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

15 ANGEL FRALEY; PAUL WANG; SUSAN  
MAINZER; JAMES H. DUVAL, a minor, by  
16 and through JAMES DUVAL, as Guardian ad  
Litem; and WILLIAM TAIT, a minor, by and  
17 through RUSSELL TAIT, as Guardian ad  
Litem; individually and on behalf of all others  
18 similarly situated,

19 Plaintiffs,

20 v.

21 FACEBOOK, INC., a corporation; and DOES  
1-100,

22 Defendants.  
23

Case No. 11-CV-01726 LHK (PSG)

**ANSWER TO SECOND AMENDED  
COMPLAINT**

Courtroom: 4  
Judge: Hon. Lucy H. Koh  
Trial Date: December 3, 2012

24 Defendant Facebook, Inc. ("Facebook"), by and through its undersigned counsel, hereby  
25 responds to the Second Amended Class Action Complaint for Damages ("Second Amended  
26 Complaint" or "Complaint") of Plaintiffs Angel Fraley; Paul Wang; Susan Mainzer; James H.  
27 Duval, a minor, by and through James Duval, as Guardian ad Litem; and William Tait, a minor,  
28 by and through Russell Tait, as Guardian ad Litem (collectively "Plaintiffs") as follows:

1                                   **I. INTRODUCTION**

2       1. Paragraph 1 is Plaintiffs’ characterization of their allegations and does not require a  
3 response. Facebook admits that Plaintiffs purport to bring a class action, but denies that they  
4 have met the requirements necessary to do so.

5       2. Paragraph 2 is Plaintiffs’ characterization of this action and does not require a response; to  
6 the extent a response is required, Facebook denies the allegations therein, including that Plaintiffs  
7 have met the requirements necessary to bring a class action.

8       3. The first sentence of paragraph 3 is Plaintiffs’ characterization of this action and does not  
9 require a response; to the extent a response is required, Facebook denies the allegations therein.  
10 The fifth and sixth sentences of paragraph 3 are Plaintiffs’ legal argument and do not require a  
11 response; to the extent a response is required, Facebook denies the allegations therein. Facebook  
12 denies all other allegations in the remainder of paragraph 3.

13                                   **II. JURISDICTION AND VENUE**

14       4. In response to paragraph 4, Facebook does not dispute that this Court has personal  
15 jurisdiction. Facebook admits that the Court has subject matter jurisdiction to adjudicate  
16 Plaintiffs’ claims, but Facebook denies Plaintiffs have standing under Article III of the United  
17 States Constitution.

18       5. In response to paragraph 5, Facebook admits that it has offices in Palo Alto, California  
19 and that venue is proper in this district. Because no Section 17203 of the California Code of Civil  
20 Procedure exists, no response is required to the second sentence of paragraph 5; to the extent a  
21 response is required, Facebook denies the allegation therein.

22                                   **III. PARTIES**

23       6. In response to paragraph 6, Facebook admits that there is a Facebook user who once had  
24 her Facebook name set as Angel Frolicker. Facebook is without knowledge sufficient to admit or  
25 deny the remaining allegations, and these allegations are therefore denied.

26       7. In response to paragraph 7, Facebook admits that there is a Facebook user who once had  
27 her Facebook name set as Susan von Seggern. Facebook is without knowledge sufficient to admit  
28 or deny the remaining allegations, and these allegations are therefore denied.

1 8. In response to paragraph 8, Facebook admits that there is a Facebook user who once had  
2 his Facebook name set as Paul Wang. Facebook is without knowledge sufficient to admit or deny  
3 the remaining allegations, and these allegations are therefore denied.

4 9. In response to paragraph 9, Facebook admits that there is a Facebook user who once had  
5 his Facebook name set as Jimmy Duval. Facebook is without knowledge sufficient to admit or  
6 deny the remaining allegations, and these allegations are therefore denied.

7 10. In response to paragraph 10, Facebook admits that there is a Facebook user who once had  
8 his Facebook name set as Will Tait. Facebook is without knowledge sufficient to admit or deny  
9 the remaining allegations, and these allegations are therefore denied.

10 11. In response to paragraph 11, Facebook admits that it is a Delaware corporation, that it  
11 operates a social networking site at www.facebook.com, and that it conducts business in many  
12 countries throughout the world. Facebook denies all other allegations in the remainder of  
13 paragraph 11.

