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FACEBOOK, INC.

13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION

17 MATTHEW CAMPBELL, MICHAEL
HURLEY, and DAVID SHADPOUR,

18 Plaintiffs,

19 v.

20 FACEBOOK, INC.,

21 Defendant.

Case No. C 13-05996 PJH

PUTATIVE CLASS ACTION

**DEFENDANT FACEBOOK, INC.'S
ANSWER TO PLAINTIFFS'
CONSOLIDATED AMENDED
COMPLAINT**

[JURY TRIAL DEMANDED]

1 Defendant Facebook, Inc. (“Facebook”) answers Plaintiffs’ Consolidated Amended
2 Complaint (the “Complaint”) as follows:

3 Except as otherwise expressly recognized herein, Facebook denies each and every allegation
4 contained in the Complaint. Facebook states that the headings, sub-headings and footnotes
5 throughout the Complaint do not constitute well-pled allegations of fact and therefore require no
6 response. To the extent a response is required, Facebook denies the allegations in the headings, sub-
7 headings, and footnotes in the Complaint. Facebook expressly reserves the right to seek to amend
8 and/or supplement its Answer as may be necessary.

9 **“I. INTRODUCTION”**

10 1. Facebook denies the allegations in the first sentence of paragraph 1. Facebook
11 disputes Plaintiffs’ characterization of its conduct, or that its conduct provides a basis for any
12 actionable claim. The remaining allegations in paragraph 1 are conclusions of law for which no
13 responsive pleading is required and which are therefore denied. To the extent the remaining
14 allegations in paragraph 1 are deemed in whole or in part to be factual, Facebook admits that
15 Plaintiffs purport to bring claims under these statutes and are requesting an order seeking injunctive,
16 declaratory, and monetary relief, except that in its Order dated December 23, 2014, the Court
17 dismissed Plaintiffs’ UCL and CIPA § 632 claims with prejudice. Facebook denies that Plaintiffs
18 are entitled to any relief and/or remedies under any of these laws, or that this action may be
19 maintained as a class action.

20 2. Facebook lacks knowledge or information sufficient to admit or deny the allegations
21 in paragraph 2 that pertain to Plaintiffs’ use of Facebook and/or the Facebook Messages product.
22 Facebook denies Plaintiffs’ characterizations of the Facebook Messages product and its disclosures
23 related to the Facebook Messages product. Facebook admits that it processes the messages of
24 Facebook users who send or receive messages through the Messages product. Facebook further
25 admits that, at certain times, and under certain circumstances, if a message sent through the
26 Facebook Messages product included a link to another website (uniform resource identifier
27 (“URL”)) that contained a Facebook “Like” button plugin, the aggregate “Like” count for that URL
28

1 displayed on a social plugin may have increased. Facebook denies the remaining allegations in
2 paragraph 2.

3 3. Facebook admits that, while it offers the Facebook social networking service to users
4 for free, it generates revenue from targeted advertising. Facebook further admits that it has
5 approximately 1.2 billion users. Facebook disputes Plaintiffs' characterization of its conduct, or that
6 its conduct provides a basis for any actionable claim. Except as so admitted, Facebook denies the
7 allegations in paragraph 3.

8 4. Facebook denies the allegations in paragraph 4.

9 **"II. THE PARTIES"**

10 5. Facebook admits that a Facebook account with a user name of Matthew Campbell
11 exists. Facebook lacks knowledge or information sufficient to admit or deny the remaining
12 allegations in paragraph 5.

13 6. Facebook admits that a Facebook account with a user name of Michael Hurley exists.
14 Facebook lacks knowledge or information sufficient to admit or deny the remaining allegations in
15 paragraph 6.

16 7. Facebook admits that a Facebook account with a user name of David Shadpour
17 exists. Facebook lacks knowledge or information sufficient to admit or deny the remaining
18 allegations in paragraph 7.

19 8. Facebook admits the allegations in paragraph 8.

20 **"III. JURISDICTION"**

21 9. Facebook admits that this Court has federal question jurisdiction over claims that
22 arise under the Electronic Communications Privacy Act, but Facebook denies that Plaintiffs have
23 standing under Article III of the United States Constitution. Facebook further denies Plaintiffs have
24 stated a claim for a violation of any law, or that this action may be maintained as a class action.
25 Except as so admitted, Facebook denies the allegations in paragraph 9.

26 10. Facebook admits that this Court has diversity jurisdiction under the Class Action
27 Fairness Act, but Facebook denies that Plaintiffs have standing under Article III of the United States
28 Constitution. Facebook further denies Plaintiffs have stated a claim for a violation of any law, or

1 that this action may be maintained as a class action. Except as so admitted, Facebook denies the
2 allegations in paragraph 10.

3 11. Facebook admits that its headquarters are in California and that it conducts business
4 in California. The remaining allegations in paragraph 11 are conclusions of law for which no
5 responsive pleading is required and which are therefore denied.

6 **“IV. INTRADISTRICT ASSIGNMENT”**

7 12. Facebook admits that its executive offices and corporate headquarters are located in
8 Menlo Park, California. Insofar as the allegations in paragraph 12 state conclusions of law, no
9 response is required. To the extent a response is required, Facebook is without information
10 sufficient to form a belief as to the truth of the allegations in this paragraph and denies each and
11 every allegation on that basis. Facebook denies any express or implied allegation within this
12 paragraph that any of its conduct was improper or unlawful.

13 13. Facebook admits the allegations in paragraph 13.

14 **“V. CHOICE OF LAW”**

15 14. The allegations in paragraph 14 are conclusions of law for which no responsive
16 pleading is required and which are therefore denied. To the extent the allegations in paragraph 14
17 are deemed in whole or in part to be factual, Facebook admits that paragraph 14 contains what
18 appears to be a partial excerpt of its Statement of Rights and Responsibilities, and avers this
19 document speaks for itself. Except as so admitted, Facebook denies the allegations in paragraph 14.

