols/rfc2616/rfc2616-sec15.html#sec15.1.3>

28 ⁸ <http://conferences.sigcomm.org/sigcomm/2009/workshops/wosn/papers/p7.pdf>.

⁹ http://www.mediapost.com/publications/index.cfm?fa=Articles.showArticle&art_aid=114344.

1 39. The Class is composed of numerous people, whose joinder in this action would be
2 impracticable. The disposition of their claims through this class action will benefit Class members,
3 the parties and the courts. Since 2006, Facebook has grown from millions of users to over 500
4 million users. Upon information and belief, there are millions of persons in the Class.

5 40. Upon information and belief, the identities and contact information of the individual
6 members of the Class are available through Facebook's electronic records.

7 41. There is a well-defined community of interest in questions of law and fact affecting
8 the Class. These questions of law and fact predominate over individual questions affecting
9 individual Class members, including, but not limited to, the following:

- 10 a. what and how personally-identifiable data and advertisement click information
11 was transmitted to advertisers;
- 12 b. whether Facebook violated its Terms of Service, Privacy Policy, and other
13 representations to users by making its users' personal information and
14 advertisement click information available to advertisers without authorization;
- 15 c. whether any Class member knew or consented to Facebook's transmission of
16 personally-identifiable data to advertisers;
- 17 d. whether Class members are entitled to damages as a result of Facebook's conduct,
18 and, if so, what is the measure of those damages;
- 19 e. whether Facebook's conduct described herein violated the Electronic
20 Communications Privacy Act, 18 U.S.C. § 2510 *et seq.* (the "ECPA");
- 21 f. whether Facebook's conduct described herein Stored Communications Act, 18
22 U.S.C. § 2701 *et seq.* (the "SCA");
- 23 g. whether Facebook's conduct described herein violated California's Unfair
24 Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.*);
- 25 h. whether Facebook's conduct described herein violated California's Computer
26 Crime Law (Cal. Penal Code § 502);
- 27 i. whether Facebook's conduct described herein violated the California Legal
28 Remedies Act (Cal. Civ. Code § 1750, *et seq.*);

- j. whether Facebook's conduct described herein constitutes a breach of contract; and
- k. whether Facebook was unjustly enriched as a result of its conduct described herein.

42. Facebook engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Class members. Similar or identical statutory and common law violations, business practices and injuries are involved. Individual questions, if any, pale by comparison to the numerous common questions that dominate.

43. The injuries sustained by members of the Class flow, in each instance, from a common nucleus of operative facts. In each case, Facebook caused or permitted unauthorized communications of private and personally identifying information to be delivered to third parties without adequate or any notice, consent or opportunity to opt out.

44. Given the similar nature of the Class members' claims and the absence of material differences in the statutes and common laws upon which the Class members' claims are based, a nationwide class will be easily managed by the Court and the parties.

45. Because of the relatively small size of the individual Class members' claims, no Class user could afford to seek legal redress on an individual basis.

46. Plaintiffs' claims are typical of those of the Class as all members of the Class are similarly affected by Facebook's uniform and actionable conduct as alleged herein.

47. Facebook has acted and failed to act on grounds generally applicable to Plaintiffs and the other members of the Class, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class.

48. Plaintiffs will fairly and adequately protect the interests of the Class and have retained counsel competent and experienced in class action litigation. Plaintiffs have no interests antagonistic to, or in conflict with, the Class that Plaintiffs seek to represent.

49. Plaintiffs reserve the right to revise the above class definition based on facts learned in discovery.

COUNT I
(Violation of the Electronic Communications Privacy Act)

50. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

1 51. The Electronic Communications Privacy Act, 18 U.S.C. § 2510 *et seq.* (the “ECPA”)
2 broadly defines an “electronic communication” as “any transfer of signs, signals, writing, images,
3 sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio,
4 electromagnetic, photoelectronic or photooptical system that affects interstate or foreign
5 commerce...” 18 U.S.C. § 2510(12).

6 52. Pursuant to the ECPA, Facebook operates an “electronic communications service” as
7 defined in 18 U.S.C. § 2510(15). Facebook provides its users with the ability to send or receive
8 electronic communications to or from any of Facebook’s millions of users and to or from third
9 parties who are not Facebook users, such as advertisers. These electronic communications include,
10 among other things, the ability for users to send and receive private messages, share photographs and
11 video, and the ability to post messages on user profile pages that can be viewed by anyone with
12 access to those profile pages. Facebook also provides its advertisers the ability to send electronic
13 communications to Facebook users by placing targeted advertisements on Facebook.com, and allows
14 Facebook users to receive those electronic communications and send electronic communications to
15 advertisers by clicking on advertising banners.

16 53. The ECPA broadly defines the contents of a communication. Pursuant to the ECPA,
17 “contents” of a communication, when used with respect to any wire, oral, or electronic
18 communications, include any information concerning the substance, purport, or meaning of that
19 communication. 18 U.S.C. § 2510(8). “Contents,” when used with respect to any wire or oral
20 communication, includes any information concerning the identity of the parties to such
21 communication or the existence, substance, purport, or meaning of that communication. The
22 definition thus includes all aspects of the communication itself. No aspect, including the identity of
23 the parties, the substance of the communication between them, or the fact of the communication
24 itself, is excluded. The privacy of the communication to be protected is intended to be
25 comprehensive.

26 54. The ECPA prevents an electronic communications service provider from intentionally
27 divulging the contents of any communication while in transmission on that service to any person or
28 entity other than an addressee or intended recipient of such communication. 18 U.S.C. § 2511(3)(a).

1 55. Plaintiffs and Class members are “person[s] whose ... electronic communication[s]
2 [are] disclosed... or intentionally used in violation of this chapter” within the meaning of 18 U.S.C. §
3 2520(a).

4 56. By clicking on an advertisement banner displayed on Facebook.com, users are asking
5 Facebook to send an electronic communication to the advertiser who supplied the ad. But pursuant
6 to Facebook’s Terms and Conditions and its Privacy Policy, users do not expect and do not consent
7 to Facebook’s disclosure of all contents of that communication. Facebook users expect that certain
8 aspects of their communications concerning advertisers—namely their identities and what Facebook
9 page they were viewing at the time they clicked an ad—will be configured by Facebook to be
10 private.

11 57. The design of the Facebook website, Facebook’s web page addresses, and Facebook’s
12 advertisement system is evidence of Facebook’s conscious objective to divulge the identities of its
13 users to advertisers. By divulging user identities and other user information to advertisers without
14 user consent, Facebook intentionally violated 18 U.S.C. § 2511(3)(a). Facebook intentionally
15 disclosed user identities to advertisers to enhance its profitability and revenue through advertising.
16 This disclosure was not necessary for the operation of Facebook’s system or to protect Facebook’s
17 rights or property.

18 58. Each incident in which Facebook divulged personally identifiable information of a
19 Facebook user is a separate and distinct violation of the ECPA. Plaintiffs and members of the Class
20 therefore seek remedy as provided for by 18 U.S.C. § 2520, including such preliminary and other
21 equitable or declaratory relief as may be appropriate, damages consistent with subsection (c) of that
22 section to be proven at trial, punitive damages to be proven at trial, and attorneys’ fees and other
23 litigation costs reasonably incurred.

24 59. Plaintiffs and the Class, pursuant to 18 U.S.C. § 2520(2), are entitled to preliminary,
25 equitable, and declaratory relief, in addition to statutory damages of the greater of \$10,000 or \$100 a
26 day for each day of violation, actual and punitive damages, reasonable attorneys’ fees, and
27 Facebook’s profits obtained from the violations described herein.
28

COUNT II
(Violations of the Stored Communications Act)

1
2 60. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

3
4 61. The Stored Communications Act of 1986 (“SCA”) incorporates the ECPA’s
5 definition of an “electronic communication service.” 18 U.S.C. § 2711(1). As set forth above,
6 Facebook is an electronic communications service provider within the meaning of the ECPA and is
7 therefore also subject to the restrictions contained in the SCA governing electronic communications
8 service providers.