14 12. Paragraph 12 is Plaintiffs' characterization of their allegations with regard to "Doe"  
15 defendants and does not require a response; to the extent a response is required, Facebook denies  
16 the allegations therein.

#### 17 **IV. FACTUAL ALLEGATIONS**

18 13. In response to paragraph 13, Facebook admits that it owns and operates a social  
19 networking site, at www.facebook.com. Facebook admits that it generates revenue through  
20 advertising targeted at its users. Facebook admits that it requires users to register in order to  
21 obtain full use of the site, through which users can post content and connect with others on the  
22 site. Facebook is without knowledge sufficient to admit or deny Plaintiffs' allegation that  
23 "Facebook has become an integral part of the lives of approximately 600 million people around  
24 the world" and that it "has become the de facto method of communication among friends for a  
25 significant portion of these Members," and these allegations are therefore denied. Facebook  
26 admits that it currently has over 600 million registered users worldwide, that over 75% of its users  
27 are outside of the United States, that some of its users reside in the United States, and that some  
28 of its users are under the age of 18. Facebook denies all other allegations in the remainder of

1 paragraph 13.

2 14. In response to paragraph 14, Facebook admits that a Facebook “Like” button appears on  
3 the Facebook website as well as on other websites and that Facebook users can interact with the  
4 Facebook website by clicking on the “Like” button on Facebook or on other websites. Facebook  
5 denies all other allegations in the remainder of paragraph 14.

6 15. In response to paragraph 15, Facebook admits that the term “Friend” can refer to a  
7 mutually acceptable, voluntary connection between Facebook users in which two users give each  
8 other permission to view content they have each shared on the Facebook site, subject to each  
9 user’s privacy and account settings. Facebook admits that the terms “Story” and “News” can  
10 refer to the sharing of content users post on the Facebook site or the sharing of actions users take  
11 on the Facebook site. Facebook is without knowledge sufficient to admit or deny the allegations  
12 in paragraph 15 regarding the intention(s) of every Facebook user who clicks a “Like” button  
13 (other than to communicate that he or she “likes” a particular page or content), and these  
14 allegations are therefore denied. Facebook denies all other allegations in the remainder of  
15 paragraph 15.

16 16. In response to paragraph 16, Facebook admits that to become a Facebook user, one must  
17 register for the site, which requires submission of a name, email address, birthdate, and gender.  
18 Facebook admits that, as stated in Facebook’s terms of service, profile pictures—which are not  
19 required to contain a likeness of the user—are viewable by a user’s friends and people who can  
20 find the user in search. Facebook denies all other allegations in the remainder of paragraph 16.

21 17. In response to paragraph 17, Facebook admits that Facebook users have “Profile” pages  
22 (or timeline) and that a part of a user’s Profile page is known as a “Wall.” Facebook denies all  
23 other allegations in the remainder of paragraph 17.

24 18. In response to paragraph 18, Facebook admits that the term “Friend” can refer to a  
25 connection between Facebook users in which two users give each other permission to view  
26 content they have each shared on the Facebook site, subject to each user’s privacy and account  
27 settings, and that Facebook Friends can share content with each other through the site. Facebook  
28 denies all other allegations in the remainder of paragraph 18.

1 19. In response to paragraph 19, Facebook admits that users' News Feeds display information  
2 such as status updates, links, photos, and videos shared by users' Friends, and that individual  
3 entries in users' News Feeds can be referred to as stories. Facebook denies all other allegations in  
4 the remainder of paragraph 19.

5 20. In response to paragraph 20, Facebook admits that users may post information to  
6 Facebook using various methods and that posted information may appear in Friends' News Feeds  
7 according to the account and privacy settings of the user posting the information and his or her  
8 Friends. Facebook denies all other allegations in the remainder of paragraph 20.

9 21. In response to paragraph 21, Facebook admits that it derives profits from selling targeted  
10 advertising that appears on the Facebook website, including on users' Profile pages (or timeline).  
11 Facebook denies all other allegations in the remainder of paragraph 21.

12 22. In response to paragraph 22, Facebook admits that some Facebook features are enabled by  
13 default in users' Facebook accounts. Facebook denies all other allegations in the remainder of  
14 paragraph 22.

15 23. In response to paragraph 23, Facebook admits that users may post to Facebook by adding  
16 content, such as text, images, web links, or videos to his or her profile page. Subject to users'  
17 account and privacy settings, this content may appear in the users' Friends' "News Feed."  
18 Facebook denies all other allegations in the remainder of paragraph 23.