20 **“VI. FACTS COMMON TO ALL COUNTS”**

21 15. Facebook admits that it operates the world’s largest social-networking website.
22 Facebook admits that it has approximately 1.2 billion users. Facebook further admits that its social-
23 networking website enables users to share text, photography, video, and other Internet content.
24 Facebook lacks knowledge or information sufficient to admit or deny the remaining allegations in
25 paragraph 15.

26 16. Facebook admits that its social-networking website enables users to communicate
27 with one another. Facebook admits that the Facebook social-networking website includes Facebook
28 Pages and the Facebook Messages product. By way of further response, Facebook avers that

1 Facebook Pages and the Facebook Messages product are not the only tools offered on the Facebook
2 social-networking website. Facebook admits that the Facebook Messages product includes
3 messages and chats. Facebook further admits that Facebook chats are in an instant messaging
4 format. Except as so admitted, Facebook denies the allegations in paragraph 16.

5 17. Facebook admits that, in order to establish a Facebook account, a Facebook user must
6 agree to Facebook's Statement of Rights and Responsibilities and acknowledge reading Facebook's
7 Data Use Policy. Facebook further admits that paragraph 17 contains what appears to be a partial
8 excerpt of a prior version of the Facebook website at www.facebook.com, and Facebook avers that
9 the document speaks for itself.

10 18. Facebook admits the allegations in paragraph 18.

11 19. Facebook admits that paragraph 19 quotes certain language used in one or more
12 versions of its Statement of Rights and Responsibilities and Data Use Policy, and avers that these
13 documents speak for themselves. Except as so admitted, Facebook denies the allegations in
14 paragraph 19.

15 20. Facebook admits that paragraph 20 quotes certain language used in an article that was
16 available on the Facebook Help Center. Facebook admits that there are different ways to share
17 content on Facebook, including sharing content with a broad audience, sharing content with a small
18 group of friends, and sharing content with an individual. Facebook admits that one way to share
19 content with an individual is to send a message. By way of further response, Facebook avers that
20 the document speaks for itself.

21 21. Facebook admits that paragraph 21 quotes portions of an article that was available on
22 the Facebook Help Center. By way of further response, Facebook avers that the document speaks
23 for itself. Except as so admitted, Facebook denies the allegations in paragraph 21.

24 22. Facebook admits that the Facebook Messages product has, at certain points in time,
25 included email, chat, and messaging functionality. Facebook admits that, at certain points in time,
26 users were able to use the Facebook Messages product to send messages to and receive messages
27 from Facebook users and non-Facebook email addresses. Except as so admitted, Facebook denies
28 the allegations in paragraph 22.

1 23. Facebook admits that the Facebook Messages product enables users to communicate
2 with one another. Facebook disputes Plaintiffs’ characterizations of its Facebook Messages product
3 and its disclosures related to the Facebook Messages product, or that its conduct provides a basis for
4 any actionable claim. Facebook further admits that paragraph 23 quotes certain language used in
5 articles that were available on the Facebook Help Center, and avers that these documents speak for
6 themselves. Except as so admitted, Facebook denies the allegations in paragraph 23.

7 24. Facebook admits that paragraph 24 contains certain words that were included in a
8 Facebook post that was previously available on the Internet, and avers that this document speaks for
9 itself. Facebook disputes Plaintiffs’ characterization of the document. Except as so admitted,
10 Facebook denies the allegations in paragraph 24.

11 25. Facebook denies the allegations in paragraph 25.

12 26. Facebook admits that it has developed items of embeddable HTML code called
13 “social plugins,” including the “Like” button. Facebook admits that certain third-party websites
14 offer social plugins in order to provide engaging and personalized social experiences to their users.
15 Facebook admits that social plugins allow people to share content using Facebook directly from
16 third-party websites. Except as so admitted, Facebook denies the allegations in paragraph 26.

17 27. Facebook admits that it processes the messages of Facebook users who send or
18 receive messages through the Messages product. Facebook further admits that, at certain times, and
19 under certain circumstances, if a message sent using the Facebook Messages product included a link
20 to another website (URL) that contained a Facebook “Like” button plugin, the aggregate “Like”
21 count for that URL displayed on a social plugin may have increased. Facebook disputes Plaintiffs’
22 characterizations of its Facebook Messages product, or that its conduct provides a basis for any
23 actionable claim. Except as so admitted, Facebook denies the allegations in paragraph 27.

24 28. Facebook denies the allegations in paragraph 28.

25 29. Facebook denies the allegations in paragraph 29.

26 30. Facebook denies the allegations in paragraph 30.

27 31. Facebook avers that the referenced documents speak for themselves. Facebook
28 disputes Plaintiffs’ characterization of its conduct and its disclosures, or that its conduct provides a

1 basis for any actionable claim. Except as so admitted, Facebook denies the allegations in paragraph
2 31.

3 32. Facebook admits that it has developed items of embeddable HTML code called
4 “social plugins,” including the “Like” button. Facebook admits that certain third-party websites
5 offer social plugins. Facebook admits that social plugins allow people to share content using
6 Facebook directly from third-party websites. Facebook admits that paragraph 32 contains what
7 appears to be a partial written excerpt of audio from a Facebook video titled “Understanding Social
8 Plugins” that was posted to Facebook at one time, and Facebook avers that the document speaks for
9 itself. Except as so admitted, Facebook denies the allegations in paragraph 32.

10 33. Facebook admits that social plugins allow people to share content using Facebook
11 directly from third-party websites. Except as so admitted, Facebook denies the allegations in
12 paragraph 33.

