


EXHIBIT F

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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF LOS ANGELES**

16 JULIET METH, a minor, by and through
17 ROBERT METH as Guardian ad Litem,
18 individually and on behalf of all others
19 similarly situated,

19 Plaintiff,

20 v.

21 FACEBOOK, INC.,

22 Defendant.

Case No. BC45479 9

FIRST AMENDED CLASS ACTION
COMPLAINT

Violations of:

- (1) Civil Code sec. 3344
- (2) Cal. Constitution Art. 1, sec. 1

JURY TRIAL DEMANDED

FILED

24 Plaintiff JULIET METH, a minor, by and through ROBERT METH as Guardian ad
25 Litem, individually and on behalf of all others similarly situated, alleges the following against
26 Facebook, Inc. (the "Company"), based on personal knowledge, information and belief, and their
27 counsel's investigation:
28

1 **JURISDICTION AND VENUE**

2 1. This is an action for misappropriation of the names and likenesses of children,
3 seeking compensatory damages and/or statutory penalties, injunctive relief and attorneys' fees
4 due to violations by Facebook, Inc. of California Civil Code, section 3344, and the California
5 Constitution, Article I, section 1.

6 2. Pursuant to California Code of Civil Procedure, Section 382, Plaintiff, through her
7 father/Guardian *ad Litem*, brings this case as a class action on behalf of a consumer class
8 consisting of all minors in California whose names or likenesses were used by Facebook, Inc. for
9 commercial purposes without the consent of the parents or guardians of said minors.

10 3. Venue is proper in this county and judicial district, pursuant to Code of Civil
11 Procedure, Section 395.5. Defendant Facebook, Inc.'s headquarters and principal place of
12 business is in the City of Palo Alto, County of Santa Clara, State of California. The named
13 plaintiff resides in the County of Los Angeles and the breach and harm done occurred in the
14 County of Los Angeles. Liability arises in the County of Los Angeles, State of California.

15 **THE PARTIES**

16 4. Plaintiff Juliet Meth is a minor residing in the County of Los Angeles, State of
17 California, and is a member of the Facebook social networking site ("Facebook") where her
18 name and likeness has been appropriated by Facebook, Inc. for commercial advantage without
19 the consent of her parents. Robert Meth is the parent and Guardian *ad Litem* of Juliet Meth, and
20 is a resident of the County of Los Angeles, State of California.

21 5. Defendant Facebook, Inc. is a corporation organized and existing under the laws
22 of the State of Delaware, and has its headquarters and principal place of business in the State of
23 California, operating under and by authority of the laws of the State of California. Facebook, Inc.
24 privately owns and operates Facebook.

25 6. Since Facebook was founded in February 2004 by Facebook, Inc., the social
26 utility has garnered world-wide success, reporting over 500 million active users – users who have
27 accessed the site within the preceding 30 days – as of July 21, 2010. The number of users under
28 the age of 18 residing in California is currently unknown but based on the demographic is

1 believed to be hundreds of thousands of individuals. Because Facebook, Inc. is a privately held
2 company, figures regarding its use and sources of revenue are not publically available, but
3 because younger persons are generally seen to be early adapters to new technologies for
4 communication, the number of users under the age of 18 is believed to be equal to or greater than
5 their proportionate share of the population at large.

6 **CLASS ACTION ALLEGATIONS**

7 7. Plaintiff brings this action on behalf of herself and all others similarly situated, as
8 a class action pursuant to section 382 of the California Code of Civil Procedure. The class which
9 Plaintiff seeks to represent is composed of and defined as follows:

10 All persons who, from November 6, 2007 through the present: (1)
11 were under the age of 18 years; (2) were California residents; (3)
12 were members of Facebook and (4) while under the age of 18
13 years, had their names or likenesses used on a Facebook feed or in
14 an advertisement sold by Facebook, Inc., without the consent of
15 their parent or guardian.

14 8. Excluded from the Class are: Defendant, its officers, directors, agents, trustees,
15 corporations, trusts, representatives, employees, principals, servants, partners, joint venturers, or
16 entities controlled by the Defendant; the Judge assigned to this action, any member of the Judge's
17 immediate family; and counsel for Plaintiff.

18 9. Subject to additional information obtained through further investigation and
19 discovery, the Class definition may be expanded or narrowed by amendment or amended
20 complaint.