19 24. In response to paragraph 24, Facebook admits that a user can "Check-in" at a location on  
20 Facebook, and that a News Feed story about the "Check-in" may be eligible to appear in the  
21 user's News Feed and/or may be eligible to appear in the News Feeds of the user's Friends, if  
22 permitted by the user's account and privacy settings. Facebook admits that users can "Check-in"  
23 at some locations linked to particular businesses. Facebook denies all other allegations in the  
24 remainder of paragraph 24.

25 25. In response to paragraph 25, Facebook admits that the "Like" button appears both on the  
26 Facebook webpage and on other webpages. Facebook admits that when a user clicks on the  
27 "Like" button, a connection is made between that user and the object "Liked," and that a Story  
28 about that connection may be eligible to appear in the user's News Feed and/or may be eligible to

1 appear in the News Feeds of the user’s Friends, if permitted by the user’s account and privacy  
2 settings. Facebook admits that the administrator of a particular Facebook page can condition  
3 certain privileges on “Liking” the page. Facebook is without knowledge sufficient to admit or  
4 deny the allegations in paragraph 25 regarding the intention of every Facebook user who clicks on  
5 a “Like” button, and these allegations are therefore denied. Facebook denies all other allegations  
6 in the remainder of paragraph 25.

7 26. In response to paragraph 26, Facebook admits that, after some limited, pre-launch testing,  
8 it launched Sponsored Stories on or around January 25, 2011. Facebook admits that certain  
9 actions users may voluntarily take on the Facebook site, including Likes, Check-ins, or use of an  
10 application or game may appear as Sponsored Stories to certain of the user’s Friends, subject to  
11 the user’s account and privacy settings, and other conditions. Facebook denies all other  
12 allegations in the remainder of paragraph 26.

13 27. In response to paragraph 27, Facebook denies the allegations therein.

14 28. In response to paragraph 28, Facebook denies the allegations therein.

15 29. In response to paragraph 29, Facebook denies the allegations therein.

16 30. In response to paragraph 30, Facebook denies the allegations therein.

17 31. In response to paragraph 31, Facebook admits that it publishes its terms of use in the  
18 Statement of Rights and Responsibilities, available at <http://www.facebook.com/legal/terms>, and  
19 that its Privacy Policy is available at <http://www.facebook.com/about/privacy>, to which the URLs  
20 Plaintiffs cite in paragraph 31 redirect respectively. Facebook denies all other allegations in the  
21 remainder of paragraph 31.

22 32. In response to paragraph 32, Facebook admits that the quoted text appears in Section 10.1  
23 of its Statement of Rights and Responsibilities dated April 26, 2011, available at  
24 <http://www.facebook.com/legal/terms>, to which the URL Plaintiffs cite in paragraph 32 redirects.  
25 Facebook denies all other allegations in the remainder of paragraph 32.

26 33. In response to paragraph 33, Facebook admits that the quoted text appeared in Facebook’s  
27 Privacy Policy that was available at the URL cited by Plaintiffs in paragraph 33 at the time of the  
28 Second Amended Complaint. Facebook denies all other allegations in the remainder of paragraph

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34. In response to paragraph 34, Facebook admits that the quoted text has appeared in the Facebook Help Center at <http://www.facebook.com/help/?faq=173332702723681>. Facebook denies all other allegations in the remainder of paragraph 34.

35. In response to paragraph 35, Facebook denies the allegations therein.

36. In response to paragraph 36, Facebook admits that the quoted text has appeared at [http://www.facebook.com/note.php?note\\_id=10150434660350301](http://www.facebook.com/note.php?note_id=10150434660350301). Facebook denies all other allegations in the remainder of paragraph 36.

37. In response to paragraph 37, Facebook denies the allegations therein.

38. In response to paragraph 38, Facebook admits that Sponsored Stories launched on or about January 25, 2011, and that accounts with the userIDs, usernames, or names that Plaintiffs' counsel has provided to Facebook's counsel were registered prior to that date. Facebook denies all other allegations in the remainder of paragraph 38.

39. In response to paragraph 39, Facebook denies the allegations therein.

40. In response to paragraph 40, Facebook denies the allegations therein.

41. In response to paragraph 41, Facebook admits that it does not attempt to contact the parents or legal guardians of users under the age of eighteen to obtain their express consent before their teenage child or children register for Facebook. Facebook denies all other allegations in the remainder of paragraph 41.