13 34. Facebook admits that paragraph 34 contains what appears to be a partial written
14 excerpt of audio from a Facebook video titled “Understanding Social Plugins” that was posted to
15 Facebook at one time, and Facebook avers that the document speaks for itself. Facebook disputes
16 Plaintiffs’ characterization of its conduct and its disclosures, or that its conduct provides a basis for
17 any actionable claim. Except as so admitted, Facebook denies the allegations in paragraph 34.

18 35. Facebook admits that paragraph 35 purports to characterize a blog post that was
19 published on the *Wall Street Journal*’s website in October 2012. Facebook avers that the blog post
20 speaks for itself. Except as so admitted, Facebook denies the allegations in paragraph 35.

21 36. Facebook admits that paragraph 36 purports to characterize an article that was
22 published on the *Digital Trends* website in October 2012. Facebook avers that the article speaks for
23 itself. Except as so admitted, Facebook denies the allegations in paragraph 36.

24 37. Facebook admits that paragraph 37 purports to characterize a blog post that was
25 published on the *Wall Street Journal*’s website in October 2012. Facebook avers that the blog post
26 speaks for itself. Except as so admitted, Facebook denies the allegations in paragraph 37.

27 38. Facebook disputes Plaintiffs’ characterization of its conduct, or that its conduct
28 provides a basis for any actionable claim, and Facebook denies the allegations in paragraph 38.

1 39. Facebook disputes Plaintiffs’ characterization of its conduct, or that its conduct
2 provides a basis for any actionable claim, and Facebook denies the allegations in paragraph 39.

3 40. Facebook admits that paragraph 40 purports to characterize an article that was
4 published on Swiss security firm High-Tech Bridge’s website in August 2013. Facebook avers that
5 the article speaks for itself. Except as so admitted, Facebook denies the allegations in paragraph 40.

6 41. Facebook denies the allegations in paragraph 41.

7 42. Facebook denies the allegations in paragraph 42. By way of further response,
8 Facebook disputes Plaintiffs’ characterization of its conduct and its disclosures, or that its conduct
9 provides a basis for any actionable claim.

10 43. Facebook admits that it has developed items of embeddable HTML code called
11 “social plugins,” including the “Like” button. Facebook admits that certain third-party websites
12 offer social plugins. Facebook admits that social plugins allow people to share content using
13 Facebook directly from third-party websites. By way of further response, Facebook admits that
14 paragraph 43 purports to characterize an article that was published on CNET News’ website in June
15 2010. Facebook avers that the article speaks for itself. Except as so admitted, Facebook denies the
16 allegations in paragraph 43.

17 44. Facebook admits that paragraph 44 purports to characterize an article that was
18 published on CNET News’ website in June 2010. Facebook avers that the article speaks for itself.
19 Except as so admitted, Facebook denies the allegations in paragraph 44.

20 45. Facebook denies the allegations in paragraph 45.

21 46. Facebook admits that paragraph 46 purports to characterize an episode of *Frontline*.
22 Facebook avers that the document speaks for itself. Facebook disputes Plaintiffs’ characterization of
23 its conduct, or that its conduct provides a basis for any actionable claim. Facebook lacks knowledge
24 or information sufficient to admit or deny the remaining allegations in paragraph 46.

25 47. Facebook denies the allegations in paragraph 47. Facebook disputes Plaintiffs’
26 characterization of its conduct, or that its conduct provides a basis for any actionable claim.

27 48. Facebook denies the allegations in paragraph 48.

28

1 49. Facebook admits that it has more than one billion users. Facebook admits that
2 paragraph 49 contains what appears to be a partial excerpt of a Facebook article titled “How
3 Advertising and Sponsored Stories Works” that was available on Facebook. Facebook avers that
4 this document speaks for itself. Facebook admits that it earns revenue from advertisements it
5 displays to Facebook users, and that such advertisements may be targeted based on certain
6 information provided by users to Facebook. Except as so admitted, Facebook denies the allegations
7 in paragraph 49.

8 50. Facebook admits that paragraph 50 purports to characterize a third-party study
9 published by Nielsen OCR. Facebook avers that this document speaks for itself. Facebook admits
10 that it earns revenue from advertisements it displays to Facebook users, and that such advertisements
11 may be targeted based on certain information provided by users to Facebook. Except as so admitted,
12 Facebook denies the allegations in paragraph 50.

13 51. Facebook admits that paragraph 51 purports to characterize an article titled “Private
14 Traits and Attributes are Predictable from Digital Records of Human Behavior” that was published
15 in the *Proceedings of the National Academy of Sciences of the United States of America* in 2013.
16 Facebook admits that paragraph 51 purports to characterize an article titled “Social Influence in
17 Social Advertising: Evidence from Field Experiments” that was published in *Proceedings of the*
18 *13th ACM Conference on Electronic Commerce* in 2012. Facebook avers that these documents
19 speak for themselves. Facebook disputes Plaintiffs’ characterization of its conduct, or that its
20 conduct provides a basis for any actionable claim. Except as so admitted, Facebook denies the
21 allegations in paragraph 51.

22 52. Facebook admits that it receives, processes, and stores information shared by users on
23 Facebook, including when users send messages. Facebook avers that it uses all information shared
24 on Facebook in accordance with its Statement of Rights and Responsibilities and its Data Use
25 Policy, and avers that these documents speak for themselves. By way of further response, Facebook
26 admits that paragraph 52 purports to characterize an article titled “Information For Law Enforcement
27 Authorities” that was available on Facebook’s Safety Center. Facebook avers that the document
28 speaks for itself. Facebook disputes Plaintiffs’ characterization of its conduct and disclosures, or

1 that its conduct provides a basis for any actionable claim. Except as so admitted, Facebook denies
2 the allegations in paragraph 52.