21 10. This action has been brought and may properly be maintained as a class action
22 pursuant to California Civil Code section 382 because there is a well-defined community of
23 interest in the litigation and the proposed class is easily ascertainable.

24 11. Plaintiff does not know the exact size of the Class since such information is
25 exclusively in the control of Defendant. Plaintiff believes that there are thousands of Class
26 members, and that they are sufficiently numerous and geographically dispersed throughout the
27 state so that joinder of all members is impracticable.

28 ///

1 12. Plaintiff's claims are typical of the claims of the members of the Class because
2 Plaintiff and all Class members were damaged by the same wrongful conduct of Defendant.

3 13. Plaintiff will fairly and adequately protect the interests of the Class. The interests
4 of Plaintiff coincide with and are not antagonistic to, those of the Class. In addition, Plaintiff is
5 represented by counsel who are experienced and competent in the prosecution of complex class
6 action and antitrust litigation.

7 14. There are questions of law and fact common to the members of the Class, and
8 those common questions predominate over any question which may affect only individual
9 members of the Class, because Defendant has acted on grounds generally applicable to the entire
10 class. Among the predominant questions of law and fact common to the Class are:

- 11 a. whether Defendant violated Civil Code section 3344;
- 12 b. whether Defendant violated the California Constitution
- 13 c. the amount of gross revenue and profit obtained by Defendant
14 attributable to their violations of Civil Code section 3344; and
- 15 d. the appropriate nature of class-wide injunctive and equitable relief.

16 15. Class action treatment is a superior method for the fair and efficient adjudication
17 of the controversy, in that, among other things, such treatment will permit a large number of
18 similarly situated persons to prosecute their common claims in a single forum simultaneously,
19 efficiently, and without the unnecessary duplication of evidence, effort and expense that
20 numerous individual actions would engender. The benefits of proceeding through the class
21 mechanism, including providing injured persons or entities with a method for obtaining redress
22 for claims that might not be practicable to pursue individually, substantially outweigh any
23 difficulties that may arise in management of this class action. There are no difficulties likely to
24 be encountered in the management of this class action that would preclude its maintenance as a
25 class action and no superior alternative exists for the fair and efficient adjudication of this
26 controversy on behalf of plaintiff and the members of the class.

27 ///

28 ///

FACTUAL ALLEGATIONS

1
2 16. Facebook is a social networking site designed to help its members (“users”)
3 communicate more efficiently with their friends, family and acquaintances by “facilitat[ing] the
4 sharing of information through the social graph, the digital mapping of people’s real-world social
5 connections.” See Facebook Factsheet, available at www.facebook.com/press/info.php?factsheet
6 (“Factsheet”).

7 17. Facebook is accessible through its online domain at <http://www.facebook.com> and
8 accounts are available at no charge to anyone over the age of 12.

9 18. Once members, users can search for other users and invite them to become their
10 Facebook Friends. Each Facebook Friendship invitation must be approved by the invited user.

11 19. Users are also invited to join one or more networks, each based around a
12 workplace, high school, or college.

13 20. Each user is assigned a unique profile page (“Profile”). A user’s Profile displays
14 personally identifying information about the user, including, among other things, a user’s name,
15 schools, employers, birthday, hometown and relationship status. The Profile also displays a
16 photo of the user. Once the online application for membership to Facebook has been approved,
17 users are immediately encouraged to fill in their Profile information and upload a photo. Aside
18 from their name, users can fill out as much or as little as this personally identifying information
19 as they choose.

20 21. Each Profile has two versions – the publically available version designed to allow
21 users to find one another and the version available to a user’s Facebook Friends. The
22 information available to other users in each version can be partially limited based on a user’s
23 Privacy Settings.

24 22. In addition to a Profile, each user has a personalized Home page. See Factsheet.
25 The Home page contains a feed of the Facebook activities and status updates of the user’s
26 Facebook Friends. For example, if a Facebook Friend of Plaintiff Meth has updated her status as
27 “watching television with my parents,” Meth will see that status on her Home page next to her
28 friend’s name and profile picture, provided that her friend’s privacy settings are set accordingly.

1 **Privacy Settings**

2 23. Facebook provides users with the ability to set their own level of privacy –
3 limiting the information available to the public and other users – with few exceptions.