42. In response to paragraph 42, Facebook admits that it has quoted statements made by the Nielsen Company and that the Nielsen Company has reported that advertising consisting of recommendations by friends has some benefits, such as increased awareness, over other forms of advertising. Facebook is without knowledge sufficient to admit or deny Plaintiffs' description of the Nielsen Company, and that allegation is therefore denied. Facebook denies all other allegations in the remainder of paragraph 42.

43. In response to paragraph 43, Facebook admits that the text offset as a quotation appears in the cited sources. Facebook denies all other allegations in the remainder of paragraph 43.

44. In response to paragraph 44, Facebook admits that the text offset as a quotation appears in

1 the cited sources. Facebook denies all other allegations in the remainder of paragraph 44.

2 45. In response to paragraph 45, Facebook admits that the text offset as a quotation appears to  
3 be a reasonable transcription of what Ms. Sandberg said in the video at the URL cited in  
4 paragraph 45. Facebook denies all other allegations in the remainder of paragraph 45.

5 46. In response to paragraph 46, Facebook denies the allegations therein.

6 47. In response to paragraph 47, Facebook admits that it does not directly pay users if their  
7 names or profile pictures appear in Sponsored Stories. Facebook also admits that it sells  
8 advertising space on its website and derives revenue from those sales. Facebook also admits that  
9 it derives revenue from the sale of Sponsored Stories. Facebook denies all other allegations in the  
10 remainder of paragraph 47.

11 48. In response to paragraph 48, Facebook admits that the quoted text appears in Section 15.1  
12 of Facebook's Statement of Rights and Responsibilities, dated April 26, 2011, available at  
13 <http://www.facebook.com/legal/terms>, to which the URL Plaintiffs cite in paragraph 48 redirects.  
14 Facebook denies all other allegations in the remainder of paragraph 48.

15 49. In response to paragraph 49, Facebook admits that all or the bulk of decisions regarding  
16 the content of the Facebook's Statement of Rights and Responsibilities, and all or the bulk of  
17 decisions regarding the implementation and marketing of Sponsored Stories, were made by  
18 Facebook employees in or around Facebook's California headquarters. Facebook denies all other  
19 allegations in the remainder of paragraph 49.

20 50. In response to paragraph 50, Facebook admits that accounts with the userIDs, usernames,  
21 or names that Plaintiffs' counsel has provided to Facebook's counsel were registered prior to  
22 January 25, 2011.

23 51. In response to paragraph 51, Facebook admits that Sponsored Stories launched on or  
24 about January 25, 2011, and that accounts with the userIDs, usernames, or names that Plaintiffs'  
25 counsel has provided to Facebook's counsel were registered prior to that date. Facebook denies  
26 all other allegations in the remainder of paragraph 51.

27 52. In response to paragraph 52, Facebook denies the allegations therein.

28 53. In response to paragraph 53, Facebook denies the allegations therein.



1 54. In response to paragraph 54, Facebook denies the allegations therein.

2 55. In response to paragraph 55, Facebook admits that users are required by Facebook's terms  
3 of use to provide their names when registering for Facebook. Facebook denies all other  
4 allegations in the remainder of paragraph 55.

5 56. In response to paragraph 56, Facebook admits that Sponsored Stories typically contain the  
6 name of, and an image related to, the object or content with which the user voluntarily interacted.  
7 Facebook denies all other allegations in the remainder of paragraph 56.

8 57. In response to paragraph 57, Facebook denies the allegations therein.

9 58. In response to paragraph 58, Facebook denies the allegations therein.

10 59. In response to paragraph 59, Facebook denies the allegations therein.

11 60. In response to paragraph 60, Facebook denies the allegations therein.

12 61. In response to paragraph 61, Facebook is without knowledge sufficient to admit or deny  
13 Plaintiffs' allegations regarding Plaintiffs' own knowledge at a certain time, and those allegations  
14 are therefore denied. Facebook denies all other allegations in the remainder of paragraph 61.

15 62. In response to paragraph 62, Facebook is without knowledge sufficient to admit or deny  
16 Plaintiffs' allegations regarding Plaintiffs' parents' knowledge or actions at a certain time, and  
17 those allegations are therefore denied. Facebook denies all other allegations in the remainder of  
18 paragraph 62.

19 63. In response to paragraph 63, Facebook denies the allegations therein.

20 64. In response to paragraph 64, Facebook denies the allegations therein.