3 53. Facebook admits that paragraph 53 contains what appears to be a partial excerpt of a
4 statement by the Senate Judiciary Committee, and Facebook avers that this document speaks for
5 itself. The remaining allegations in paragraph 53 are conclusions of law for which no responsive
6 pleading is required and which are therefore denied. To the extent the allegations in paragraph 53
7 are deemed in whole or in part to be factual, Facebook denies them.

8 54. Facebook admits that paragraph 54 contains what appears to be a partial excerpt of a
9 statement by Senator Patrick Leahy, and Facebook avers that this document speaks for itself. The
10 remaining allegations in paragraph 54 are conclusions of law for which no responsive pleading is
11 required and which are therefore denied. To the extent the allegations in paragraph 54 are deemed
12 in whole or in part to be factual, Facebook denies them.

13 55. Facebook admits that paragraph 55 purports to characterize the “Fair Information
14 Practice Principles” published by the U.S. Department of Health and Human Services. Facebook
15 avers that this document speak for itself. The remaining allegations in paragraph 55 are conclusions
16 of law for which no responsive pleading is required and which are therefore denied. To the extent
17 these allegations are deemed in whole or in part to be factual, Facebook denies them. Facebook
18 disputes Plaintiffs’ characterization of its conduct, or that its conduct provides a basis for any
19 actionable claim.

20 56. Facebook disputes Plaintiffs’ characterization of its conduct, or that its conduct
21 provides a basis for any actionable claim, and Facebook denies the allegations in paragraph 56.

22 57. Facebook disputes Plaintiffs’ characterization of its conduct, or that its conduct
23 provides a basis for any actionable claim, and Facebook denies the allegations in paragraph 57.

24 58. Facebook disputes Plaintiffs’ characterization of its conduct, or that its conduct
25 provides a basis for any actionable claim, and Facebook denies the allegations in paragraph 58.

26 **“VII. CLASS ALLEGATIONS”**

27 59. Facebook admits that Plaintiffs purport to bring a class action under Rule 23 of the
28 Federal Rules of Civil Procedure. The remaining allegations in paragraph 59 are conclusions of law

1 for which no responsive pleading is required and which are therefore denied. To the extent these
2 allegations are deemed in whole or in part to be factual, Facebook denies them. By way of further
3 response, Facebook avers that this action may not be maintained as a class action.

4 In response to footnote 2 to paragraph 59, Facebook admits that what it understands to be the
5 “practice” challenged in this action—incrementing a “Like” count when users shared URLs in
6 Facebook messages in certain circumstances—ceased in October 2012.

7 60. Facebook admits that Plaintiffs purport to exclude certain entities and individuals
8 from the putative class. By way of further response, Facebook avers that this action may not be
9 maintained as a class action. Except as so admitted, Facebook denies the allegations in paragraph
10 60.

11 61. The allegations in paragraph 61 are conclusions of law for which no responsive
12 pleading is required and which are therefore denied. To the extent the allegations in paragraph 61
13 are deemed in whole or in part to be factual, Facebook denies them. By way of further response,
14 Facebook avers that this action may not be maintained as a class action.

15 62. The allegations in paragraph 62 are conclusions of law for which no responsive
16 pleading is required and which are therefore denied. To the extent the allegations in paragraph 62
17 are deemed in whole or in part to be factual, Facebook denies them. By way of further response,
18 Facebook avers that this action may not be maintained as a class action.

19 63. The allegations in paragraph 63 are conclusions of law for which no responsive
20 pleading is required and which are therefore denied. To the extent the allegations in paragraph 63
21 are deemed in whole or in part to be factual, Facebook denies them. By way of further response,
22 Facebook avers that this action may not be maintained as a class action.

23 64. The allegations in paragraph 64 are conclusions of law for which no responsive
24 pleading is required and which are therefore denied. To the extent the allegations in paragraph 64
25 are deemed in whole or in part to be factual, Facebook denies them. By way of further response,
26 Facebook avers that this action may not be maintained as a class action.

27 65. The allegations in paragraph 65 are conclusions of law for which no responsive
28 pleading is required and which are therefore denied. To the extent the allegations in paragraph 65

1 are deemed in whole or in part to be factual, Facebook denies them. By way of further response,
2 Facebook avers that this action may not be maintained as a class action.

3 66. The allegations in paragraph 66 are conclusions of law for which no responsive
4 pleading is required and which are therefore denied. To the extent the allegations in paragraph 66
5 are deemed in whole or in part to be factual, Facebook denies them. By way of further response,
6 Facebook avers that this action may not be maintained as a class action.

7 67. The allegations in paragraph 67 are conclusions of law for which no responsive
8 pleading is required and which are therefore denied. To the extent the allegations in paragraph 67
9 are deemed in whole or in part to be factual, Facebook denies them. By way of further response,
10 Facebook avers that this action may not be maintained as a class action.

11 68. The allegations in paragraph 68 are conclusions of law for which no responsive
12 pleading is required and which are therefore denied. To the extent the allegations in paragraph 68
13 are deemed in whole or in part to be factual, Facebook denies them. By way of further response,
14 Facebook avers that this action may not be maintained as a class action.

15 **“VIII. THE CLASS REPRESENTATIVES”**

16 69. Facebook lacks knowledge or information sufficient to admit or deny the allegations
17 in paragraph 69.

18 70. Facebook lacks knowledge or information sufficient to admit or deny the allegations
19 in paragraph 70.

20 71. Facebook lacks knowledge or information sufficient to admit or deny the allegations
21 in paragraph 71.

22 **“IX. CAUSES OF ACTION**

23 **COUNT ONE**

24 **(Violations of the Electronic Communications Privacy Act,
25 18 U.S.C. §§ 2510 *et seq.*)”**

26 72. Responding to paragraph 72, Facebook incorporates by reference its responses to the
27 preceding paragraphs as if fully set forth herein.
28

1 73. Facebook admits that Plaintiffs purport to bring claims under these statutes.
2 Facebook denies that Plaintiffs are entitled to any relief and/or remedies under any of these laws, or
3 that this action may be maintained as a class action.

