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

16 ANTHONY DITIRRO, KATYA BRESLER, )  
 17 AND MICHELLE SHUMATE, on behalf of )  
 themselves and all others similarly situated , )

18 Plaintiffs, )

19 v. )

20 FACEBOOK, INC., )

21 Defendant. )

Case No. **5:14-cv-00132-PSG**

**FIRST AMENDED CLASS ACTION  
 COMPLAINT FOR:**

- 1. VIOLATION OF CALIFORNIA CIVIL CODE § 3344
- 2. MISAPPROPRIATION OF LIKENESS
- 3. FALSE LIGHT
- 4. VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200 *et seq.*
- 5. FALSE ADVERTISING, CAL. BUS. & PROF. CODE § 17500
- 6. VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT (CAL. CIVIL CODE §§ 1750 *et seq.*)
- 7. NEGLIGENCE
- 8. BREACH OF CONTRACT
- 9. BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING
- 10. RESTITUTION BASED ON QUASI-CONTRACT / UNJUST ENRICHMENT

**DEMAND FOR JURY TRIAL**

1 **INTRODUCTION**

2 1. ANTHONY DITIRRO, KATYA BRESLER, AND MICHELLE SHUMATE  
3 (“PLAINTIFFS”) brings this class action for damages, injunctive relief, and any other available  
4 legal or equitable remedies, resulting from the illegal actions of FACEBOOK, INC.  
5 (“DEFENDANT”) and its related entities, subsidiaries and agents, in unlawfully using its  
6 customers’ likenesses and Facebook profiles to create a false impression that its customers are  
7 promoting a particular company or product without said customer’s knowledge or consent.  
8 PLAINTIFFS allege as follows upon personal knowledge as to themselves and their own acts and  
9 experiences, and, as to all other matters, upon information and belief, including investigation  
10 conducted by their attorneys.

11 **JURISDICTION AND VENUE**

12 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because the claims of the  
13 individual class members, when aggregated among a proposed class numbering in the millions,  
14 exceeds the \$5,000,000 threshold for federal court jurisdiction. Further, PLAINTIFFS allege a  
15 national class, which will result in at least one class member belonging to a different state than that  
16 of DEFENDANT. Therefore, both elements of diversity jurisdiction under the Class Action  
17 Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

18 3. Venue is proper in the United States District Court for the Northern District of  
19 California pursuant to 28 U.S.C. § 1391(b) (1) and 1441(a) because DEFENDANT is  
20 headquartered in San Mateo.

21 **PARTIES**

22 4. PLAINTIFF DITIRRO is, and at all times mentioned herein was, an individual  
23 citizen and resident of the State of Colorado.

24 5. PLAINTIFF BRESLER is, and at all times mentioned herein was, an individual  
25 citizen and resident of the State of California, County of Ventura.

26 6. PLAINTIFF SHUMATE is, and at all times mentioned herein was, an individual  
27 citizen and resident of the State of California, County of Yolo.



1           17.     According to a recent Internet article, The Facebook “Like Button” is seen more  
2 than 22 billion times per day and is embedded in over 7.5 million websites.

3           18.     PLAINTIFFS DITIRRO has been a registered Facebook user since 2009. Before  
4 signing up for Facebook and continually thereafter, PLAINTIFFS read Facebook’s terms and  
5 conditions and other information provided by DEFENDANT regarding privacy and the  
6 dissemination and use of personal information and content posted on Facebook, and he has  
7 continually followed statements in the media by DEFENDANT’S representatives and officials  
8 regarding these issues.

9           19.     PLAINTIFFS BRESLER has been a registered Facebook user since 2008. Before  
10 signing up for Facebook and continually thereafter, PLAINTIFFS read Facebook’s terms and  
11 conditions and other information provided by DEFENDANT regarding privacy and the  
12 dissemination and use of personal information and content posted on Facebook, and he has  
13 continually followed statements in the media by DEFENDANT’S representatives and officials  
14 regarding these issues.

15           20.     PLAINTIFFS SHUMATE has been a registered Facebook user since 2008. Before  
16 signing up for Facebook and continually thereafter, PLAINTIFFS read Facebook’s terms and  
17 conditions and other information provided by DEFENDANT regarding privacy and the  
18 dissemination and use of personal information and content posted on Facebook, and he has  
19 continually followed statements in the media by DEFENDANT’S representatives and officials  
20 regarding these issues.