9 62. The SCA also incorporates the ECPA’s broad definition of “electronic
10 communication” and “electronic storage.” 18 U.S.C. § 2711(1). Pursuant to the ECPA and SCA,
11 “electronic storage” means any “temporary storage of a wire or electronic communication incidental
12 to the electronic transmission thereof.” 18 U.S.C. § 2510(17)(A). This type of electronic storage
13 includes communications in intermediate electronic storage that have not yet been delivered to their
14 intended recipient.

15 63. Examples of communications held by Facebook in temporary storage pursuant to 18
16 U.S.C. § 2510(17)(A) include private messages not yet received by the intended recipient and user
17 requests to Facebook to visit advertiser websites.

18 64. The SCA prohibits any electronic communications service provider from divulging to
19 any person or entity the contents of a communication while in electronic storage by that service. 18
20 U.S.C. § 2702(a)(1).

21 65. When a Facebook user clicks on an ad, the user is asking Facebook to send an
22 electronic communication to that advertiser allowing the user to view the advertiser’s website. By
23 clicking an ad, the Facebook user also tells Facebook, via an electronic communication, who the user
24 is, what Facebook page the user is viewing, and where the user wants to go. This information is held
25 in temporary storage by Facebook pending the delivery of the user’s request to the advertiser
26 website. By divulging to advertisers the user’s identity and what Facebook page they were viewing
27 just prior to leaving Facebook.com, Facebook violated 18 U.S.C. § 2702(a)(1).

28 66. The design of the Facebook website, Facebook’s web page addresses, and Facebook’s
advertisement system is evidence of Facebook’s knowledge of and intent to divulge the private

1 contents of its users' electronic communications without user consent, in violation of 18 U.S.C. §
2 2702(1)(a). Facebook intentionally disclosed user identities and other information to advertisers to
3 enhance its profitability and revenue through advertising. The disclosures were not necessary for the
4 operation of Facebook's system or to protect Facebook's rights or property.

5 67. The SCA definition of "electronic storage" also includes "storage of [a wire or
6 electronic] communication by an electronic communication service for purposes of backup
7 protection of such communication." 18 U.S.C. § 2510(17)(B). The information that Facebook users
8 send via electronic communications to Facebook to be displayed in user profiles—such as name,
9 gender, pictures, friends, religious, political and sexual preferences, wall posts and more—is
10 electronically stored by Facebook for backup purposes. All of the foregoing user information, once
11 posted, remains available for viewing and re-access at a later time by the user and other persons
12 authorized by the user to access that information. This storage is one of the main services that
13 Facebook provides to its users.

14 68. Because Facebook thus operates as a "virtual filing cabinet" for its users, allowing
15 them to store and re-access at a later time their photos, messages, wall posts and more, Facebook is
16 also a "remote computing service" provider pursuant to 18 U.S.C. § 2711(2).

17 69. The SCA, at 18 U.S.C. § 2702(a)(2), provides that "a person or entity providing an
18 remote communication service to the public shall not knowingly divulge to any person or entity the
19 contents of any communication which is carrier or maintained on that service (A) on behalf of, and
20 received by means of electronic transmission...a subscriber or customer of such service; (B) solely
21 for the purpose of providing storage...to such subscriber or customer, if the provider is not
22 authorized to access the contents of any such communications for purposes of providing any services
23 other than storage or computer processing."

24 70. As a result of Facebook's disclosure of user identities, Facebook gives unauthorized
25 access to and thereby divulges electronically-stored information to advertisers about the particular
26 user who clicked an ad. With the user name that Facebook provides them, advertisers can navigate
27 to user profiles and see a user's stored electronic communications, including Facebook names,
28 gender, pictures, friends, networks, wall posts, photos, and more. Because Facebook is both an

1 electronic communication service provider and a remote computing service provider, Facebook's
2 disclosure of this information to advertisers is in violation of both 18 U.S.C. § 2702(a)(1) and (2).
3 As set forth above, Facebook's disclosures were knowing and intentional and designed to enhance
4 its profitability and revenue through advertising. The disclosures were not necessary for the
5 operation of Facebook's system or to protect Facebook's rights or property.

6 71. Facebook intentionally and knowingly divulged confidential and private information
7 relating to Plaintiffs and Class member's stored electronic communications without the consent,
8 knowledge or authorization of Plaintiffs and members of the Class.

9 72. Plaintiffs and Class members are "person[s] aggrieved by [a] violation of [the SCA]
10 in which the conduct constituting the violation is engaged in with a knowing or intentional state or
11 mind..." within the meaning of 18 U.S.C. § 2707(a).

12 73. Each incident in which Facebook provided personally identifiable information of a
13 Facebook user, thereby divulging that user's stored communications to a third party, is a separate
14 and distinct violation of the SCA, subject to the remedies provided under the SCA, and specifically
15 pursuant to 18 U.S.C. § 2707(a).

16 74. Plaintiffs and users of the Class therefore seek remedy as provided for by 18 U.S.C. §
17 2707(b) and (c), including such preliminary and other equitable or declaratory relief as may be
18 appropriate, damages consistent with subsection (c) of that section to be proven at trial, punitive
19 damages to be proven at trial, and attorneys' fee and other litigation costs reasonably incurred.

20 75. Plaintiffs and the Class, pursuant to 18 U.S.C. § 2707(c), are entitled to preliminary,
21 equitable, and declaratory relief, in addition to statutory damages of no less than \$1,000 per
22 violation, actual and punitive damages, reasonable attorneys' fees, and Facebook's profits obtained
23 from the violations described herein.

24
25 **COUNT III**
(Violation of Cal. Bus. & Prof. Code § 17200)

26 76. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

27 77. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et*
28 *seq.*, protects both consumers and competitors by promoting fair competition in commercial markets
for goods and services.

1 78. The UCL prohibits any unlawful, unfair or fraudulent business act or practice. A
2 business practice need only meet one of the three criteria to be considered unfair competition. An
3 unlawful business practice is anything that can properly be called a business practice and that at the
4 same time is forbidden by law.

5 79. As described herein, Facebook’s nonconsensual disclosure of its users’ personal
6 information to third-party advertisers without their authorization is a violation of the UCL.

7 80. Facebook has violated the “unlawful” prong of the UCL in that Facebook’s conduct
8 violated the ECPA (18 U.S.C. § 2510 *et seq.*), the SCA (18 U.S.C. § 2701 *et seq.*), Consumer Legal
9 Remedies Act (Cal. Civ. Code § 1750 *et seq.*), and the California Computer Crime Law (Cal. Penal
10 Code § 502).

11 81. Facebook violated the fraudulent prong of the UCL by explicitly representing in its
12 Privacy Policy and in subsequent public statements that it would not make users’ personal
13 information available to any third party without authorization. Facebook used those
14 misrepresentations to induce users to submit their personally identifiable information to its website.
15 Facebook then knowingly transmitted that information to third parties without its users’
16 authorization.

17 82. Facebook violated the unfair prong of the UCL by gaining control over and divulging
18 to third parties its users’ PII without consent and under false pretenses.

19 83. Facebook’s unfair or deceptive practices occurred primarily and substantially in
20 California. Decisions concerning the retention and safeguarding the disclosure of user information
21 were made in California, Facebook maintains all or a substantial part of its computer systems
22 containing user information in California, and the disclosure of its users’ information took place
23 primarily and substantially in California.

24 84. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiffs seek an order of this Court
25 permanently enjoining Facebook from continuing to engage in the unfair and unlawful conduct
26 described herein. Plaintiffs seek an order requiring Facebook to (1) immediately cease the unlawful
27 practices stated in this Complaint; and (2) awarding Plaintiffs and the Class reasonable costs and
28 attorneys’ fees pursuant to Cal. Code Civ. Proc. § 1021.5.

COUNT IV

(Violation of California’s Computer Crime Law (“CCCL”), Cal. Penal Code § 502)

85. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

86. Facebook knowingly accessed and without permission used any data, computer, computer system, or computer network in order to execute a scheme or artifice to deceive and/or to wrongfully control or obtain money, property, or data in violation of Cal. Penal Code § 502(c)(1). Facebook did so by accessing and sharing with advertisers the personal information of Plaintiffs and Class members in order to deceive Facebook users and/or to wrongfully obtain money from advertisers and more data from Facebook users.