4 74. Facebook admits the allegations in paragraph 74.

5 75. Facebook admits that it presently has over 166 million users in the United States.
6 Facebook further admits that it presently has more than one billion users. The remaining allegations
7 in paragraph 75 are conclusions of law for which no responsive pleading is required and which are
8 therefore denied. To the extent the allegations in paragraph 75 are deemed in whole or in part to be
9 factual, Facebook denies them.

10 76. The allegations in paragraph 76 are conclusions of law for which no responsive
11 pleading is required and which are therefore denied. To the extent the allegations in paragraph 76
12 are deemed in whole or in part to be factual, Facebook denies them.

13 77. The allegations in paragraph 77 are conclusions of law for which no responsive
14 pleading is required and which are therefore denied. To the extent the allegations in paragraph 77
15 are deemed in whole or in part to be factual, Facebook denies them.

16 78. Facebook denies the allegations in paragraph 78.

17 79. The allegations in paragraph 79 are conclusions of law for which no responsive
18 pleading is required and which are therefore denied. To the extent the allegations in paragraph 79
19 are deemed in whole or in part to be factual, Facebook denies them.

20 80. The allegations in paragraph 80 are conclusions of law for which no responsive
21 pleading is required and which are therefore denied. To the extent the allegations in paragraph 80
22 are deemed in whole or in part to be factual, Facebook denies them.

23 81. The allegations in paragraph 81 are conclusions of law for which no responsive
24 pleading is required and which are therefore denied. To the extent the allegations in paragraph 81
25 are deemed in whole or in part to be factual, Facebook denies them.

26 82. The allegations in paragraph 82 are conclusions of law for which no responsive
27 pleading is required and which are therefore denied. To the extent the allegations in paragraph 82
28 are deemed in whole or in part to be factual, Facebook denies them.

1 96. Facebook avers that in its Order dated December 23, 2014, the Court dismissed
2 Plaintiffs' claim under California Penal Code § 632 with prejudice, and therefore no response to this
3 paragraph is required. To the extent a response is required, Facebook denies that Plaintiffs are
4 entitled to any relief and/or remedies under any of these laws, or that this action may be maintained
5 as a class action. The allegations in paragraph 96 are conclusions of law for which no responsive
6 pleading is required and which are therefore denied. To the extent the remaining allegations in
7 paragraph 96 are deemed in whole or in part to be factual, Facebook denies them.

8 97. Facebook admits that the language quoted in paragraph 97 appears in California
9 Penal Code § 630. Facebook denies that the language has anything to do with Facebook's conduct
10 or renders unlawful any of Facebook's conduct. By way of further response, Facebook avers that in
11 its Order dated December 23, 2014, the Court dismissed Plaintiffs' claim under California Penal
12 Code § 632 with prejudice.

13 98. The allegations in paragraph 98 are conclusions of law for which no responsive
14 pleading is required and which are therefore denied. To the extent the allegations in paragraph 98
15 are deemed in whole or in part to be factual, Facebook denies them. By way of further response,
16 Facebook avers that in its Order dated December 23, 2014, the Court dismissed Plaintiffs' claim
17 under California Penal Code § 632 with prejudice.

18 99. Facebook lacks knowledge or information sufficient to admit or deny the allegations
19 in paragraph 99. By way of further response, Facebook avers that in its Order dated December 23,
20 2014, the Court dismissed Plaintiffs' claim under California Penal Code § 632 with prejudice.

21 100. The allegations in paragraph 100 are conclusions of law for which no responsive
22 pleading is required and which are therefore denied. To the extent the allegations in paragraph 100
23 are deemed in whole or in part to be factual, Facebook denies them. By way of further response,
24 Facebook avers that in its Order dated December 23, 2014, the Court dismissed Plaintiffs' claim
25 under California Penal Code § 632 with prejudice.

26 101. The allegations in paragraph 101 are conclusions of law for which no responsive
27 pleading is required and which are therefore denied. To the extent the allegations in paragraph 101
28 are deemed in whole or in part to be factual, Facebook denies them. By way of further response,

1 Facebook avers that in its Order dated December 23, 2014, the Court dismissed Plaintiffs' claim
2 under California Penal Code § 632 with prejudice.

3 102. The allegations in paragraph 102 are conclusions of law for which no responsive
4 pleading is required and which are therefore denied. To the extent the allegations in paragraph 102
5 are deemed in whole or in part to be factual, Facebook denies them. By way of further response,
6 Facebook avers that in its Order dated December 23, 2014, the Court dismissed Plaintiffs' claim
7 under California Penal Code § 632 with prejudice.

8 **“A. Violations of California Penal Code § 631(a)”**

9 103. Facebook admits the allegations in paragraph 103.

10 104. The allegations in paragraph 104 are conclusions of law for which no responsive
11 pleading is required and which are therefore denied. To the extent the allegations in paragraph 104
12 are deemed in whole or in part to be factual, Facebook denies them.

13 105. Facebook denies the allegations in paragraph 105.

14 106. Facebook denies the allegations in paragraph 106.

15 107. The allegations in paragraph 107 are conclusions of law for which no responsive
16 pleading is required and which are therefore denied. To the extent the allegations in paragraph 107
17 are deemed in whole or in part to be factual, Facebook denies them.

18 108. Facebook denies the allegations in paragraph 108.

19 109. Facebook denies the allegations in paragraph 109.

20 110. The allegations in paragraph 110 are conclusions of law for which no responsive
21 pleading is required and which are therefore denied. To the extent the allegations in paragraph 110
22 are deemed in whole or in part to be factual, Facebook denies them.