21           21.     PLAINTIFFS and other Class members (defined below) understood that by signing  
22 up for Facebook they would own and control their personal information and content. Indeed  
23 DEFENDANT not only permitted but required PLAINTIFFS and other Class members to provide  
24 accurate and truthful information. For PLAINTIFFS and other Class members, the value of  
25 DEFENDANT’S service consisted in the conveyance truthfully and accurately of this information.

26           22.     Furthermore, PLAINTIFFS and other Class members understood not only from the  
27 expressed purpose of Facebook (i.e., to convey correct and truthful information), but also from the  
28 terms and conditions that DEFENDANT would use information about PLAINTIFFS and Class

1 members, subject to their privacy and application settings, that they actually posted and that  
2 advertising would use the information and content they posted or provided, not information they  
3 did not post and that was inaccurate or untrue.

4 23. Thus PLAINTIFFS, Class members, and reasonable consumers would understand  
5 from DEFENDANT'S mission and policies that it would not disseminate false, incorrect, or  
6 untruthful information, and specifically would not falsely attribute sponsorship, endorsement,  
7 preference, or approval in the form of "Likes" to them when they had not in fact "Liked" a  
8 product, service, or company.

9 24. On or about November of 2013, PLAINTIFF DITIRRO received notification from  
10 one of his Facebook friends that PLAINTIFFS was featured on Facebook, "Liking" USA TODAY  
11 newspaper in a Facebook sponsored advertisement. (Attached as Exhibit "A" to this Complaint is  
12 a screenshot of Facebook showing PLAINTIFF DITIRRO "liking" USA TODAY).

13 25. Although PLAINTIFF DITIRRO has nothing negative to say about USA TODAY  
14 newspapers, PLAINTIFF DITIRRO is not an avid reader of USA TODAY, nor does PLAINTIFF  
15 DITIRRO endorse the newspaper.

16 26. PLAINTIFF DITIRRO has never visited USA TODAY'S website.

17 27. PLAINTIFF DITIRRO never clicked his "Like Button" on USA TODAY's  
18 website, USA TODAY'S Facebook page, nor any Facebook content or advertisement featuring  
19 USA TODAY.

20 28. DEFENDANT knowingly used PLAINTIFF DITIRRO'S likeness and Facebook  
21 profile to advertise to the general public that PLAINTIFF DITIRRO endorsed USA TODAY  
22 without PLAINTIFF DITIRRO'S permission.

23 29. PLAINTIFF DITIRRO was unaware that DEFENDANT had utilized PLAINTIFF  
24 DITIRRO'S Facebook profile to advertise for USA TODAY until PLAINTIFF DITIRRO was  
25 notified of the same by one of his Facebook Friends.

26 30. DEFENDANT never contacted PLAINTIFF DITIRRO to ask permission to use  
27 PLAINTIFF DITIRRO'S Facebook profile to sponsor or "like" USA TODAY.

28

1           31.     DEFENDANT intentionally manipulated PLAINTIFF DITIRRO'S Facebook  
2 profile to give the general public, and specifically PLAINTIFF DITIRRO'S Facebook friends, the  
3 false impression that PLAINTIFF DITIRRO liked or endorsed USA TODAY.

4           32.     On or about January 13, 2014 PLAINTIFF BRESLER received notification that  
5 PLAINTIFF BRESLER was featured on Facebook, "Liking" DURACELL in a Facebook  
6 sponsored advertisement. (Attached as Exhibit "B" to this Complaint is a screenshot of Facebook  
7 showing PLAINTIFF BRESLER "liking" DURACELL).

8           33.     Although PLAINTIFF BRESLER has nothing negative to say about DURACELL,  
9 PLAINTIFF BRESLER does not endorse this company.

10          34.     PLAINTIFF BRESLER never clicked her "Like Button" on DURACELL'S  
11 website, DURACELL'S Facebook page, nor any Facebook content or advertisement featuring  
12 DURACELL.

13          35.     DEFENDANT knowingly used PLAINTIFF BRESLER'S likeness and Facebook  
14 profile to advertise to the general public that PLAINTIFF BRESLER endorsed DURACELL  
15 without PLAINTIFF BRESLER'S permission.

16          36.     PLAINTIFF BRESLER was unaware that DEFENDANT had utilized PLAINTIFF  
17 BRESLER'S Facebook profile to advertise for DURACELL until PLAINTIFF BRESLER was  
18 notified of the same via the Facebook posting.

19          37.     DEFENDANT never contacted PLAINTIFF BRESLER to ask permission to use  
20 PLAINTIFF BRESLER'S Facebook profile to sponsor or "like" DURACELL.