4 24. Users control their privacy settings through their account’s Privacy Settings Page.
5 On the Privacy Settings Page, Facebook breaks all of the potentially shared information into
6 groups. For example, a user’s status, photos and posts are grouped together and controlled
7 inseparably.

8 25. Each group can be assigned a separate level of privacy. The levels of privacy are:
9 (i) Friends Only; (ii) Friends of Friends; (iii) Everyone; and (iv) Custom. The Custom setting
10 allows users to limit sharing on a friend-by-friend basis.

11 26. Facebook sets each group to its “recommended” privacy level by default. For
12 example, the group including a user’s status, photos and posts is automatically set to the
13 “Everyone” setting. The default privacy settings for a minor’s account are shown in Exhibit A.

14 27. According to Facebook, the “Everyone” setting works differently for minors than
15 adults. Whereas, with adults, information set to be shared with “Everyone” is, in fact, publicly
16 available to everyone on the internet (*see* www.facebook.com/help/?faq=14444), when minors
17 set information to be visible to “Everyone,” that information is actually only visible to their
18 friends, friends of friends, and people in any verified school or work networks they have joined.
19 *See* www.facebook.com/help/?faq=16397.

20 **Facebook Advertising and Minors**

21 28. Since late 2007, Facebook, Inc. has been selling advertisements on Facebook as
22 its primary means of generating income. With complete access to the information provided in
23 users’ profiles as well as the information generated through users’ networking activities,
24 Facebook, Inc. is uniquely able to offer advertisers the ability to direct their ads to very specific
25 demographics.

26 29. On or about November 6, 2007, Facebook unveiled “Social Ads” or ads that, in
27 addition to the advertisement displayed by the advertiser, would also display the names and/or
28 likenesses of a user’s Facebook Friends who had interacted with the ad or the advertiser’s brand

1 page.

2 30. This type of endorsement-advertising has existed in one form or another since
3 November of 2007. Currently, advertisements are displayed on Facebook along with a “Like”
4 button or, in the case of events, the ability to RSVP through the ad itself. When a user “Likes” a
5 Facebook page through an ad or responds to an Event, the user’s action is recorded on the
6 Facebook Page or Event page along with the user’s name and likeness. For example, if Plaintiff
7 Meth were to “Like” an advertisement by XYZ, Inc., when her Facebook Friends viewed XYZ,
8 Inc.’s Facebook Page, they would see “1 Friend Likes” that page, with Meth’s name and photo
9 appearing in the margin.

10 31. Additionally, when a user “Likes” a brand or responds to an event invitation, a
11 corresponding message is displayed to their Facebook Friends’ Home page feed announcing their
12 endorsement. Thus, not only will Meth’s Facebook Friends see her name and likeness on XYZ
13 Inc.’s Page, they will also see a post on their own Home page noting that “Meth Likes XYZ,
14 Inc.”

15 32. Users can prevent their endorsements from being shared with their friends by
16 limiting who can see their posts through their Privacy Settings. They can also “unlike” a page
17 immediately after having “Liked” it.

18 33. There is, however, no mechanism in place by which a user can prevent their name
19 and likeness from appearing on a Facebook Page if they have “Liked” it, nor can their name or
20 likeness be removed as long as they continue to “Like” the Page.

21 34. Advertisers can purchase ads on a Cost-Per-Click (“CPC”) or Cost-Per-
22 Impression (“CPI”) basis. With the CPC, an advertiser pays Facebook every time a user clicks
23 through an ad to the advertiser’s landing page. If an advertisement directs users to a Facebook
24 Page or Event, advertisers will also pay Facebook whenever a user “Likes” the Page or RSVPs to
25 the event through the ad itself. Each of these actions is considered a “Click,” according to
26 Facebook. See <http://www.facebook.com/help/?faq=14627>.

27 35. Facebook offers its advertisers the ability to direct ads to specific age groups so
28 that target markets will be most likely to click through to the ad and cost the advertiser money.

1 36. The apparent endorsement of a good or service in an advertisement by one user
2 who is recognizable to other users will generate more clicks for an advertiser, and thereby
3 generate more revenue for Facebook, Inc.