23 111. Facebook denies the allegations in paragraph 111.

24 112. Facebook denies the allegations in paragraph 112.

25 **“B. Violations of California Penal Code § 632”**

26 113. Facebook avers that in its Order dated December 23, 2014, the Court dismissed
27 Plaintiffs' claim under California Penal Code § 632 with prejudice, and therefore no response to
28 paragraph 113 is required.

1 114. Facebook avers that in its Order dated December 23, 2014, the Court dismissed
2 Plaintiffs' claim under California Penal Code § 632 with prejudice, and therefore no response to
3 paragraph 114 is required.

4 115. Facebook avers that in its Order dated December 23, 2014, the Court dismissed
5 Plaintiffs' claim under California Penal Code § 632 with prejudice, and therefore no response to
6 paragraph 115 is required.

7 116. Facebook avers that in its Order dated December 23, 2014, the Court dismissed
8 Plaintiffs' claim under California Penal Code § 632 with prejudice, and therefore no response to
9 paragraph 116 is required.

10 117. Facebook avers that in its Order dated December 23, 2014, the Court dismissed
11 Plaintiffs' claim under California Penal Code § 632 with prejudice, and therefore no response to
12 paragraph 117 is required.

13 118. Facebook avers that in its Order dated December 23, 2014, the Court dismissed
14 Plaintiffs' claim under California Penal Code § 632 with prejudice, and therefore no response to
15 paragraph 118 is required.

16 119. Facebook avers that in its Order dated December 23, 2014, the Court dismissed
17 Plaintiffs' claim under California Penal Code § 632 with prejudice, and therefore no response to
18 paragraph 119 is required.

19 120. Facebook avers that in its Order dated December 23, 2014, the Court dismissed
20 Plaintiffs' claim under California Penal Code § 632 with prejudice, and therefore no response to
21 paragraph 120 is required.

22 121. Facebook avers that in its Order dated December 23, 2014, the Court dismissed
23 Plaintiffs' claim under California Penal Code § 632 with prejudice, and therefore no response to
24 paragraph 121 is required.

25 122. Facebook avers that in its Order dated December 23, 2014, the Court dismissed
26 Plaintiffs' claim under California Penal Code § 632 with prejudice, and therefore no response to
27 paragraph 122 is required. By way of further response, the allegations in paragraph 122 are
28 conclusions of law for which no responsive pleading is required and which are therefore denied. To

1 the extent the allegations in paragraph 122 are deemed in whole or in part to be factual, Facebook
2 denies them.

3 123. Facebook avers that in its Order dated December 23, 2014, the Court dismissed
4 Plaintiffs' claim under California Penal Code § 632 with prejudice, and therefore no response to
5 paragraph 123 is required. By way of further response, the allegations in paragraph 123 are
6 conclusions of law for which no responsive pleading is required and which are therefore denied. To
7 the extent the allegations in paragraph 123 are deemed in whole or in part to be factual, Facebook
8 denies them.

9 **“COUNT THREE**

10 **(Violations of California's Unfair Competition**

11 **Law, Cal. Bus. & Prof. Code § 17200, et seq.)”**

12 124. Responding to paragraph 124, Facebook incorporates by reference its responses to
13 the preceding paragraphs as if fully set forth herein.

14 125. Facebook avers that in its Order dated December 23, 2014, the Court dismissed
15 Plaintiffs' claim under California Business & Professions Code § 17200 with prejudice, and
16 therefore no response to paragraph 125 is required.

17 126. Facebook avers that in its Order dated December 23, 2014, the Court dismissed
18 Plaintiffs' claim under California Business & Professions Code § 17200 with prejudice, and
19 therefore no response to paragraph 126 is required.

20 127. Facebook avers that in its Order dated December 23, 2014, the Court dismissed
21 Plaintiffs' claim under California Business & Professions Code § 17200 with prejudice, and
22 therefore no response to paragraph 127 is required.

23 128. Facebook avers that in its Order dated December 23, 2014, the Court dismissed
24 Plaintiffs' claim under California Business & Professions Code § 17200 with prejudice, and
25 therefore no response to paragraph 128 is required.

26 129. Facebook avers that in its Order dated December 23, 2014, the Court dismissed
27 Plaintiffs' claim under California Business & Professions Code § 17200 with prejudice, and
28 therefore no response to paragraph 129 is required.

1 130. Facebook avers that in its Order dated December 23, 2014, the Court dismissed
2 Plaintiffs' claim under California Business & Professions Code § 17200 with prejudice, and
3 therefore no response to paragraph 130 is required.

4 **"JURY TRIAL DEMANDED"**

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

6 **"PRAYER FOR RELIEF"**

7 The allegations set forth in Plaintiffs' "Prayer for Relief" are conclusions of law for which no
8 responsive pleading is required and which are therefore denied. To the extent the allegations in
9 paragraph 1 through 10 of Plaintiffs' "Prayer for Relief" are deemed in whole or in part to be
10 factual, Facebook denies them. By way of further response, Facebook denies that Plaintiffs'
11 purported class is certifiable or that Plaintiffs or members of the purported class suffered injury or
12 damage of any kind. Facebook denies that Plaintiffs or the members of the purported classes are
13 entitled to any relief on any of their claims.

14 **AFFIRMATIVE DEFENSES**

15 Without assuming the burden to prove that which properly falls on Plaintiffs, Facebook pleads
16 the following separate and additional defenses.

17 **FIRST SEPARATE AND ADDITIONAL DEFENSE**

18 Facebook denies all allegations not expressly admitted and specifically reserves all
19 affirmative or other defenses that it may have against Plaintiffs and the putative class. It is not
20 necessary at this time for Facebook to delineate such defenses against the putative class because no
21 class has been certified, and the putative class members are not parties to this litigation.