21          38.     DEFENDANT intentionally manipulated PLAINTIFF BRESLER'S Facebook  
22 profile to give the general public, and specifically PLAINTIFF BRESLER'S Facebook friends, the  
23 false impression that PLAINTIFF BRESLER liked or endorsed DURACELL.

24          39.     In or around January 2014, PLAINTIFF SHUMATE received notification that  
25 PLAINTIFF SHUMATE was featured on Facebook, "Liking" KOHL'S Facebook Page.  
26 (Attached as Exhibit "C" to this Complaint is a screenshot of Facebook showing PLAINTIFF  
27 SHUMATE "liking" KOHL'S Facebook Page).

28

1 40. Although PLAINTIFF SHUMATE has nothing negative to say about KOHL'S,  
2 PLAINTIFF SHUMATE does not endorse this company.

3 41. PLAINTIFF SHUMATE never clicked her "Like Button" on KOHL'S website,  
4 KOHL'S Facebook page, nor any Facebook content or advertisement featuring KOHL'S.

5 42. DEFENDANT knowingly used PLAINTIFF SHUMATE likeness and Facebook  
6 profile to advertise to the general public that PLAINTIFF SHUMATE endorsed KOHL'S without  
7 PLAINTIFF SHUMATE'S permission.

8 43. PLAINTIFF SHUMATE was unaware that DEFENDANT had utilized  
9 PLAINTIFF SHUMATE'S Facebook profile to advertise for KOHL'S until PLAINTIFF  
10 SHUMATE was notified of the same via her Facebook profile.

11 44. DEFENDANT never contacted PLAINTIFF SHUMATE to ask permission to use  
12 PLAINTIFF SHUMATE'S Facebook profile to sponsor or "like" KOHL'S.

13 45. DEFENDANT intentionally manipulated PLAINTIFF SHUMATE'S Facebook  
14 profile to give the general public, and specifically PLAINTIFF SHUMATE'S Facebook friends,  
15 the false impression that PLAINTIFF SHUMATE liked or endorsed KOHL'S.

16 46. PLAINTIFFS and the members of the Class have all suffered irreparable harm and  
17 damages as a result of DEFENDANT'S unlawful and wrongful conduct heretofore described.

18 **CLASS ACTION ALLEGATIONS**

19 47. PLAINTIFFS bring this action on behalf of themselves and on behalf of all others  
20 similarly situated ("the Class").

21 PLAINTIFFS represent, and are members of, the Class, consisting of:

22  
23 **All persons within the United States whose Facebook profile was manipulated**  
24 **by DEFENDANT to give the impression to other Facebook users, including**  
25 **but not limited to their friends, family and acquaintances, that said person**  
26 **liked, endorsed and/or used a product/and or company that advertised on**  
27 **Facebook without the consent of said person to use their likeness and/or**  
28 **private data.**

26 48. DEFENDANT and its employees or agents are excluded from the Class.  
27 PLAINTIFFS do not know the number of members in the Class, but believes the Class members

1 number in millions, if not more. Thus, this matter should be certified as a Class action to assist in  
2 the expeditious litigation of this matter.

3 49. PLAINTIFFS reserve the right to amend or modify the class description with  
4 greater particularity or further division into subclasses or limitation to particular issues.

5 50. The joinder of the Class members is impractical and the disposition of their claims  
6 in the Class action will provide substantial benefits both to the parties and to the court.  
7 DEFENDANT has more than one hundred million current subscribers. The Class can be identified  
8 through DEFENDANT's records or DEFENDANT's agents' records.

9 51. There is a well-defined community of interest in the questions of law and fact  
10 involved affecting the parties to be represented. The questions of law and fact to the Class  
11 predominate over questions which may affect individual Class members, including *inter alia*:

- 12 a. Whether DEFENDANT violated California Civil Code § 3344 by representing  
13 that Class members "liked" products, companies, and/or services when they had  
14 not in fact done so;
- 15 b. Whether DEFENDANT misappropriated Class members' likenesses by  
16 representing in Facebook advertisements that Class members "liked" products,  
17 services and/or companies when they had not in fact done so;
- 18 c. Whether DEFENDANT portrayed members of the Class in a false light by  
19 inaccurately representing their preferences and endorsements for particular  
20 products and companies;
- 21 d. Whether DEFENDANT'S conduct and omissions as heretofore alleged are  
22 false, misleading, or reasonably likely to deceive its customers;
- 23 e. Whether DEFENDANT failed to disclose material facts relating to the character  
24 and quality of its advertising practices;
- 25 f. Whether California law applies to the proposed Class;
- 26 g. Whether DEFENDANT'S conducted described herein constitutes a breach of  
27 contract;
- 28 h. Whether DEFENDANT'S conduct described herein was negligent;