21 **Angel Fraley**

22 65. In response to paragraph 65, Facebook is without knowledge sufficient to admit or deny  
23 the allegations, and these allegations are therefore denied.

24 66. In response to paragraph 66, Facebook's investigation and discovery are ongoing, but  
25 based on current information, Facebook is without information sufficient to admit or deny the  
26 allegations of paragraph 66, and these allegations are therefore denied.

27 67. In response to paragraph 67, while Facebook's investigation is still ongoing, Facebook is  
28 currently without knowledge sufficient to admit or deny the allegations, and these allegations are

1 therefore denied.

2 68. In response to paragraph 68, Facebook is without knowledge sufficient to admit or deny  
3 the allegations regarding Plaintiff Fraley’s appearance in a Sponsored Story, and these allegations  
4 are therefore denied. Facebook denies all other allegations in the remainder of paragraph 68, and  
5 specifically the allegation that Facebook solely authored a sentence stating, “Angel Frolicker likes  
6 Rosetta Stone.”

7 **Susan Mainzer**

8 69. In response to paragraph 69, Facebook admits that at some time, the profile picture of the  
9 user with Facebook name set as Susan von Seggern appeared to be an image of Plaintiff Mainzer.  
10 Facebook denies all other allegations in the remainder of paragraph 69.

11 70. In response to paragraph 70, Facebook admits that at some time on or before February 12,  
12 2011, the user with Facebook name set as Susan von Seggern clicked on a Facebook “Like”  
13 button associated with UNICEF. Facebook is without knowledge sufficient to admit or deny the  
14 remaining allegations in paragraph 70, and these allegations are therefore denied.

15 71. In response to paragraph 71, while Facebook’s investigation is still ongoing, Facebook is  
16 currently without knowledge sufficient to admit or deny the allegations, and these allegations are  
17 therefore denied.

18 72. In response to paragraph 72, Facebook is without knowledge sufficient to admit or deny  
19 the allegations regarding Plaintiff Mainzer’s appearance in a Sponsored Story, and these  
20 allegations are therefore denied. Facebook denies all other allegations in the remainder of  
21 paragraph 72, and specifically the allegation that Facebook solely authored a sentence stating,  
22 “Susan von Seggern likes UNICEF.”

23 **Paul Wang**

24 73. In response to paragraph 73, Facebook admits that at some time on or before March 10,  
25 2011, the user with Facebook name set as Paul Wang clicked on a Facebook “Like” button  
26 associated with Warrior Dash. Facebook is without knowledge sufficient to admit or deny the  
27 remaining allegations in paragraph 73, and these allegations are therefore denied.

28 74. In response to paragraph 74, while Facebook’s investigation is still ongoing, Facebook is

1 currently without knowledge sufficient to admit or deny the allegations, and these allegations are  
2 therefore denied.

3 75. In response to paragraph 75, Facebook is without knowledge sufficient to admit or deny  
4 the allegations regarding Plaintiff Wang's appearance in a Sponsored Story, and these allegations  
5 are therefore denied. Facebook denies all other allegations in the remainder of paragraph 75, and  
6 specifically the allegation that Facebook solely authored a sentence stating, "Paul Wang likes  
7 Warrior Dash."

8 **Jimmy Duval**

9 76. In response to paragraph 76, Facebook admits that at some time, the profile picture of the  
10 user who currently has his Facebook name set as Dojanutt McSwindy (Bassnutt McSwindy)  
11 appeared to be an image of Plaintiff Duval and that at some time after registration, the user who  
12 currently has his Facebook name set as Dojanutt McSwindy (Bassnutt McSwindy) changed his  
13 Facebook account information to set the name associated with his Facebook account to include  
14 the word "Bassnutt." Facebook is without knowledge sufficient to admit or deny the remaining  
15 allegations in paragraph 76, and these allegations are therefore denied.

16 77. In response to paragraph 77, Facebook admits that at some time on or before April 7,  
17 2011, the user who currently has his Facebook name set as Dojanutt McSwindy (Bassnutt  
18 McSwindy) clicked on a Facebook "Like" button associated with PopCorners. Facebook is  
19 without knowledge sufficient to admit or deny the remaining allegations in paragraph 77, and  
20 these allegations are therefore denied.

21 78. In response to paragraph 78, while Facebook's investigation is still ongoing, Facebook is  
22 currently without knowledge sufficient to admit or deny the allegations, and these allegations are  
23 therefore denied.