87. Facebook knowingly accessed and without permission took, copied, or made use of Plaintiffs’ and Class members’ personal information in violation of § 502(c)(2).

88. Facebook knowingly and without permission used or caused to be used computer services by impermissibly accessing, collecting, and transmitting Plaintiffs’ and Class members’ personal information in violation of § 502(c)(3).

89. Facebook knowingly and without permission provided or assisted in providing a means of accessing a computer, computer system, or computer network by creating a system that allowed advertisers to impermissibly access, collect, and transmit Plaintiffs’ and Class members’ personal information in violation of § 502(c)(6).

90. Facebook knowingly and without permission accessed or caused to be accessed Plaintiffs’ and Class members’ computers and/or computer networks by impermissibly divulging Plaintiffs’ and Class members’ personal information to advertisers in violation of § 502(c)(7).

91. Facebook knowingly and without permission introduced a computer contaminant, as defined in § 502(b)(10), by introducing computer instructions designed to record or transmit to advertisers Plaintiffs’ and the Class’s personally-identifiable information on Facebook’s computer networks without the intent or permission of Plaintiffs or the Class in violation of § 502(c)(8).

92. As a direct and proximate result of Facebook’s violation of § 502, Facebook caused loss to Plaintiffs and the Class members in an amount to be proven at trial. Plaintiffs and the Class are entitled to the recovery of attorneys’ fees pursuant to § 502(e).

1 c. In violation of § 1770(a)(16) by representing that the subject of a transaction has
2 been supplied in accordance with a previous representation when it has not.

3 98. Plaintiffs and the Class have suffered harm as a direct and proximate result of the
4 Facebook’s violations of law and wrongful conduct.

5 99. Under Cal. Civ. Code § 1780(a) & (b), Plaintiffs and the Class seek injunctive relief
6 requiring Facebook to cease and desist the illegal conduct described herein, and any other
7 appropriate remedy for violations of the CLRA. For the sake of clarity, Plaintiffs explicitly disclaim
8 any claim for damages under the CLRA at this time.

9
10 **COUNT VI**

11 **(Breach of Contract)**

12 100. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

13 101. In order to register for and use its social-networking website, Facebook required that
14 Plaintiffs and the Class affirmatively assent to its Terms and Conditions and Privacy Policy (the
15 “Agreement”).

16 102. The Agreement’s provisions constitute a valid and enforceable contract between
17 Plaintiffs and the Class on the one hand, and Facebook on the other.

18 103. Under the Agreement, Plaintiffs and the Class transmitted sensitive personally-
19 identifiable information to Facebook in exchange for Facebook’s promise that it would not share that
20 personal information with third parties, including but not limited to advertisers, without their
21 authorization.

22 104. Facebook users pay for Facebook’s services with their personal information.
23 Facebook’s users exchange something valuable—access to their personal information—for
24 Facebook’s services and Facebook’s promise to safeguard that personal information. In particular,
25 Facebook promises that any personal information submitted by its users will only be disclosed to
26 advertisers in the specific ways and circumstances set out in Facebook’s privacy policy and with
27 user consent.

28 105. Facebook collects revenues in large part because the personal information submitted
by its users increases the value of Facebook’s advertising services. Because Facebook has access to

1 highly personal information about its users, Facebook’s advertising platform is particularly attractive
2 to advertisers and marketers who can and do use that personal information to deliver highly-targeted
3 ads to Facebook’s users. In this regard, Facebook’s services are vehicles to acquire personal
4 information about consumers in order to sell that personal information to advertisers.

5 106. If not for the inherent and identifiable value of access to personal consumer
6 information, Facebook would be much less profitable. Thus, its promises concerning the
7 safeguarding of the personal information Facebook receives from its users in exchange for its
8 services are vital to its business and its users.

9 107. Facebook’s practices—providing services to consumers and profiting from the sale of
10 personal information to advertisers—have helped Facebook achieve a valuation exceeding \$30
11 billion.

12 108. Facebook materially breached the terms of the Agreement through its unlawful
13 conduct alleged herein, including its disclosure of Plaintiffs’ and the Class’s personal information to
14 its advertiser partners.

15 109. As a result of Facebook’s misconduct and breach of the Agreement described herein,
16 Plaintiffs and the Class suffered injury.

17 **COUNT VII**

18 **(Violation of Cal. Civ. Code §§ 1572 & 1573)**

19 110. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

20 111. Cal. Civ. Code § 1572 provides in relevant part that actual fraud exists when a party
21 to a contract suppresses “that which is true, by one having knowledge or belief of the fact” “with
22 intent to deceive another party thereto, or to induce him to enter into the contract.”

23 112. Cal. Civ. Code § 1573 provides in relevant part that constructive fraud exists “[i]n
24 any such act or omission as the law specially declares to be fraudulent, without respect to actual
25 fraud.”

26 113. Facebook violated § 1572 through its repeated and explicit false assertions that it
27 would not share the identity of its users with its advertisers without consent, as described herein.
28 Facebook further violated this section by suppressing its knowledge of this fact.

1
2 114. Additionally and/or alternatively, Facebook violated § 1573 by breaching its duty to
3 protect its users' identities from its advertisers and gaining an advantage in doing so, by misleading
4 its users to their prejudice, as described herein.

5 115. Plaintiffs, on behalf of themselves and the Class, seek damages from Facebook,
6 including but not limited to disgorgement of all proceeds Facebook obtained from its unlawful
7 business practices.

8 **COUNT VIII**

9 **(Unjust Enrichment (In the Alternative))**

10 116. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

11 117. Plaintiffs and the Class have conferred a benefit upon Facebook. Facebook has
12 received and retained money belonging to Plaintiffs and the Class as a result of sharing its users'
13 personal information with its advertisers without their consent, as described herein.

14 118. Facebook appreciates or has knowledge of said benefit.

15 119. Under principles of equity and good conscience, Facebook should not be permitted to
16 retain money belonging to Plaintiffs and the Class that it unjustly received as a result of its actions.

17 120. Plaintiffs and the Class have suffered loss as a direct result of Facebook's conduct.

18 121. Plaintiffs, on their own behalf and on behalf of the Class, seek the imposition of a
19 constructive trust on and restitution of the proceeds of Facebook received as a result of its conduct
20 described herein, as well as attorney's fees and costs pursuant to Cal. Civ. Proc. Code § 1021.5.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs, individually and on behalf of the Class, pray for the following
23 relief:

24 A. Certify this case as a class action on behalf of the Class defined above, appoint
25 Plaintiffs Gould and Robertson as class representatives, and appoint their counsel as class co-
26 counsel;

27 B. Declare that Facebook's actions, as described herein, violate the ECPA (18 U.S.C. §
28 2510 *et seq.*), the SCA (18 U.S.C. § 2701 *et seq.*), California Unfair Competition Law (Cal. Bus. &
Prof. Code § 17200, *et seq.*), the Computer Crime Law (Cal. Penal Code § 502), and the Consumer

1 Legal Remedies Act (Cal. Bus. & Prof. Code § 1750), and constitute breach of contract, fraud, and
2 unjust enrichment;

3 C. Awarding injunctive and other equitable relief as is necessary to protect the interests
4 of Plaintiffs and the Class, including, *inter alia*, an order prohibiting Facebook from engaging in the
5 wrongful and unlawful acts described herein;

6 D. Disgorge Facebook of all revenue earned from displaying third-party advertising on
7 Facebook.com during the class period;

8 E. Awarding damages, including statutory damages where applicable, to Plaintiffs and
9 the Class in an amount to be determined at trial;

10 F. Awarding all economic, monetary, actual, consequential, and compensatory damages
11 caused Facebook’s conduct, and if its conduct is proved willful, award Plaintiffs and the Class
12 exemplary damages;