- 1 i. Whether DEFENDANT owed a duty to customers to exercise reasonable care  
2 to accurately represent the preferences and/or endorsements of members of the  
3 Class;  
4 j. Whether DEFENDANT breached its duty to exercise reasonable care in failing  
5 to represent accurately the preferences and/or endorsements of Class members  
6 for particular products, services, and companies;  
7 k. Whether DEFENDANT'S conduct described herein constitutes a breach of the  
8 covenant of good faith and fair dealing;  
9 l. Whether DEFENDANT was unjustly enriched as a result of the conduct alleged  
10 herein;  
11 m. Whether PLAINTIFFS and the members of the Class were damaged by  
12 DEFENDANT'S conduct, and the extent of damages;  
13 n. Whether DEFENDANT has engaged in unlawful, unfair, or fraudulent business  
14 practices in violation of Cal. Bus. & Prof. Code § 17200 *et seq.*; and  
15 o. Whether DEFENDANT should be enjoined from engaging in such conduct in  
16 the future.

17 52. As a person whose personal information and likeness was compromised as a result  
18 of DEFENDANT'S wrongful conduct as herein alleged, PLAINTIFFS are asserting claims that  
19 are typical of the Class. PLAINTIFFS will fairly and adequately represent and protect the interests  
20 of the Class in that PLAINTIFFS have no interests antagonistic to any member of the Class.

21 53. PLAINTIFFS and the members of the Class have all suffered irreparable harm as a  
22 result of the DEFENDANT'S unlawful and wrongful conduct. Absent a class action, the Class  
23 will continue to face the potential for irreparable harm. In addition, these violations of law will be  
24 allowed to proceed without remedy and DEFENDANT will likely continue such illegal conduct.  
25 Because of the size of the individual Class member's claims, few, if any, Class members could  
26 afford to seek legal redress for the wrongs complained of herein.

27 54. PLAINTIFFS have retained counsel experienced in handling class action lawsuits.  
28



1 conduct carried on by DEFENDANT with a willful and conscious disregard of PLAINTIFFS' and  
2 other Class members' rights and that has subjected PLAINTIFFS and other putative Class  
3 members to cruel and unjust hardship and humiliation in conscious disregard of their rights, in the  
4 process making intentional misrepresentations, engaging in deceit and concealing material facts  
5 known to DEFENDANT with the intention on the part of DEFENDANT to thereby deprive  
6 PLAINTIFFS and Class members of their property rights, legal rights and otherwise to cause them  
7 injury, as described herein above.

8 62. Under authority of California Civil Code § 3344, PLAINTIFFS and other Class  
9 members, upon prevailing upon this claim, shall be entitled to an award of their reasonable  
10 attorneys' fees and costs of suit incurred herein, as against DEFENDANT, as well as actual  
11 statutory damages, profits gained and punitive damages.

12 63. DEFENDANT will continue using the misappropriated likenesses of PLAINTIFFS  
13 and other Class members for purposes of promoting DEFENDANT'S websites, online presence,  
14 advertising clients of DEFENDANT, and for their overall advantage, including, but not limited to  
15 commercial gain and profit. Unless and until enjoined and restrained by order of this Court,  
16 DEFENDANT'S continued use of PLAINTIFFS' and other Class members' images and likeness  
17 will cause PLAINTIFFS and other Class member great and irreparable injury in that the  
18 impairment of their reputation and standing will continue to be threatened.

19 64. PLAINTIFFS and other Class members have no adequate remedy at law for the  
20 injuries being suffered in that a judgment for monetary damages alone will not end the invasion of  
21 their right of privacy or suffice to fully remedy their injuries.

22 **SECOND CAUSE OF ACTION**

23 **(INVASION OF COMMON LAW RIGHT OF PRIVACY – UNAUTHORIZED**  
24 **MISAPPROPRIATION OF IMAGE)**

25 65. PLAINTIFFS re-allege the foregoing paragraphs of this complaint and incorporate  
26 the same by reference as though set forth at length herein.