4 37. In the course of using the names and likenesses of Facebook members in
5 advertising, Facebook regularly and frequently includes the names and likenesses of minors
6 without obtaining consent for that use. Children are a large marketing audience, so that
7 endorsements that include the names and likenesses of other children in advertisements and
8 solicitations generate a great increase in the revenue and profits to Facebook. This increased
9 revenue and profit occurs in the case of endorsement advertisements by increasing exposure of
10 the ads within preexisting social groups, and thereby increasing the chance that the advertisement
11 will be clicked.

12 38. The revenue for Facebook, Inc. associated with its social networking site has been
13 reported to be close to or approximately \$800 million in the year 2009. Facebook, Inc. is not a
14 publically held or traded company so its income figures are not generally available to the public.

15 39. Facebook, Inc. appears to be continually seeking new ways to use the names and
16 likenesses of its members, including children, for its own marketing purposes. In addition to
17 displaying users' names and likenesses as detailed above, Facebook also displays users' names
18 and likenesses to promote its own recruitment utility, Friend Finder.

19 40. Friend Finder can appear in the margin of any Facebook page, with a message
20 encouraging users to supply their login information to various third-party applications so that
21 Facebook can import the user's third-party contacts and compare those contacts with its own
22 membership. Once the login information is confirmed, Friend Finder displays two groups of
23 results: (i) third-party contacts with existing Facebook accounts; and (ii) email addresses for
24 third-party contacts without existing Facebook accounts. Users are encouraged to add those
25 contacts with memberships as their Facebook Friends and to invite their third-party contacts
26 without accounts to Facebook by simply selecting that option and clicking a button.

27 41. Thus, Friend Finder serves the dual purpose of both connecting Facebook users
28 and increasing Facebook's own membership which increases the size of Facebook's advertising

1 market and generates significantly more revenue for Facebook. In spite of Facebook, Inc.'s
2 characterization of Friend Finder (<http://www.facebook.com/help/?faq=18442>), Friend Finder
3 clearly serves as an advertisement.

4 42. In addition to its message encouraging users to import their contacts, Friend
5 Finder typically displays the names and/or likenesses of any Facebook Friends who used the
6 Friend Finder utility in the past. See <http://www.facebook.com/help/?faq=18442>. This is a
7 further commercial use of the names and likenesses of minors without legal consent.

8 43. The business model of Facebook indicates that using the names and likenesses of
9 its members, including children, for marketing and revenue generating purposes is integral to its
10 operating system and will continue and likely increase in the future.

11 **Facebook, Inc. Does Not Obtain the Legal Consent of Its Minor Members**
12 **to use their Names and/or Likenesses for Marketing Purposes**

13 44. The current Statement of Rights and Responsibilities posted by Facebook, Inc. on
14 Facebook includes the following section regarding advertising:

15 **10. About Advertisements and Other Commercial Content**
16 **Served or Enhanced by Facebook**

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

- 20 1. You can use your privacy settings to limit how your name
21 and profile picture may be associated with commercial,
22 sponsored or related content (such as a brand you like)
23 served or enhanced by us. You give us permission to use
24 your name and profile picture in connection with that
25 content, subject to the limits you place.
2. We do not give your content or information to advertisers
without your consent.
3. You understand that we may not always identify paid
services and communications as such.

26 45. The foregoing section 10 of the Statement of Rights and Responsibilities, once
27 agreed to by a Facebook member, does not amount to "consent" by that member for the use of
28 the name and likeness of the member for Facebook's own commercial and marketing activities,

1 nor does it amount to consent for Facebook to sell to third parties the right to use the name and
2 likeness of the member for commercial and marketing purposes.

3 46. As a practical matter, a user cannot consent to having their name or likeness used
4 in an advertisement when Facebook does not identify certain advertisements as paid services and
5 communications.

6 47. Moreover, even if section 10 of the Statement of Rights and Responsibilities did
7 constitute consent to users over the age of majority, Facebook does not obtain consent to use the
8 names and likeness of minors for commercial and marketing purposes. Pursuant to Cal. Civ.
9 Code § 3344, consent of a parent or legal guardian is required prior to using a minor's name or
10 likeness in an advertisement.

11 48. At no time does Facebook seek or obtain the consent of any parent or guardian of
12 its minor users to use or sell the name and likeness of the child for commercial use by Facebook
13 or third-party advertisers.

14 **FIRST CAUSE OF ACTION**

15 **(Violation Of Civil Code § 3344)**

16 49. Plaintiff incorporates the allegations contained in the paragraphs above as if they
17 were fully set forth in this Count.