13 G. Award restitution against Facebook for all money to which Plaintiffs and the Class
14 are entitled in equity;

15 H. Awarding Plaintiffs and the Class their reasonable litigation expenses and attorneys’
16 fees;

17 I. Awarding Plaintiffs and the Class pre- and post-judgment interest, to the extent
18 allowable; and

19 J. Awarding such other and further relief as equity and justice may require.
20

21 Dated: October 11, 2010

Respectfully submitted,
NASSIRI & JUNG LLP

22
23 /s/ Kassra P. Nassiri
Kassra P. Nassiri
Attorneys for Plaintiffs and the Putative Class

24
25 Dated: October 11, 2010

Respectfully submitted,
EDELSON MCGUIRE, LLP

26 /s/ Michael J. Aschenbrener
27 Michael J. Aschenbrener
Attorneys for Plaintiffs and the Putative Class
28

EXHIBIT B

1 DONALD AMAMGBO
2 AMAMGBO & ASSOCIATES
3 P. O BOX 13315, PMB # 148
4 OAKLAND, CA 94661
5 510 615 6000/FAX: 510 615 6025

6 REGINALD TERRELL
7 THE TERRELL LAW GROUP
8 P. O BOX 13315, PMB # 148
9 OAKLAND, CA 94661
10 510 237 9700/FAX: 510 237 4616

11 SYDNEY J. HALL, ESQ., SBN: 158151
12 LAW OFFICES OF SYDNEY J. HALL
13 1308 Bayshore Highway, Suite 220
14 Burlingame, CA 94010
15 Telephone: (650) 342-1830
16 Facsimile: (650) 342-6344
17 Email: sydneyhalllawoffice@yahoo.com

18 Attorneys for Plaintiff

ORIGINAL
FILED

DEC 20 2010

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

E-filing

19 UNITED STATES DISTRICT COURT

ADR

20 NORTHERN DISTRICT OF CALIFORNIA

21 ZETHA NOBLE, individually and on behalf of all
22 others similar situated,

C10-05781 HRL

No.

23 Plaintiff,

CIVIL - CLASS ACTION

24 vs.

JURY TRIAL DEMANDED

25 FACEBOOK INC., a Delaware corporation,

26 Defendant.

27 Plaintiff Zetha Noble, by and through her attorneys, upon personal knowledge as to
28 herself and her own acts, and upon information and belief as to all other matters, alleges as
follow:

NATURE OF THE ACTION

1. Plaintiff Zetha Noble ("Plaintiff" or "Ms. Noble"), brings this class action
complaint against Facebook, Inc. ("Facebook") for sharing its users' sensitive personally

1 identifiable information (“PII”), including users’ real names, place of birth, current city, schools
2 attended, friend lists, pictures, genders, and more with Facebook’s advertising partners, in
3 violation of its own Privacy Policy and accepted industry standards.

4 **PARTIES**

5 2. Plaintiff Zetha Noble is a resident of Alameda County, California. She is a
6 registered user of Facebook, Inc.’s services and has been since at least 2008.

7 3. Defendant Facebook, Inc. is a Delaware corporation headquartered in San Clara
8 County, California, at 1601 South California Avenue, Palo Alto, City 94304. Facebook does
9 business throughout the State of California and the nation.

10 **JURISDICTION AND VENUE**

11 4. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §
12 1332(d), because (a) at least one member of the putative class is a citizen of a state different from
13 Defendant, (b) the amount in controversy exceeds \$5,000,000, exclusive of interests and costs,
14 and (c) none of the exceptions under the subsection apply to this action.

15 5. Personal jurisdiction and venue are proper because Facebook is corporation
16 headquartered in Santa Clara County and/or because the improper conduct alleged in the
17 Complaint occurred in, was directed from, and/or emanated or exported from California.

18 **INTRADISTRICT ASSIGNMENT**

19 6. Pursuant to Local Civil Local Rule 3-2(e), this case shall be assigned to the San
20 Jose Division.

21 **FACTS**

22 **About Facebook**

23 7. Facebook is the world’s largest social networking website, with over 400 million
24 registered users worldwide.

25 8. According to Facebook, its “mission is to give people the power to share and
26 make the world more open and connected.” (www.facebook.com/facebook?v=info%ref=pf) To
27 accomplish that mission, Facebook allows anyone with access to a computer and Internet
28 connection to register for its services free of charge.

1 9. One of the only requirements Facebook places on its registrants is that they use
2 their actual names, rather than create a “screen name” or “user name,” as is commonplace with
3 other website registrations.

4 10. Once registered, a Facebook user may post a multitude of information to their own
5 personal “Facebook profile” page, including their birth date, place of birth, current and past
6 addresses, present and past employment, relationship status, personal pictures, videos, and more.
7 Facebook, in fact, presents users with pre-made forms in which users may enter this type of
8 personal information.

9 11. As of May 21, 2010, Facebook’s default privacy settings allow everyone on the
10 internet, including advertisers, to see a user’s real name, gender, picture, friends, networks, wall
11 posts, photos, and likes, among other data.

12 12. In many ways, Facebook is accomplishing its official mission. Facebook users
13 share unprecedented personal information through the service. And while users may do so in
14 order to connect with other Facebook users, they are also sharing this information with Facebook.
15 And all this personal information is valuable to Facebook because it is valuable to advertisers.

16 **Advertising on Facebook**

17 13. Because users share so much information through Facebook, Facebook is able to
18 use that data to help its advertisers target their ads to finely tailored audiences.

19 14. This targeting may help explain Facebook’s success in generating advertisement
20 impressions. According to comScore’s Ad Metrix services, Facebook now serves more ad
21 impressions than any other online entity. comScore reports that in the first quarter of 2010,
22 Facebook served up over 176 billion display ad impressions, which accounts for 16.2% of the
23 market.*

24 15. In fact, the information Facebook possesses allows its advertisers to target their
25 ads based on age, city of residence, gender, and interests, such as mountain biking for example.
26 This allows a local mountain bike maker to only pay for ads that Facebook serves to 20 to 30-
27 year old men in Moab, Utah who have expressly shared with Facebook an interest in mountain
28 biking.

1 16. The only thing better for the advertiser would be to know the true identity of that
2 20-something male mountain biker. But Facebook's own Privacy Policy prohibits this. It states:

3 **5. How We Use Your Information**

4 **To serve personalized advertising to you.** We don't share your information
5 with advertisers without your consent...

6 17. As a result, while Facebook advertisers are able to engage in very targeting
7 advertising, Facebook promises not to share anyone's true identity or personal information with
8 any advertisers.

9 18. Facebook requires its users to agree to this Privacy Policy upon registering with
10 the site.

11 **Facebook violates its own Privacy Policy**

12 19. Unfortunately for Facebook users, Facebook-in violation of its own Privacy
13 Policy-shares its users' information with third-party advertisers without consent.

14 20. When a Facebook user clicks on an advertisement posted on Facebook's website,
15 Facebook sends what is known as a "Referrer Header" to the relevant advertiser. The Referrer
16 Header is similar in many ways to a web address that a typical Internet user might use to navigate
17 to a particular website, except that the Referrer Headers sent by Facebook to its advertisers
18 include the user ID of the user who clicked the ad.

19 21. Because Facebook requires its users to use their real names, navigating to any
20 users' site will reveal that user's real name, and many times much more.

21 22. Accordingly, once an advertiser receives the Referrer Header containing a
22 Facebook user ID, an advertiser can simply navigate back to the specific user's profile and obtain
23 any personal information the user has made publicly available. And remember, the default
24 privacy settings that many users never change make the users name, photo, and more available.

25 23. Thus, Facebook advertisers are able to gain the ultimate demographic information:
26 users' true identities, including real name, gender, friends, interests, and more. All in violation of
27 Facebook's own Privacy Policy.

28 24. The importance of this systematic practice of privacy violations cannot be

1 understated. As noted Harvard professor, Ben Edelman, stated on *NBC Nightly News*, “[I]t’s like
2 giving away your social security number. Once someone has this code, they can look up
3 everything else that Facebook knows about you.”**

4 **Facebook has been on notice of this problem, but failed to fix it.**

5 25. While the story regarding this problem broke on May 21, 2010 in the *Wall Street*
6 *Journal****, Facebook was put on notice of this problem in August 2009.