24 79. In response to paragraph 79, Facebook is without knowledge sufficient to admit or deny  
25 the allegations regarding Plaintiff Duval's appearance in an advertisement on Facebook, and these  
26 allegations are therefore denied. Facebook denies all other allegations in the remainder of  
27 paragraph 79, and specifically the allegation that Facebook solely authored a sentence stating,  
28 "Jimmy Bassnutt Duval likes PopCorners."

1 80. In response to paragraph 80, Facebook admits that it did not attempt to contact the parents  
2 or legal guardians of Jimmy Duval to obtain their express consent before Plaintiff Duval  
3 registered for Facebook; Facebook denies all other allegations in the remainder of paragraph 80.

4 **William Tait**

5 81. In response to paragraph 81, Facebook admits that at some time, the profile picture of the  
6 user with Facebook name set as Will Tait (TheMailman) appeared to be an image of Plaintiff  
7 Tait. Facebook denies all other allegations in the remainder of paragraph 81.

8 82. In response to paragraph 82, Facebook admits that at some time on or before March 30,  
9 2011, the user with Facebook name set as Will Tait (TheMailman) clicked on a Facebook “Like”  
10 button associated with Warrior Dash. Facebook is without knowledge sufficient to admit or deny  
11 the remaining allegations in paragraph 82, and these allegations are therefore denied.

12 83. In response to paragraph 83, Facebook is while Facebook’s investigation is still ongoing,  
13 Facebook is currently without knowledge sufficient to admit or deny the allegations, and these  
14 allegations are therefore denied.

15 84. In response to paragraph 84, Facebook is without knowledge sufficient to admit or deny  
16 the allegations regarding Plaintiff Tait’s appearance in an advertisement on Facebook, and these  
17 allegations are therefore denied. Facebook denies all other allegations in the remainder of  
18 paragraph 84, and specifically the allegation that Facebook authored a sentence stating, “William  
19 Tait and Paul Wang like Warrior Dash.”

20 85. In response to paragraph 85, Facebook admits that it did not attempt to contact the parents  
21 or legal guardians of Plaintiff Tait to obtain their express consent before Plaintiff Tait registered  
22 for Facebook; Facebook denies all other allegations in the remainder of paragraph 41.

23 86. In response to paragraph 86, Facebook denies the allegations therein.

24 87. In response to paragraph 87, Facebook denies the allegations therein.

25 88. In response to paragraph 88, Facebook denies the allegations therein.

26 89. In response to paragraph 89, Facebook denies the allegations therein.

27 90. In response to paragraph 90, Facebook denies the allegations therein.

28 91. In response to paragraph 91, Facebook denies the allegations therein.

1 92. In response to paragraph 92, Facebook denies the allegations therein.

2 93. In response to paragraph 93, Facebook denies the allegations therein.

3 **V. CLASS ACTION ALLEGATIONS**

4 94. In response to paragraph 94, Facebook denies that this action can be maintained as a class  
5 action under Rule 23(b)(3).

6 95. Paragraph 95 sets forth Plaintiffs' proposed class definition and does not require a  
7 response; to the extent a response is required, Facebook denies the allegations therein, including  
8 that this action can be maintained as a class action under Rule 23(b)(3).

9 96. In response to paragraph 96, Facebook admits that it currently has over 600 million  
10 registered users worldwide, that over 75% of its users are outside of the United States, that some  
11 of its users reside in the United States, and that some of its users are under the age of 18.  
12 Facebook denies all other allegations in the remainder of paragraph 96, including that this action  
13 is certifiable as a class action.

14 97. In response to paragraph 97, Facebook denies the allegations therein, including that this  
15 action can be maintained as a class action.

16 98. In response to paragraph 98, Facebook denies that common questions of law and fact exist  
17 sufficient to warrant certification under Rule 23.

18 99. In response to paragraph 99, Facebook denies the allegations therein, including that this  
19 action can be maintained as a class action.

20 100. In response to paragraph 100, Facebook denies the allegations therein, including that this  
21 action can be maintained as a class action.

22 101. In response to paragraph 101, Facebook denies the allegations therein, including that this  
23 action can be maintained as a class action.

24 102. In response to paragraph 102, Facebook denies the allegations therein, including that this  
25 action can be maintained as a class action.

26 103. In response to paragraph 103, Facebook denies the allegations therein, including that  
27 Plaintiffs' claims are typical and that this action can be maintained as a class action.

28 104. In response to paragraph 104, Facebook denies the allegations therein, including that this

1 action can be maintained as a class action.