18 50. From November 2007 and continuing to the present, Facebook, Inc. has regularly
19 and repeatedly used the names and/or likenesses of Plaintiff and the members of the Class for the
20 commercial purpose of marketing, advertising, selling and soliciting the purchase of goods and
21 services.

22 51. Facebook, Inc. did not first obtain the consent of plaintiff and members of the
23 Class before using their names or likenesses for commercial and marketing purposes.

24 52. Even if Facebook, Inc. had obtained consent of minor class members, such
25 consent is inadequate under Cal. Civ. Code § 3344.

26 53. Pursuant to Cal. Civ. Code § 3344,

27 Any person who knowingly uses another's name, voice, signature,
28 photograph, or likeness, in any manner, on or in products, merchandise, or
goods, or for purposes of advertising or selling, or soliciting purchases of,

1 products, merchandise, goods or services, without such person's prior
2 consent, **or, in the case of a minor, the prior consent of his parent or legal**
3 **guardian**, shall be liable for . . . the injured party or parties in an amount
4 equal to the greater of seven hundred fifty dollars (\$750) or the actual
damages suffered by him or her as a result of the unauthorized use, and any
profits from the unauthorized use that are attributable to the use and are not
taken into account in computing the actual damages.

5 (emphasis added).

6 54. Facebook, Inc. did not first obtain prior consent of the parents or legal guardians
7 of the Plaintiff and members of the Class before using their names or likenesses for commercial
8 and marketing purposes.

9 55. California Civil Code § 3344 provides statutory damages in the sum of \$750 per
10 person for the violation of its provisions, or actual damages, whichever is greater, and Plaintiff
11 asserts her right to such damages in an amount to be determined according to proof at trial.

12 56. Plaintiff has incurred attorney's fees and costs which are recoverable under Civil
13 Code section 3344 in an amount to be determined according to proof at trial.

14 **SECOND CAUSE OF ACTION**

15 **(Violation Of California Constitution, Article I, Section 1)**

16
17 57. Plaintiff incorporates the allegations contained in the paragraphs above as if they
18 were fully set forth in this Count.

19 58. The California Constitution, Article I, section 1 provides an actionable and
20 inalienable right of privacy as follows:

21 All people are by nature free and independent and have inalienable
22 rights. Among these are enjoying and defending life and liberty,
23 acquiring possessing and protecting property, and pursuing and
obtaining safety, happiness, and privacy.

24 59. The inalienable right to privacy under the California Constitution includes the
25 right to be free from "...the improper use of information properly obtained ... [and] the use of it
26 for another purpose or the disclosure of it to some third party." *White v. Davis*, 13 Cal. 3d 757,
27 775 (1975). The State Constitutional right of privacy "...is self-executing and confers a judicial
28 right of action on all Californians." *Id.* "Privacy is protected not merely against state action; it

1 is considered an inalienable right which may not be violated by anyone.” *Porten v. Univ. of San*
2 *Francisco*, 64 Cal. App. 3d 825, 829 (1976).

3 60. The conduct of Facebook, Inc. as alleged herein constitutes a violation of the right
4 of privacy of Plaintiff and of the Class as guaranteed by the California Constitution.

5 61. As a direct and legal result of the Constitutional violation herein alleged, Plaintiff
6 and the Class have sustained economic and non-economic damages in an amount to be
7 determined at trial.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff, on behalf of herself and the members of the Class, pray for the
10 Court to enter judgment as follows:

11 A. for a determination that this action may be maintained as a class action;

12 B. for statutory penalties under Civil Code section 3344;

13 C. for all profits and revenues received by Defendant from the unauthorized
14 commercial use of the names and/or likenesses of Plaintiff and the Class members;

15 D. for an injunction against the further commercial use by Defendant of the names
16 and likenesses of children in California without the consent of the parents or guardians of each
17 such child;

18 E. for attorneys fees under Civil Code section 3344 and/or Code of Civil Procedure
19 section 1021.5; and

20 F. for such other and further relief that the Court may deem just and proper.

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff demands a trial by jury on all claims so triable.

23 Dated: February 11, 2011

Respectfully submitted,

24 **WEXLER WALLACE LLP**

25
26 By: 

27 Mark J. Tamblyn
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