7 26. In August 2009, Balachander Krishnamurthy and Craig E. Wills published an
8 article titled, “On the Leakage of Personally Identifiable Information Via Online Social
9 Networks.”**** In this article, the authors detail the exact manner in which Facebook shares
10 with its advertisers information it promises to protect. The authors also sent this article to
11 Facebook.

12 27. Facebook confirmed its knowledge of the violation in September 2009, as reported
13 by Wendy Davis of *Media Post*,***** yet it did not fix the problem, which would have been easy
14 to do.

15 28. Troublingly, while Facebook knew of the problem, it continued to make public
16 statements to the contrary.

17 29. On April 5, 2010, Facebook stated in an official blog post:

18 We don’t share your information with advertisers unless you tell us
19 to (e.g.) get a sample, hear more, or enter a contest). Any assertion
20 to the contrary is false. Period. Instead, we enable advertisers to
21 target anonymized demographics and attributes. That is, a company
22 selling boats can target people between 40 and 50 years old who
23 expressed an interest in boating. However, we never provide the
24 advertiser any names or other information about the people who are
25 shown, or even who click on, the ads.

26 30. As demonstrated throughout this Complaint, this statement is not only false, but is
27 knowingly and willingly false.

28 31. Also troubling is the fact that problem would have been easy to fix or prevent

1 from ever occurring by making minor adjustments to its software.*****

2 **FACTS RELATING TO PLAINTIFF**

3 32. During the relevant time period, Plaintiff Noble was a registered account holder
4 with Facebook. Plaintiff registered with Facebook prior to December 31, 2008.

5 33. During the relevant time period, Plaintiff clicked on at least one third-party
6 advertisement displayed on Facebook.com

7 **CLASS ALLEGATIONS**

8 34. Plaintiff Noble brings this action pursuant to Fed. R. Civ. P. 23(b)(2) and (3) on
9 behalf of herself and a class of similarly situated individuals, defined as follows:

10 All Facebook users in the United States who clicked on a third-
11 party advertisement displayed on Facebook.com between February
12 4, 2004 and May 21, 2010.

13 Excluded from the class are Defendant, its legal representatives, assigns, and successors, and any
14 entity in which Defendant has controlling interest. Also excluded is the judge to whom this case
15 is assigned and the judge's immediate family.

16 35. The class consists of millions of individuals and other entities, making joinder
17 impractical.

18 36. Plaintiff's claims are typical of the claims of all of the other class members.

19 37. Plaintiff will fairly and adequately represent and protect the interests of the other
20 class members. Plaintiff has retained counsel with substantial experience in prosecuting complex
21 litigation and class actions. Plaintiff and her counsel are committed to vigorously prosecuting this
22 action on behalf of the class members, and have the financial resources to do so. Neither Plaintiff
23 nor her counsel has any interest adverse to those of the other class members.

24 38. Absent a class action, most class members would find the cost of litigating their
25 claims to be prohibitive and will have no effective remedy. The class treatment of common
26 questions of law and fact is also superior to multiple individual actions or piecemeal litigation in
27 that it conserves the resources of the courts and the litigants, and promotes consistency and
28 efficiency of adjudication.

1 39. Facebook has acted and failed to act on grounds generally applicable to Plaintiff
2 and the other class members, requiring the Court's imposition of uniform relief to ensure
3 compatible standards of conduct toward the class members.

4 40. The factual and legal bases of Facebook's liability to plaintiff and to the other
5 class members. Plaintiff and the other class members have all suffered harm as a result of
6 Facebook's unlawful conduct.

7 41. There are many questions of law and fact common to the claims of Plaintiff and
8 the other class members, and those questions predominate over any questions that may affect
9 individual class members. Common questions for the class include but are not limited to the
10 following:

11 (a) Whether Facebook violated its Terms of Service and Privacy Policy by
12 making its users' personal information available to third parties without
13 authorization;

14 (b) Whether Facebook's conduct described herein violated California's Unfair
15 Competition Law (Cal. Bus. & Prof. code § 17200, *et seq.*);

16 (c) Whether Facebook's conduct described herein violated California's
17 Computer Crime Law (Cal. Penal Code § 502);

18 (d) Whether Facebook's conduct described herein violated the California
19 Legal Remedies Act (Cal. Civ. Code § 1750);

20 (e) Whether Facebook's conduct described herein constitutes a breach of
21 contract;

22 (f) Whether Facebook's conduct described herein constitutes a breach of the
23 implied covenants of good faith and fair dealing;

24 (g) Whether Facebook's conduct described herein constitutes a breach of
25 implied contracts;

26 (h) Whether Facebook's conduct described herein was negligent and/or
27 grossly negligent;

28 (i) Whether Facebook's conduct described herein constitutes negligence per

1 se;

2 42. Plaintiff reserves the right to revise the above class definition based on facts
3 learned in discovery.

4 **FIRST CAUSE OF ACTION**

5 **Violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200**
6 **(On Behalf of Plaintiff and the class)**

7 43. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

8 44. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200,
9 *et seq.*, protects both consumers and competitors by promoting fair competition in commercial
10 markets for goods and services.

11 45. The UCL prohibits any unlawful, unfair or fraudulent business act or practice. A
12 business practice need only meet one of the three criteria to be considered unfair competition. An
13 unlawful business practice is anything that can properly be called a business practice that at the
14 same time is forbidden by law.

15 46. As described herein, Facebook's disclosure of its users' personal information to
16 third-party advertisers without their authorization is a violation of UCL.

17 47. Facebook has violated the "unlawful" prong of the UCL in that Defendant's
18 conduct violated the Consumer Legal Remedies Act (Cal. Civ. Code § 1750 *et seq.*), the
19 California Computer Crime Law (Cal. Penal Code § 502), and the California Security Breach
20 Information Act (Cal. Civ. Code § 1798.80, *et seq.*).

21 48. Facebook violated the fraudulent prong of the UCL by explicitly representing in
22 its Privacy Policy and in subsequent public statements that it would not make users' personal
23 information available to any third-party without authorization. Facebook used those
24 misrepresentations to induce users to submit their personally identifiable information to its
25 website. Facebook then knowingly transmitted that information to third parties without its users'
26 authorizations.

27 49. Facebook violated the unfair prong of the UCL by gaining control over its users'
28 PII under false pretenses.

50. Defendant's unfair or deceptive practices occurred primarily and substantially in

1 California. Decisions concerning the retention and safeguarding the disclosure of user
2 information were made in California, Facebook maintains all or a substantial part of its computer
3 systems containing user information in California, and the disclosure of its users' information
4 took place primarily and substantially in California.

5 51. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff seeks an order of this Court
6 permanently enjoining Facebook from continuing to engage in the unfair and unlawful conduct
7 described herein. Plaintiff seeks an order requiring Facebook to (1) immediately cease the
8 unlawful practices stated in this Complaint; and (2) awarding Plaintiff and the class reasonable
9 costs and attorneys' fees pursuant to Cal. Code Civ. Proc. § 1021.5.

10 **SECOND CAUSE OF ACTION**

11 **Violation of California's Computer Crime Law ("CCCL"), Cal. Penal Code § 502
12 (On Behalf of Plaintiff and the class)**

13 52. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

14 53. Facebook knowingly accessed and without permission used any data, computer,
15 computer system, or computer network in order to execute a scheme or artifice to deceive and/or
16 wrongfully control or obtain money, property or data in violation of § 502(c)(1). Facebook did so
17 by accessing and sharing with advertisers the personal information of Plaintiff and class members
18 in order to deceive Facebook users and/or to wrongfully obtain money from advertisers and more
19 data Facebook users.

20 54. Facebook knowingly accessed and without permission took, copied, or made use
21 of Plaintiff and class members' personal information in violation of § 502(c)(2).

22 55. Facebook knowingly and without permission used or caused to be used computer
23 services by impermissibly accessing, collecting, and transmitting Plaintiff and class members'
24 personal information in violation of § 502(c)(3).

25 56. Facebook knowingly and without permission provided or assisted in providing a
26 means of accessing a computer, computer system, or computer network by creating a command
27 that allowed it to impermissibly access, collect, and transmit Plaintiff and class members'
28 personal information in violation of § 502(c)(6).

