

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

E.K.D., by her next friend Melissa K.)	
Dawes, and C.M.D., by his next friend)	
Jennifer E. DeYong, individually and on)	
behalf of all others similarly situated,)	Cause No: 3:11-cv-00461-GPM-SCW
)	
Plaintiffs,)	CLASS ACTION
)	
vs.)	Redacted, Publicly-Filed Version
)	
FACEBOOK, INC.,)	
)	
Defendant.)	

**DECLARATION OF SANDEEP N. SOLANKI IN SUPPORT OF
FACEBOOK’S MOTION TO TRANSFER VENUE**

Sandeep N. Solanki hereby declares under penalty of perjury as follows:

1. I am Litigation Counsel at Facebook, Inc. (“Facebook”). I submit this Declaration in support of Defendant Facebook’s Motion to Transfer Venue Pursuant to 28 U.S.C. § 1404(a). Except as otherwise noted, this declaration is based on my personal knowledge and my review of Facebook’s records. If called upon to testify as to the facts set forth in this declaration, I could and would competently testify thereto.

The Named Plaintiffs (E.K.D. and C.M.D.)

2. I understand that Plaintiffs in this action have not provided Facebook with their Usernames, User identification numbers (“UIDs”), email addresses, or other information associated with their Facebook accounts.

3. Nevertheless, I have attempted to identify the Facebook accounts of the named Plaintiffs E.K.D. and C.M.D., based on: (1) the allegation from the Complaint that the named Plaintiffs reside in the Southern District of Illinois; (2) the initials Plaintiffs provided in the Complaint; (3) the allegation that their parents’ last names are Dawes and DeYong, respectively;

and (4) the allegation that the named Plaintiffs are teenagers.

4. Using this information and internal Facebook tools and resources, I determined with reasonable certainty that the UID of Plaintiff E.K.D.'s Facebook account is [REDACTED], and the UID of Plaintiff C.M.D.'s Facebook account is [REDACTED].

5. Facebook's business records show that E.K.D. (UID [REDACTED]) registered for her Facebook account on or about [REDACTED], and that C.M.D. (UID [REDACTED]) registered for his account on or about [REDACTED].

6. At the time both Plaintiffs registered, prospective users who registered for Facebook in the U.S. at www.facebook.com were required to navigate through a series of registration prompts and web pages in which they agreed to Facebook's terms of service, known as the "Statement of Rights and Responsibilities" ("SRR"). At one of the final registration pages, registrants were required to represent that "By clicking Sign Up, [I am] indicating that [I] have read and agree to the Terms of Use and Privacy Policy," where the underlined text for "Terms of Use" was a hyperlink that directed Users to the full text of the SRR. To become a registered Facebook User, Plaintiffs were required to complete each of these steps; otherwise, they could not complete the registration process.

7. Attached hereto as **Exhibit A** is a true and correct copy of the current version of the SRR, which has been in place since April 26, 2011. Attached hereto as **Exhibit B** is a true and correct copy of the SRR that was in place as of August 2, 2010, the date that E.K.D. joined Facebook. Attached hereto as **Exhibit C** is a true and correct copy of the SRR that was in place as of February 3, 2010, the date that C.M.D. joined Facebook.

8. The current SRR is available on Facebook's website at www.facebook.com/terms.php. Users may access the SRR from the Facebook website at any

time by clicking on a blue link called "Terms," which is part of a fixed menu at the bottom of virtually every page of the site, including the www.facebook.com homepage. The word "Terms" is recognizable as a link not only because of its positioning, but because each page is programmed to display the text "Review our Terms of Service" when users hover their mouse cursor over the word. Clicking on the link will take the user directly to the SRR at the web address indicated above.

9. Once a User navigates to the SRR, the heading "Statement of Rights and Responsibilities" is prominently displayed in bolded black text. Immediately beneath that heading, users are informed of the terms under which Facebook offers its services and that: "By using or accessing Facebook, you agree to this Statement." This language also appeared in the SRR when E.K.D. and C.M.D. joined Facebook. (*Compare* Ex. A (introduction), *with* Ex. B (introduction), *and* Ex. C (introduction).)