27 66. By virtue of DEFENDANT'S wrongdoing and the facts alleged herein above,  
28 DEFENDANT, separate and apart from, any statutory violation of California Civil Code § 3344,

1 committed an invasion of PLAINTIFFS' and other Class members' right of privacy as recognized  
2 by the common law of the State of California, and as supported and protected by the Constitution  
3 of the State of California.

4 67. DEFENDANT, without PLAINTIFFS' and other Class members' consent, invaded  
5 PLAINTIFFS' and Class members' right to privacy by unlawfully representing to the general  
6 population that they endorsed DEFENDANT'S advertising via the internet, as alleged above.

7 68. DEFENDANT invaded PLAINTIFFS' and Class members' right to privacy by  
8 unlawfully using PLAINTIFFS' Facebook profiles to promote advertising, of which it knew  
9 DEFENDANT had not obtained a valid written consent from PLAINTIFFS or other Class  
10 members.

11 69. The appropriation was unauthorized and without PLAINTIFFS' consent or the  
12 consent of Class members.

13 70. DEFENDANT'S conduct involved the appropriation of PLAINTIFFS' image and  
14 likeness, and the image and likeness of other Class members. In doing the acts alleged herein  
15 DEFENDANT, without PLAINTIFFS' or Class members' consent, invaded PLAINTIFFS' and  
16 Class members' right to privacy by unlawfully publishing their likenesses.

17 71. The appropriation was for DEFENDANT'S advantage in that DEFENDANT used  
18 PLAINTIFFS' and Class members' Facebook profiles and likenesses to promote and market their  
19 online presence, website, and overall marketability, as well as that of DEFENDANT'S advertising  
20 customers.

21 72. Any public interest to be served by DEFENDANT'S action could be done without  
22 the use of PLAINTIFFS' and Class members' likenesses.

23 73. As a proximate result of the above misappropriation of likenesses, PLAINTIFFS  
24 and Class members were exposed to loss of reputation humiliation, embarrassment, hurt feeling,  
25 mental anguish, and suffering, all to their general damage in an amount according to proof.

26 74. In making the misappropriation described above, DEFENDANT acted with  
27 negligence, oppression, fraud, and malice, engaging in despicable conduct carried on by  
28 DEFENDANT with a willful and conscious disregard of PLAINTIFFS' rights and the rights of

1 other Class members and have subjected them to cruel and unjust hardship and humiliation in  
2 conscious disregard of their rights, engaging in deceit and concealing material facts known to  
3 DEFENDANT with the intention on the part of DEFENDANT to thereby deprive PLAINTIFFS  
4 and Class members of their property rights, legal rights and otherwise to cause PLAINTIFFS and  
5 Class members injury, as described herein above. In doing the acts alleged herein, DEFENDANT,  
6 without PLAINTIFFS' or Class members' consent, invaded their right to privacy by unlawfully  
7 publishing their Facebook profiles and likenesses.

8 75. PLAINTIFFS believe that DEFENDANT will to continue disclosing the above  
9 information. Unless and until enjoined and restrained by order of this court, DEFENDANT'S  
10 continued publication will cause PLAINTIFFS and Class members great and irreparable injury.  
11 PLAINTIFFS have no adequate remedy at law for the injuries being suffered in that a judgment  
12 for monetary damages will not end the invasion of PLAINTIFFS' or Class members' privacy.

13 76. As a direct and proximate result of DEFENDANT'S negligent and/or reckless  
14 conduct, PLAINTIFFS and Class members have been damaged in an amount to be proven at trial.

15 **THIRD CAUSE OF ACTION**

16 **(INVASION OF COMMON LAW RIGHT OF PRIVACY - PUBLICLY PLACING**  
17 **PERSON IN FALSE LIGHT IN THE PUBLIC EYE)**

18 77. PLAINTIFFS re-allege the foregoing paragraphs of this complaint and incorporate  
19 the same by reference as though set forth at length herein.

20 78. DEFENDANT, without PLAINTIFFS' consent and the consent of other Class  
21 members, invaded PLAINTIFFS' and other Class members' right of privacy by posting on  
22 Facebook advertisements of companies, products and/or services which contained PLAINTIFFS'  
23 and Class members' misappropriated likenesses, purporting to promote said companies.

24 79. PLAINTIFFS and other Class members are portrayed in these advertisements  
25 promoting said companies/products/services by "Liking" them with their Facebook profiles. (See  
26 Exhibit "A").

27 80. Such disclosure by DEFENDANT created publicity in the sense of a public  
28 disclosure to a large number of people in that this was published on the Internet to thousands,

1 perhaps millions of other Facebook users.