57. Facebook knowingly and without permission accessed or caused to be accessed

1 Plaintiff and class members' computers and/or computer networks by impermissibly collecting
2 Plaintiff and class members' personal information in violation of § 502(c)(8).

3 58. Facebook knowingly and without permission introduced a computer contaminant,
4 as defined in § 502(b)(10), by introducing computer instructions designed to record or transmit
5 information-Plaintiff and class members' personal information-on Plaintiff and class members'
6 computers and/or computer networks without the intent or permission of the owners of that
7 information in violation § 502(c)(8).

8 59. As a direct and proximate result of Facebook's violation of § 502, Facebook
9 caused loss to Plaintiff and the class members in an amount to be proven at trial. Plaintiff and the
10 class are entitled to the recovery of attorneys' fees pursuant to § 502(e).

11 60. Plaintiff and class members have also suffered irreparable injury as a result of
12 Defendant's unlawful conduct, including the collection and sharing of their personal information.
13 Additionally, because the stolen information cannot be returned, the harm from the security
14 breach is ongoing and compounding. Accordingly, Plaintiff and the class have no adequate
15 remedy at law, entitling them to injunctive relief.

16 **THIRD CAUSE OF ACTION**

17 **Violation of the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.***
18 **(On Behalf of Plaintiff and the class)**

19 61. Plaintiff incorporates the foregoing allegations as fully set forth herein.

20 62. The Consumers Legal Remedies Act prohibits the act, use or employment by any
21 person of any deception, fraud, false pretense, false promise, misrepresentation, concealment,
22 suppression or omission of any material fact with intent that others rely upon such act in
23 connection with the sale or advertisement of any merchandise whether or not any person has in
24 fact been misled, deceived or damaged thereby.

25 63. As described within, Facebook has engaged in deceptive practices, unlawful
26 methods of competition, and/or unfair acts as defined by Cal. Civ. Code §§ 1750, *et seq.*, to the
27 detriment of Plaintiff and the class.

28 64. Facebook, acting with knowledge, intentionally and unlawfully brought harm
upon Plaintiff and the class by deceptively inducing Plaintiff and the class to register with

1 Facebook and click on advertisements based upon deceptive and misleading representations that
2 it would not disclose their personal information to third-parties without authorization.
3 Specifically, Facebook violated Cal. Civ. Code § 1750 in at least the following respects:

- 4 (a) In violation of § 1770(a)(5) by representing that goods or services have
5 characteristics and benefits that they do not have;
- 6 (b) In violation of § 1770(a)(14) by representing that a transaction confers or involves
7 rights, remedies, or obligations which it does not have or involve, or which are
8 prohibited by law;
- 9 (c) In violation of § 1770(a)(16) by representing that the subject of a transaction has
10 been supplied in accordance with a previous representation when it has not.

11 65. Plaintiff and the class have suffered harm as a direct proximate result of the
12 Facebook's violations of law and wrongful conduct.

13 66. Under Cal. Civ. Code § 1780(a) & (b), Plaintiff and the class seek injunctive relief
14 requiring Defendant to cease and desist the illegal conduct described herein, and any other
15 appropriate remedy for violations of the CLRA. For the sake of clarity, Plaintiff explicitly
16 disclaims any claim for damages under the CLRA at this time.

17 **FOURTH CAUSE OF ACTION**
18 **Breach of Contract**
19 **(On Behalf of Plaintiff and the class)**

20 67. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

21 68. In order to register for and use its social networking website, Facebook required
22 that Plaintiff and the class affirmatively assent to its Terms and Conditions and Privacy Policy
(the "Agreement").

23 69. The Agreement's provisions constitute a valid and enforceable contract between
24 Plaintiff and the class on the one hand, Facebook on the other.

25 70. Under the Agreement, Plaintiff and the class transmitted several pieces of
26 sensitive PII to Facebook in exchange for Facebook's promise that it would not share their
27 personal information with third parties, including but not limited to advertisers, without their
28 authorization.

1 71. Defendant materially breached the terms of the Agreement through its unlawful
2 conduct alleged herein, including its disclosure of Plaintiff and the class's personal information to
3 its advertiser partners.

4 72. As a result of Defendant's misconduct and a breach of the Agreement described
5 herein, Plaintiff and the class suffered injury.

6 **FIFTH CAUSE OF ACTION**
7 **Breach of the Implied Covenant of Good Faith and Fair Dealing**
8 **(On Behalf of Plaintiff and the class)**

9 73. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

10 74. In order to use Defendant's social-networking website, Plaintiff and the class
11 affirmatively assented to Defendant's Terms and Conditions and Privacy Policy.

12 94. The Agreement's provisions constitute a valid and enforceable contract between
13 Plaintiff and the class on the one hand, and Facebook on the other.

14 95. Implicit in the Agreement were contract provisions that prevented Facebook from
15 engaging in conduct that frustrated or injured Plaintiff's and the class's rights to receive the
16 benefits of the Agreement.

17 96. Defendant's obligation to prevent the disclosure of Plaintiff and the class's
18 personal information to third-parties without their authorization was a material term of the
19 Agreement.

20 97. Furthermore, implicit in the terms of the Agreement was Facebook's obligation to
21 comply with Cal. Bus. & Prof. Code §§ 17200, *et seq.*, Cal. Penal Code § 502, Cal. Civ. Code §§
22 1798.80, *et seq.*, and Cal. Civ. Code §§ 1750, *et seq.*

23 98. Defendant breached the implied covenant of good faith and fair dealing by
24 disclosing Plaintiff and the class's personal information to third-parties without their
25 authorization, and further by failing to fully comply with the proscriptions of applicable statutory
26 law.

27 99. Defendant's misconduct and breach of the implied covenant of good faith and fair
28 dealing as described herein resulted in injury to Plaintiff and the class.

SIXTH CAUSE OF ACTION
Breach of Implied Contracts
(On Behalf of Plaintiff and the class)

1
2
3 100. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

4 101. In order to register for Facebook's social-networking website, Plaintiff and the
5 class transmitted several pieces of sensitive pieces of sensitive PII to Facebook.

6 102. By providing that sensitive PII and upon Facebook's acceptance of such
7 information, Plaintiff and the class, on the one hand, and Defendant, on the other hand, entered
8 into implied contracts whereby Facebook was obligated not to disclose that information to third-
9 parties without Plaintiff and the class's authorization.

10 103. Without such implied contracts, Plaintiff and the class would not have provided
11 their personal information to Defendant.

12 104. By disclosing Plaintiff and the class's sensitive PII to third-parties without their
13 authorization, Facebook breached its implied contracts with Plaintiff and the class.

14 105. Facebook's breach and other misconduct described herein resulted in injury to
15 Plaintiff and the class.

SEVENTH CAUSE OF ACTION
Violation of Cal. Civ. Code §§ 1572 & 1573
(On Behalf of Plaintiff and the class)

16
17 106. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

18 107. Cal. Civ. Code § 1572 provides in relevant part that actual fraud exists when a
19 party to a contract suppresses "that which is true, by one having knowledge or belief of the fact"
20 "with intent to deceive another party thereto, or induce him to enter into the contract."

21 108. Cal. Civ. Code § 1573 provides in relevant part that constructive fraud exists "[i]n
22 any such act or omission as the law specially declares to be fraudulent, without respect to actual
23 fraud."

24 109. Facebook violated § 1572 through its positive assertions that it would not share
25 the identity of its users with its advertisers without consent, as described herein. Facebook further
26 violated this section by suppressing its knowledge of this fact.

27 110. Additionally and/or alternatively, Facebook violated § 1573 by breaching its duty
28

1 to protect its users' identities from its advertisers and gaining an advantage in doing so, by
2 misleading its users to their prejudice, as described herein.

3 111. Plaintiff, on behalf of herself and the class, seeks damages from Facebook,
4 including but not limited to disgorgement of all proceeds Facebook obtained from its unlawful
5 business practices.

6 **EIGHTH CAUSE OF ACTION**
7 **Unjust Enrichment (In the Alternative)**
8 **(On Behalf of Plaintiff and the class)**

9 112. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

10 113. Plaintiff and the class have conferred a benefit upon Facebook. Facebook has
11 received and retained money belonging to Plaintiff and the class as a result of sharing its users'
12 personal information with its advertisers without their consent, as described herein.