10. The SRR governs Facebook's "relationship with users" including privacy, safety, and dispute resolution. Section 15 of the SRR (titled "Disputes") states:

You will resolve any claim, cause of action or dispute (claim) you have with us arising out of or relating to this Statement or Facebook *exclusively in a state or federal court located in Santa Clara County*. The laws of the State of California will govern this Statement, as well as any claim that might arise between you and us, without regard to conflict of law provisions. You agree to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.

(*See* Ex. A, at § 15.1.)

11. A provision virtually identical to this one also appeared in the SRR when E.K.D. and C.M.D. joined Facebook. (*Compare* Ex. A, at § 15.1, *with* Ex. B, at § 15.1, *and* Ex. C, at § 15.1.)

12. According to Facebook records, both Plaintiffs have continued to access and use their Facebook accounts since they filed this lawsuit on June 1, 2011. From June 1 to November

22, 2011, E.K.D. appears to have logged into her Facebook account at least [REDACTED] times. Likewise, from July 6 to November 22, 2011, C.M.D. appears to have logged into his Facebook account at least [REDACTED] times.

Facebook

13. Facebook is a Delaware corporation with its headquarters and principal place of business in Menlo Park, California. Facebook employs more than 3,000 individuals worldwide, over 2,000 of who work in Facebook's Menlo Park or Palo Alto offices in California. The Menlo Park and Palo Alto offices are located in San Mateo County and Santa Clara County, respectively, which are encompassed within the Northern District of California.

14. I have reviewed a copy of Plaintiffs' Complaint. Although the allegations in Plaintiffs' Complaint are not clear, Plaintiffs' allegations appear to center on Facebook's alleged "knowing[] use[] and [continued use of] Plaintiffs' name[s] and photographs for the purpose of marketing, advertising, selling and soliciting the purchase of goods and services without the consent of Plaintiffs' parents or guardians." (Compl. ¶ 39.) Based on my personal knowledge as well as discussions with other knowledgeable individuals within Facebook, the current Facebook employees who were primarily involved in the development of the potentially relevant Facebook advertising and marketing products are the individuals identified in Facebook's initial disclosures, all of whom work and/or reside in the Northern District of California. Kent Schoen, also referenced in Facebook's initial disclosures, is a former employee who, to the best of my current knowledge, lives in the Northern District of California. Additionally, to the best of my current knowledge, almost all of the significant decisions and conduct that appear to be relevant to the allegations in this case took place in the Northern District of California, and nearly all relevant documents and records are located and accessible there. Attached as **Exhibit D** is a true

and correct copy of Facebook's initial disclosures.

15. To the best of my current knowledge, Facebook has no offices, employees, or any other physical presence in the counties encompassed within the Southern District of Illinois. Facebook has 23 employees—primarily sales, account management, and ad operations staff—who work in its Chicago, Illinois office. To the best of my current knowledge, no employee likely to have discoverable information in this case works in Facebook's Chicago, Illinois office. Additionally, to the best of my current knowledge, no documents relevant to the allegations in this case are located there.

16. I have reviewed Plaintiffs' Initial Request for Production of Documents and believe that, to the extent that any relevant documents requested by Plaintiffs exist, virtually all of them would be located in and accessible from Facebook's Menlo Park or Palo Alto offices, including, but not limited to, documents responsive to: (a) RFP No. 3 (company directories); (b) RFP No. 6 (marketing materials provided to potential advertisers); and (3) RFP No. 5 (documents reflecting communications related to the facts of this case). To the best of my current knowledge, no such documents are located in Illinois. Attached hereto as **Exhibit E** is a true and correct copy of Plaintiffs' Initial Request for Production of Documents.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 7, 2011, at Menlo Park, California.



Sandeep N. Solanki