22 **SECOND SEPARATE AND ADDITIONAL DEFENSE**

23 Plaintiffs' Complaint, and each and every purported cause of action, fails to state a claim upon
24 which relief can be granted.

25 **THIRD SEPARATE AND ADDITIONAL DEFENSE**

26 Plaintiffs' claims are barred in whole or in part by the First Amendment of the United States
27 Constitution and/or by Article 1, Section 2 of the California Constitution.

28

1 **FOURTH SEPARATE AND ADDITIONAL DEFENSE**

2 Plaintiffs’ claims and the claims of the putative class members are barred, in whole or in part,
3 because Plaintiffs and the putative class members lack standing under Article III of the United States
4 Constitution.

5 **FIFTH SEPARATE AND ADDITIONAL DEFENSE**

6 Plaintiffs’ claims and the claims of the putative class members are barred, in whole or in part,
7 because Plaintiffs and the putative class members lack standing under the Electronic
8 Communications Privacy Act, 18 U.S.C. 2510, *et seq.*

9 **SIXTH SEPARATE AND ADDITIONAL DEFENSE**

10 Plaintiffs’ claims and the claims of the putative class members are barred, in whole or in part,
11 because Plaintiffs and the putative class members lack standing under the California Invasion of
12 Privacy Act, California Penal Code §§ 630, *et seq.*

13 **SEVENTH SEPARATE AND ADDITIONAL DEFENSE**

14 This Court lacks jurisdiction over some or all of the claims asserted by the Plaintiffs and/or
15 the purported class.

16 **EIGHTH SEPARATE AND ADDITIONAL DEFENSE**

17 Plaintiffs and the putative class members have not sustained any injury or damage as a result
18 of any actions allegedly taken by Facebook, and are thus barred from asserting any claims against
19 Facebook.

20 **NINTH SEPARATE AND ADDITIONAL DEFENSE**

21 Plaintiffs’ damages—including actual, punitive, compensatory, exemplary, or statutory
22 damages—are limited by the terms of the contracts between Facebook and Plaintiffs.

23 **TENTH SEPARATE AND ADDITIONAL DEFENSE**

24 Plaintiffs’ claims are barred, in whole or in part, because the damages sought by Plaintiffs and
25 the putative class members are speculative and remote and impossible to ascertain.

26 **ELEVENTH SEPARATE AND ADDITIONAL DEFENSE**

27 Plaintiffs’ claims are barred, in whole or in part, because the damages alleged to have been
28 suffered are not compensable under the law.

1 **TWELFTH SEPARATE AND ADDITIONAL DEFENSE**

2 Plaintiffs have failed to mitigate their damages, if any, and any recovery should be reduced or
3 denied accordingly.

4 **THIRTEENTH SEPARATE AND ADDITIONAL DEFENSE**

5 Plaintiffs are barred by the doctrine of unclean hands from maintaining each and every
6 purported claim against Facebook, or from recovering any damages thereunder from Facebook.

7 **FOURTEENTH SEPARATE AND ADDITIONAL DEFENSE**

8 Plaintiffs have consented to and/or ratified the conduct alleged in the Complaint.

9 **FIFTEENTH SEPARATE AND ADDITIONAL DEFENSE**

10 Plaintiffs' claims and the claims of the putative class are barred, in whole or in part, by
11 contracts and/or agreements they entered into with Facebook.

12 **SIXTEENTH SEPARATE AND ADDITIONAL DEFENSE**

13 If Plaintiffs have sustained any damages as alleged in the Complaint, which Facebook denies,
14 such damages were proximately caused by subsequent and intervening or superseding acts of the
15 Plaintiffs and/or of third parties, such that Facebook is not responsible or liable for any damages
16 allegedly suffered by Plaintiffs.

17 **SEVENTEENTH SEPARATE AND ADDITIONAL DEFENSE**

18 Plaintiffs' claims and the claims of the putative class are barred, in whole or in part, because
19 any recovery by Plaintiffs would constitute unjust enrichment of Plaintiffs. In particular, Plaintiffs'
20 claims and the claims of the putative class are barred, in whole or in part, to the extent that Plaintiffs
21 have used any of Facebook's services that are enabled by the practices that Plaintiffs seek to
22 challenge.

23 **EIGHTEENTH SEPARATE AND ADDITIONAL DEFENSE**

24 Plaintiffs' Complaint and each purported cause of action are barred, in whole or in part, by the
25 applicable statutes of limitation and statutes of repose.

26 **NINETEENTH SEPARATE AND ADDITIONAL DEFENSE**

27 Plaintiffs' Complaint and each purported cause of action are barred, in whole or in part, by the
28 doctrine of laches.

1 **TWENTIETH SEPARATE AND ADDITIONAL DEFENSE**

2 Plaintiffs' Complaint and each purported cause of action are barred, in whole or in part, by the
3 doctrine of estoppel.

4 **TWENTY-FIRST SEPARATE AND ADDITIONAL DEFENSE**

5 Plaintiffs' Complaint and each purported cause of action are barred, in whole or in part, by the
6 doctrine of waiver.

7 **TWENTY-SECOND SEPARATE AND ADDITIONAL DEFENSE**

8 Plaintiffs' Complaint and each purported cause of action are barred, in whole or in part, to the
9 extent there is an adequate remedy at law.

10 **TWENTY-THIRD SEPARATE AND ADDITIONAL DEFENSE**

11 Plaintiffs' Complaint and each purported cause of action are barred, in whole or in part,
12 because Plaintiffs and members of the putative class proceeded with knowledge and/or awareness of
13 the occurrences that form the bases of their claims as alleged in the Complaint.