2 105. In response to paragraph 105, Facebook denies the allegations therein, including that this  
3 action can be maintained as a class action.

4 106. Paragraph 106 is Plaintiffs' reservation of rights and does not require a response; to the  
5 extent a response is required, Facebook denies the allegations therein.

#### 6 **FIRST CAUSE OF ACTION**

7 107. Facebook hereby incorporates by reference its answers contained herein to paragraphs 1  
8 through 106 of the Complaint.

9 108. Paragraph 108 is Plaintiffs' legal argument and does not require a response; to the extent a  
10 response is required, Facebook denies the allegations therein.

11 109. In response to paragraph 109, Facebook denies the allegations therein.

12 110. In response to paragraph 110, Facebook denies the allegations therein.

13 111. In response to paragraph 111, Facebook denies the allegations therein.

14 112. In response to paragraph 112, Facebook denies the allegations therein.

15 113. In response to paragraph 113, Facebook denies the allegations therein.

16 114. In response to paragraph 114, Facebook denies the allegations therein.

17 115. In response to paragraph 115, Facebook denies the allegations therein.

18 116. In response to paragraph 116, Facebook denies the allegations therein.

19 117. Paragraph 117 is Plaintiffs' characterization of the sought-after relief, and does not require  
20 a response. To the extent a response is required, Facebook denies the allegations therein,  
21 including that Plaintiffs are entitled to any relief.

22 118. Paragraph 118 is Plaintiffs' characterization of the sought-after relief, and does not require  
23 a response. To the extent a response is required, Facebook denies the allegations therein,  
24 including that Plaintiffs are entitled to any relief.

#### 25 **SECOND CAUSE OF ACTION**

26 119. Facebook hereby incorporates by reference its answers contained herein to paragraphs 1  
27 through 118 of the Complaint.

28 120. In response to paragraph 120, Facebook denies the allegations therein.

1 121. In response to paragraph 121, Facebook denies the allegations therein.

2 122. In response to paragraph 122, Facebook denies the allegations therein.

3 123. In response to paragraph 123, Facebook denies the allegations therein.

4 124. In response to paragraph 124, Facebook denies the allegations therein.

5 125. In response to paragraph 125, Facebook denies the allegations therein.

6 126. In response to paragraph 126, Facebook admits that it maintains computer systems in  
7 California and that decisions concerning Sponsored Stories were made, and source code related to  
8 Sponsored Stories was developed, in California. Facebook denies all other allegations in the  
9 remainder of paragraph 126.

10 127. Paragraph 127 is Plaintiffs' characterization of the sought-after relief, and does not require  
11 a response. To the extent a response is required, Facebook denies the allegations therein,  
12 including that Plaintiffs are entitled to any relief.

13 128. In response to paragraph 128, Facebook denies the allegations therein.

14 129. Paragraph 129 is Plaintiffs' characterization of the sought-after relief, and does not require  
15 a response. To the extent a response is required, Facebook denies the allegations therein,  
16 including that Plaintiffs are entitled to any relief.

17 **THIRD CAUSE OF ACTION**

18 130. Facebook hereby incorporates by reference its answers contained herein to paragraphs 1  
19 through 129 of the Complaint.

20 131. Paragraph 131 relates to Plaintiffs' third cause of action, which claim has been dismissed  
21 with prejudice per Judge Koh's December 16, 2011 ruling on Defendant's Motion to Dismiss;  
22 therefore, no response is required; to the extent a response is required, Facebook denies the  
23 allegations therein.

24 132. Paragraph 132 relates to Plaintiffs' third cause of action, which claim has been dismissed  
25 with prejudice per Judge Koh's December 16, 2011 ruling on Defendant's Motion to Dismiss;  
26 therefore, no response is required; to the extent a response is required, Facebook denies the  
27 allegations therein.

28 133. Paragraph 133 relates to Plaintiffs' third cause of action, which claim has been dismissed

1 with prejudice per Judge Koh's December 16, 2011 ruling on Defendant's Motion to Dismiss;  
2 therefore, no response is required; to the extent a response is required, Facebook denies the  
3 allegations therein.

4 134. Paragraph 134 relates to Plaintiffs' third cause of action, which claim has been dismissed  
5 with prejudice per Judge Koh's December 16, 2011 ruling on Defendant's Motion to Dismiss;  
6 therefore, no response is required; to the extent a response is required, Facebook denies the  
7 allegations therein.