13 114. Facebook appreciates or has knowledge of said benefits.

14 115. Under principles of equity and good conscience, Facebook should not be
15 permitted to retain money belonging to Plaintiff and the class that it unjustly received as a result
16 of its actions.

17 116. Plaintiff and the class have suffered loss as a direct result of Facebook's conduct.

18 117. Plaintiff, on her own behalf and on behalf of the class, seeks the imposition of a
19 constructive trust on and restitution of the proceeds of Facebook received as a result of its
20 conduct described herein, as well as attorneys' fees and costs pursuant to Cal. Civ. Proc. Code §
21 10121.5/

22 **NINTH CAUSE OF ACTION**
23 **Negligence**
24 **(On Behalf of Plaintiff and the class)**

25 118. In order to register for Facebook's social-networking website, Plaintiff and the
26 class transmitted several pieces of sensitive PII to Defendant.

27 119. By agreeing to accept and the class's sensitive PII, Facebook assumed a duty,
28 which required it to exercise reasonable care in protecting that information from its unauthorized
disclosure to third-parties.

120. Defendant failed to protect Plaintiff and the class's sensitive PII from its

1 unauthorized disclosure to third-parties, including by failing to ensure that user IDs and other
2 identifying information that would allow third-parties to navigate to individual users' profile
3 pages were not included in the referrer URL's transmitted to its advertiser partners.

4 121. By failing to take appropriate measures to protect Plaintiff and the class's sensitive
5 PII from unauthorized disclosure described herein, Defendant's conduct was grossly negligent
6 and departed from all reasonable standards of care.

7 122. As a direct and proximate result of Facebook's conduct described herein, Plaintiff
8 and the class's sensitive PII was disclosed to third-parties without their authorization.

9 123. That disclosure of Plaintiff and the class's sensitive PII was reasonably
10 foreseeable by Defendant.

11 124. Neither Plaintiff nor the other class members contributed to the unauthorized
12 disclosure of their sensitive PII described herein.

13 125. As a direct and proximate result of Facebook's misconduct described herein,
14 Plaintiff and the class were injured.

15 **TENTH CAUSE OF ACTION**
16 **Negligence Per Se**
17 **(On Behalf of Plaintiff and class)**

18 126. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

19 127. Defendant's violations of Cal. Bus. & Prof. Code §§ 17200, *et seq.*, Cal. Penal
20 Code § 502, Cal. Civ. Code §§ 1798.80, *et seq.*, and Cal. Civ. Code §§ 1750, *et seq.*, resulted in
21 injury to Plaintiff and the class.

22 128. The harm Defendant caused to Plaintiff and the class are injuries that result from
23 the type of occurrences those statutes were designed to prevent.

24 129. Plaintiff and the class are the type of persons for whose protection those statutes
25 were adopted.

26 130. Defendant's violations of the foregoing statutes as described herein resulted in
27 injury to Plaintiff and the class.
28

1 WHEREFORE, Plaintiff, individually and on behalf of the class, prays for the following
2 relief:

3 A. Certify this case as a class action on behalf of the class defined above appoint
4 Plaintiff Noble as class representative, and appoint her counsel as class counsel;

5 B. Declare that Facebook's actions, as described herein, violate the California Unfair
6 Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.*), the Computer Crime Law (Cal.
7 Penal Code § 502), the California Security Breach Information Act (Cal. Civ. Code § 1798.80, *et*
8 *seq.*), and the Consumer Legal Remedies Act (Cal. Bus. & Prof. Code § 1750), and constitute
9 breach of contract, breach of implied covenant of good faith and fair dealing, breach of implied
10 contract, fraud, unjust enrichment, negligence, and negligence per se;

11 C. Awarding injunctive and other equitable relief as is necessary to protect the
12 interests of the class, including, *inter alia*, an order prohibiting Facebook from engaging in the
13 wrongful and unlawful acts described herein;

14 D. Disgorge Facebook of all revenue earned from displaying third-party advertising
15 on Facebook.com during the class period;

16 E. Awarding damages, including statutory damages where applicable, to Plaintiff and
17 the class in an amount to be determined at trial;

18 F. Awarding all economic, monetary, actual, consequential, and compensatory
19 damages caused Facebook's conduct, and if its conduct is proved willful, award Plaintiff and the
20 class exemplary damages;

21 G. Award restitution against Facebook for all money to which Plaintiff and the class
22 are entitled in equity;

23 H. Awarding Plaintiff and the class pre- and post-judgment interest, to the extent
24 allowable; and

25 J. Awarding such other and further relief as equity and justice may require.
26
27
28

DEMAND FOR JURY TRIAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a jury trial as to all issues so triable.

Date: December 20, 2010

Respectfully submitted,

By:  _____
REGINALD TERRELL

DONALD AMAMGBO
AMAMGBO & ASSOCIATES
P. O BOX 13315, PMB # 148
OAKLAND, CA 94661
510 615 6000/FAX: 510 615 6025

REGINALD TERRELL
THE TERRELL LAW GROUP
P. O BOX 13315, PMB # 148
OAKLAND, CA 94661
510 237 9700/FAX: 510 237 4616

SYDNEY J. HALL, ESQ., SBN: 158151
LAW OFFICES OF SYDNEY J. HALL
1308 Bayshore Highway, Suite 220
Burlingame, CA 94010
Telephone: (650) 342-1830
Facsimile: (650) 342-6344

1 COOLEY LLP
MICHAEL G. RHODES (116127)
2 (rhodesmg@cooley.com)
MATTHEW D. BROWN (196972)
3 (brownmd@cooley.com)
JAMES M. PENNING (229727)
4 (jpenning@cooley.com)
101 California Street
5 5th Floor
San Francisco, CA 94111-5800
6 Telephone: (415) 693-2000
Facsimile: (415) 693-2222

7 Attorneys for Defendant
8 FACEBOOK, INC.

THE TERRELL LAW GROUP
REGINALD TERRELL
P.O. Box 13315, PMB # 148
Oakland, CA 94661
Telephone: (510) 237-9700
Facsimile: (510) 237-4616

AMAMGBO & ASSOCIATES
DONALD AMAMGBO
P.O. Box 13315, PMB # 148
Oakland, CA 94661
Telephone: (510) 615-6000
Facsimile: (510) 615-6025

LAW OFFICES OF SYDNEY J. HALL
SYDNEY J. HALL, ESQ. (158151)
(sydneyhallawoffice@yahoo.com)
1308 Bayshore Highway, Suite 220
Burlingame, CA 94010
Telephone: (650) 342-1830
Facsimile: (650) 342-6344

Attorneys for Plaintiff
ZETHA NOBLE in *Noble v. Facebook, Inc.*,
No. 10-cv-05781-HRL

14 [Additional Counsel Listed In Signature Block]

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

20 IN RE:
21 FACEBOOK PRIVACY LITIGATION

Case No. 10-cv-02389-JW

**STIPULATION IN SUPPORT OF
DEFENDANT FACEBOOK, INC.'S
ADMINISTRATIVE MOTION TO RELATE
AND CONSOLIDATE CASES**

1 Pursuant to Civil Local Rules 3-12, 7-11, and 7-12, this Stipulation is entered into by and
2 among (1) Plaintiffs in this consolidated action in this Court, captioned *In re Facebook Privacy*
3 *Litigation*, No. 10-cv-02389-JW, (2) Zetha Noble, Plaintiff in another action in this Court
4 captioned *Noble v. Facebook Inc.*, No. 10-cv-05781-HRL, and (3) Facebook, Inc., Defendant in
5 each of these actions, by and through their respective counsel.