14 **TWENTY-FOURTH SEPARATE AND ADDITIONAL DEFENSE**

15 Plaintiffs may not maintain this lawsuit as a class action because the purported claims of the
16 putative plaintiff class representatives are not sufficiently typical of those of the purported class
17 members, common issues of fact and law do not predominate over individual issues and liability and
18 damages cannot be proven on a class-wide basis, the putative plaintiff class representatives will not
19 adequately represent the purported plaintiff class, the putative plaintiff class is not ascertainable, the
20 proposed class action would not be manageable, and a class action is not a superior method for
21 adjudicating the purported claims set forth in Plaintiffs' Complaint.

22 **TWENTY-FIFTH SEPARATE AND ADDITIONAL DEFENSE**

23 Plaintiffs may not maintain this lawsuit as a class action because the interests of the purported
24 class members are in conflict with each other.

25 **TWENTY-SIXTH SEPARATE AND ADDITIONAL DEFENSE**

26 Any attempt to require Facebook to identify, locate or notify absent persons on whose behalf
27 this action is allegedly prosecuted would violate the Due Process Clause of the Fourteenth
28 Amendment to the United States Constitution.

1 **TWENTY-SEVENTH SEPARATE AND ADDITIONAL DEFENSE**

2 As a matter of constitutional right and substantive due process, Facebook would be entitled to
3 contest by jury trial its liability to any particular individual plaintiff, even if the representatives of the
4 purported plaintiff class prevail on their claims. Trying this case as a class action would violate the
5 United States Constitution and the Constitution of California.

6 **TWENTY-EIGHTH SEPARATE AND ADDITIONAL DEFENSE**

7 Plaintiffs’ claims and the claims of the putative class are barred, in whole or in part, because
8 at all relevant times, Facebook’s actions were a necessary incident to the rendition of services.

9 **TWENTY-NINTH SEPARATE AND ADDITIONAL DEFENSE**

10 Plaintiffs’ claims and the claims of the putative class are barred, in whole or in part, because
11 at all relevant times, Facebook’s alleged conduct was authorized.

12 **THIRTIETH SEPARATE AND ADDITIONAL DEFENSE**

13 Plaintiffs’ claims and the claims of the putative class are barred, in whole or in part, because
14 at all relevant times, Facebook’s actions were within the ordinary course of business.

15 **THIRTY-FIRST SEPARATE AND ADDITIONAL DEFENSE**

16 Plaintiffs’ claims and the claims of the putative class are barred, in whole or in part, because
17 to the extent Facebook engaged in any of the alleged acts, omissions, or conduct, it did so with
18 justification.

19 **THIRTY-SECOND SEPARATE AND ADDITIONAL DEFENSE**

20 Plaintiffs’ application of the California Invasion of Privacy Act in this case is contrary to
21 public policy.

22 **THIRTY-THIRD SEPARATE AND ADDITIONAL DEFENSE**

23 Plaintiffs’ remaining state law claim is preempted by federal law.

24 **THIRTY-FOURTH SEPARATE AND ADDITIONAL DEFENSE**

25 Statutory damages under 18 U.S.C. § 2510 should not be awarded or should otherwise be
26 limited because: (i) such an award would violate the substantive and procedural safeguards
27 guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, by Article 1,
28 Section 7 of the California Constitution, and by the common law; and (ii) the imposition of such an

1 award would constitute an excessive fine or penalty under the Eighth Amendment to the United
2 States Constitution and Article 1, Section 17 of the California Constitution.

3 **THIRTY-FIFTH SEPARATE AND ADDITIONAL DEFENSE**

4 Per 18 U.S.C § 2520(d), Facebook acted in good faith reliance on a court warrant or order, a
5 grand jury subpoena, a legislative authorization, or a statutory authorization; a request of an
6 investigative or law enforcement officer under 18 U.S.C § 2518(7); and/or a good faith determination
7 that 18 U.S.C § 2511(3) or 18 U.S.C § 2511(2)(i) permitted the conduct complained of.

8 **THIRTY-SIXTH SEPARATE AND ADDITIONAL DEFENSE**

9 The Complaint and each cause of action are vague, ambiguous, and uncertain. Facebook
10 reserves the right to add additional defenses as the factual bases for each of Plaintiffs' claims and
11 allegations become known.

12 **THIRTY-SEVENTH SEPARATE AND ADDITIONAL DEFENSE**

13 Facebook has insufficient knowledge or information upon which to form a basis as to whether
14 it may have additional, as yet unstated, separate defenses available. Facebook has not knowingly or
15 intentionally waived any applicable affirmative defenses and reserves the right to raise additional
16 affirmative defenses as they become known to it through discovery in this matter. Facebook further
17 reserves the right to amend its answer and/or affirmative defenses accordingly and/or to delete
18 affirmative defenses that it determines are not applicable during the course of subsequent discovery.

19 **PRAYER**

20 WHEREFORE, Facebook prays for the following relief:

- 21 A. That judgment on the Complaint, and on each cause of action, be entered in favor of
22 Facebook;
- 23 B. That this Court finds that this suit cannot be maintained as a class action;
- 24 C. That Plaintiffs and the members of the putative class take nothing by Plaintiffs'
25 Complaint;
- 26 D. That the request for declaratory and injunctive relief be denied;
- 27 E. That Facebook be awarded its costs incurred, including reasonable attorneys' fees; and
- 28 F. For such other and/or further relief as this Court may deem just and proper.

1 Dated: February 6, 2015

Respectfully submitted,

2 GIBSON, DUNN & CRUTCHER LLP

3 By: _____/s/_____
4 Joshua A. Jessen

5 Attorneys for Defendant FACEBOOK, INC.

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JURY DEMAND

Defendant Facebook, Inc. hereby demands a jury trial on all issues so triable.

Dated: February 6, 2015

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: _____
Joshua A. Jessen

Attorneys for Defendant FACEBOOK, INC.

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