8 135. Paragraph 135 relates to Plaintiffs' third cause of action, which claim has been dismissed  
9 with prejudice per Judge Koh's December 16, 2011 ruling on Defendant's Motion to Dismiss;  
10 therefore, no response is required; to the extent a response is required, Facebook denies the  
11 allegations therein.

12 136. Paragraph 136 is Plaintiffs' statement of requested relief, to which no response is  
13 required; to the extent a response is required, Facebook denies the allegations therein, including  
14 that Plaintiffs are entitled to any relief.

15 **JURY TRIAL DEMANDED**

16 Plaintiffs' last paragraph is a demand for a jury trial, to which no response is required.

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18 **AFFIRMATIVE DEFENSES**

19 Facebook asserts the following separate defenses to Plaintiffs' Second Amended  
20 Complaint, without assuming the burden of proof on such defenses that would otherwise fall on  
21 Plaintiffs. Facebook reserves the right to supplement or amend these defenses as discovery is  
22 conducted, and does not knowingly or intentionally waive any applicable affirmative defense.

23 **First Defense**

24 The Complaint, and each and every claim alleged therein, fails to state a claim upon  
25 which relief may be granted.

26 **Second Defense**

27 The named Plaintiffs, and each and every member of the purported Class, are barred from  
28 recovery, in whole or in part, by the doctrines of waiver, estoppel, laches, and other applicable



1 equitable doctrines.

2 **Third Defense**

3 The named Plaintiffs, and each and every member of the purported Class, are barred from  
4 recovery in whole or in part by their failure to mitigate injury and their failure to mitigate  
5 damages.

6 **Fourth Defense**

7 This action is not suitable for class action treatment under Federal Rule of Civil  
8 Procedure 23.

9 **Fifth Defense**

10 Plaintiffs have no standing to bring this action under Article III of the United States  
11 Constitution.

12 **Sixth Defense**

13 Plaintiffs have no standing to bring this action under California Business and Professions  
14 Code Section 17200, *et seq.*

15 **Seventh Defense**

16 This action is preempted by the federal Children's Online Privacy Protection Act of 1998,  
17 15 U.S.C. §§ 6501, *et seq.* and related regulations.

18 **Eighth Defense**

19 This action is barred by the federal Communications Decency Act, 47 U.S.C. § 230.

20 **Ninth Defense**

21 This action is barred as a result of Plaintiffs' consent to Facebook's alleged actions.

22 **Tenth Defense**

23 As to Plaintiffs Duval and Tait, this action is barred as a result of Plaintiffs' parents' or  
24 legal guardians' consent to Facebook's alleged actions.

25 **Eleventh Defense**

26 This action is barred as a result of the doctrine of unclean hands.  
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**Twelfth Defense**

This action is barred by the First Amendment to the United States Constitution and/or by Article 1, Section 2 of the California Constitution.

**Thirteenth Defense**

No punitive or exemplary damages should be awarded arising out of the claims made in the Complaint, or any such damages should otherwise be limited, because: (i) any recovery of punitive or exemplary damages would violate the substantive and/or procedural safeguards guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, by Article 1, Section 7 of the California Constitution, and by the common law; and (ii) the imposition of any punitive or exemplary damages would constitute an excessive fine or penalty under Article 1, Section 17 of the California Constitution.

**Fourteenth Defense**

Statutory damages under California Civil Code Section 3344 should not be awarded or should otherwise be limited because: (i) such an award would violate the substantive and/or procedural safeguards guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, by Article 1, Section 7 of the California Constitution, and by the common law; and (ii) the imposition of such an award would constitute an excessive fine or penalty under the Eighth Amendment to the United States Constitution and/or Article 1, Section 17 of the California Constitution.

**Fifteenth Defense**

Facebook has acted reasonably and in good faith with respect to the conduct alleged in the Second Amended Complaint.

**Sixteenth Defense**

Plaintiffs' damages—including actual, punitive, compensatory, exemplary, or statutory damages—are limited by the terms of a contract between Facebook and Plaintiffs.

**Reservation of Defenses**

Future discovery may reveal additional facts that support additional affirmative defenses presently available to, but unknown to, Facebook. Facebook reserves the right to assert additional

1 defenses in the event that discovery and investigation indicate that additional defenses would be  
2 appropriate.

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Dated: January 9, 2012

COOLEY LLP

/s/ Matthew D. Brown  
Matthew D. Brown (196972)

Attorneys for Defendant  
FACEBOOK, INC.