6 WHEREAS, by Order dated August 20, 2010, the Court consolidated the related actions
7 *Gould v. Facebook, Inc. (Gould)*, No. 10-cv-02389-JW, and *Robertson v. Facebook, Inc.*
8 (*Robertson*), No. 10-cv-02408-JW, into the single action *In re Facebook Privacy Litigation*, No.
9 10-cv-02389-JW, and closed No. 10-cv-02408-JW;

10 WHEREAS, by Order dated December 10, 2010, the Court consolidated eight related
11 cases—*Graf v. Zynga*, No. 10-cv-04680-JW, *Albini v. Zynga*, No. 10-cv-04723-JW, *Gudac &*
12 *Beiles v. Zynga*, No. 10-cv-04793-JW, *Schreiber v. Zynga*, No. 10-cv-04794-JW, *Swanson v.*
13 *Zynga*, No. 10-cv-04902-JW, *Carmel-Jessup v. Facebook & Zynga*, No. 10-cv-04930-JW, *Phee*
14 *& O'Hara v. Zynga*, No. 10-cv-04935-JW, and *Bryant & Brock v. Zynga*, No. 10-cv-05192-JW—
15 into the single action *In re Zynga Privacy Litigation*, No. 10-cv-04680-JW;

16 WHEREAS, on December 20, 2010, the *Noble* action was filed in this Court and assigned
17 Case No. 10-cv-05781-HRL;

18 WHEREAS, by Order dated December 21, 2010, the Court related the action *Marfeo v.*
19 *Facebook, Inc.*, No. 10-cv-05301-BZ, with *In re Facebook Privacy Litigation*, No. 10-cv-02389-
20 JW;

21 WHEREAS, by the same Order dated December 21, 2010, the Court consolidated the
22 *Marfeo* action into *In re Facebook Privacy Litigation*, administratively closed No. 10-cv-05301,
23 and further ordered that “[a]ll future related cases shall be automatically consolidated and
24 administratively closed”;

25 WHEREAS, the parties hereto through their respective counsel agree that the *Noble* action
26 should be related to the above-captioned action, *In re Facebook Privacy Litigation*, pursuant to
27 Civil Local Rule 3-12 and this Court’s Order dated December 21, 2010;

28

1 WHEREAS, the parties hereto through their respective counsel agree that the *Noble* action
2 should be consolidated into the above-captioned action, *In re Facebook Privacy Litigation*,
3 pursuant to Federal Rule of Civil Procedure 42(a) and this Court's Order dated December 21,
4 2010;

5 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between
6 the parties hereto through their respective counsel:

7 1. *Noble v. Facebook, Inc.*, No. 10-cv-05781-HRL, should be related to *In re*
8 *Facebook Privacy Litigation*, No. 10-cv-02389-JW, the lower numbered case, and, accordingly,
9 should be reassigned to the Honorable James Ware.

10 2. *Noble v. Facebook, Inc.*, No. 10-cv-05781-HRL, and *In re Facebook Privacy*
11 *Litigation*, No. 10-cv-02389-JW, should be consolidated for all purposes into one action, and the
12 *Noble* action should be administratively closed.

13 3. All future filings shall be made in, and bear the caption of, *In re Facebook Privacy*
14 *Litigation*, No. 10-cv-02389-JW, which will be the lead case. The existing Consolidated Class
15 Action Complaint in *In re Facebook Privacy Litigation* shall be the operative complaint in the
16 consolidated action.

17 IT IS SO STIPULATED.

18 Dated: January 13, 2011

COOLEY LLP

19

20

/s/ Matthew D. Brown

MATTHEW D. BROWN

21

Attorneys for Defendant FACEBOOK, INC.

22

23 Dated: January 13, 2011

EDELSON MCGUIRE LLP

24

25

/s/ Michael J. Aschenbrener

MICHAEL J. ASCHENBRENER

26

Co-Lead Counsel in *In re Facebook Privacy*
Litigation, No. 10-cv-02389-JW

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: January 13, 2011

THE TERRELL LAW GROUP

/s/ Reginald Terrell

REGINALD TERRELL

Attorneys for Plaintiff ZETHA NOBLE in
Noble v. Facebook, Inc., No. 10-cv-05781-HRL

Additional Counsel (Continued From Caption Page):

NASSIRI & JUNG LLP

KASSRA P. NASSIRI (215405) (knassiri@nassiri-jung.com)

CHARLES H. JUNG (217909) (cjung@nassiri-jung.com)

47 Kearny Street, Suite 700

San Francisco, CA 94108

Telephone: (415) 762-3100

Facsimile: (415) 534-3200

EDELSON MCGUIRE LLP

SEAN REIS (184044) (sreis@edelson.com)

30021 Tomas Street, Suite 300

Rancho Santa Margarita, CA 92688

Telephone: (949) 450-2124

Facsimile: (949) 459-2123

EDELSON MCGUIRE LLP

MICHAEL J. ASCHENBRENER (*pro hac vice*) (maschenbrener@edelson.com)

BENJAMIN J. RICHMAN (*pro hac vice*)

(brichman@edelson.com)

350 North LaSalle Street, Suite 1300

Chicago, IL 60654

Telephone: (312) 589-6370

Facsimile: (312) 693-6378

Co-Lead Counsel in

In re Facebook Privacy Litigation, No. 10-cv-02389-JW

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTESTATION PURSUANT TO GENERAL ORDER 45

I, Matthew D. Brown, attest that concurrence in the filing of this Stipulation has been obtained from each of the other signatories. Executed this 13th day of January, 2011, at San Francisco, California.

/s/ Matthew D. Brown
Matthew D. Brown

1 COOLEY LLP
 2 MICHAEL G. RHODES (116127)
 (rhodesmg@cooley.com)
 3 MATTHEW D. BROWN (196972)
 (brownmd@cooley.com)
 4 JAMES M. PENNING (229727)
 (jpenning@cooley.com)
 101 California Street
 5 5th Floor
 San Francisco, CA 94111-5800
 6 Telephone: (415) 693-2000
 Facsimile: (415) 693-2222

7 Attorneys for Defendant
 8 FACEBOOK, INC.

9
 10
 11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN JOSE DIVISION
 14

15 IN RE:
 16 FACEBOOK PRIVACY LITIGATION

Case No. 10-cv-02389-JW

**[PROPOSED] ORDER GRANTING
 DEFENDANT FACEBOOK, INC.’S
 ADMINISTRATIVE MOTION TO RELATE
 AND CONSOLIDATE CASES**

17
 18
 19
 20
 21 Facebook, Inc., the Defendant in both the above-captioned case and *Noble v. Facebook*
 22 *Inc.*, No. 10-cv-05781-HRL, filed an Administrative Motion to Relate and Consolidate Cases
 23 pursuant to Civil Local Rules 3-12 and 7-11, Federal Rule of Civil Procedure 42(a), and this
 24 Court’s Order dated December 21, 2010 (*In re Facebook Privacy Litigation*, No. 10-cv-02389-
 25 JW, Dkt. No. 72 (providing that “[a]ll future related cases shall be automatically consolidated and
 26 administratively closed”).) The Court has considered the motion, the Memorandum of Points and
 27
 28

1 Authorities in support of the motion, the Stipulation in support of the motion, and the pleadings
2 and papers on file in the cases.

3 **GOOD CAUSE APPEARING, IT IS HEREBY ORDERED:**

4 1. *Noble v. Facebook, Inc.*, No. 10-cv-05781-HRL, is related to *In re Facebook*
5 *Privacy Litigation*, No. 10-cv-02389-JW, the lower numbered case, pursuant to Civil Local Rule
6 3-12 and, accordingly, should be reassigned to the Honorable James Ware.

7 2. *Noble v. Facebook, Inc.*, No. 10-cv-05781-HRL, and *In re Facebook Privacy*
8 *Litigation*, No. 10-cv-02389-JW, are consolidated for all purposes into one action, and the *Noble*
9 action, No. 10-cv-05781, shall be administratively closed.

10 3. All future filings shall be made in, and bear the caption of, *In re Facebook Privacy*
11 *Litigation*, No. 10-cv-02389-JW, which will be the lead case. The existing Consolidated Class
12 Action Complaint in *In re Facebook Privacy Litigation* shall be the operative complaint in the
13 consolidated action.

14 **IT IS SO ORDERED.**

15
16
17 Dated: January ____, 2011

18 THE HONORABLE JAMES WARE
19 UNITED STATES DISTRICT JUDGE