2           81.     The publicity created by DEFENDANT placed PLAINTIFFS and Class members  
3 in a false light in the public eye in that DEFENDANT’S advertisements suggest that PLAINTIFFS  
4 and Class members like, promote and/or use the companies/products/services depicted in said  
5 advertisements.

6           82.     The publicity created by DEFENDANT was offensive and objectionable to  
7 PLAINTIFFS and Class members, and to a reasonable person of ordinary sensibilities.

8           83.     The publicity created by DEFENDANT was done with negligence and/or malice  
9 in that it was made either with knowledge of its falsity or in reckless disregard of its truth in that  
10 the advertisements depicting PLAINTIFFS and Class members were calculated falsehoods  
11 because DEFENDANT knew that PLAINTIFFS and Class members did not in fact like, promote  
12 and/or use the companies/products/services depicted in said advertisements.

13           84.     As a proximate result of the above-mentioned disclosure and depictions,  
14 PLAINTIFFS and Class members suffered general damages in an amount according to proof.

15           85.     In making the disclosure and depiction described above, DEFENDANT was guilty  
16 of negligence, oppression, fraud, or malice, in that DEFENDANT made the disclosure with  
17 negligence or with a willful and conscious disregard of PLAINTIFFS’ and Class members’  
18 property rights. PLAINTIFFS therefore seek an award of damages, including punitive damages,  
19 in an amount to be proven at trial, on behalf of themselves and the Class.

20           86.     PLAINTIFFS believe that DEFENDANT will to continue disclosing the above  
21 information. Unless and until enjoined and restrained by order of this court, DEFENDANT’S  
22 continued publication will cause PLAINTIFFS and Class members great and irreparable injury.  
23 PLAINTIFFS have no adequate remedy at law for the injuries being suffered in that a judgment  
24 for monetary damages will not end the invasion of PLAINTIFFS’ or Class members’ privacy.

25

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27 ///

28 ///

1 **FOURTH CAUSE OF ACTION**

2 **UNLAWFUL, UNFAIR, AND FRAUDULENT BUSINESS PRACTICES UNDER**  
3 **CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200, *et seq.***

4 87. PLAINTIFFS re-allege the foregoing paragraphs of this complaint and incorporate  
5 the same by reference as though set forth at length herein.

6 88. DEFENDANT’S acts, practices, and omissions detailed above constitute unlawful,  
7 unfair and/or fraudulent business practices and acts, within the meaning of California Business &  
8 Professions Code § 17200 et seq.

9 89. DEFENDANT’S acts, practices, and omissions detailed above constitute fraudulent  
10 practices in that they are likely to deceive and did deceive reasonable consumers. PLAINTIFFS  
11 and each member of the Class were fraudulently induced to register with Facebook and/or  
12 continue using Facebook and provide content and information based on their understanding that  
13 DEFENDANT would not fabricate false information about them and broadcast it to their Friends  
14 and others.

15 90. DEFENDANT’S acts, practices, and omissions detailed above, constitute unlawful  
16 practices and/or acts in that they violate Cal. Civ. Code § 3344, as well as the common law right to  
17 privacy by, *inter alia*, systematically misappropriating the likeness of PLAINTIFFS and Class  
18 members and portraying them in a false light.

19 91. DEFENDANT has committed all of the aforesaid acts of infringement deliberately,  
20 willfully, maliciously and oppressively, without regard to PLAINTIFFS’ or Class members’ legal,  
21 contractual, and exclusive proprietary rights.

22 92. The potential harm that consumers will be deceived into registering for and using  
23 Facebook and be the subject of DEFENDANT’S false and misleading representations is  
24 substantially injurious to consumers and violates public policy, and is immoral, unethical,  
25 oppressive, and unscrupulous, because the gravity of the conduct outweighs any alleged benefits  
26 attributable to such conduct.

27 93. As a direct and proximate result of DEFENDANT’S unlawful, unfair and  
28 fraudulent business practices as alleged herein, PLAINTIFFS have suffered injury in fact and lost

1 money or property, including but not limited to loss to their reputations, the misappropriation of  
2 their likenesses (which has monetary value), the lessened value of DEFENDANT’S service to  
3 them, and the diminishment in value of their personal information.

4 94. Pursuant to California Business & Professions Code § 17203, PLAINTIFFS seeks  
5 an order of this Court prohibiting DEFENDANT from engaging in the unlawful, unfair, or  
6 fraudulent business acts or practices set forth in this Complaint and/or ordering DEFENDANT  
7 perform its obligations under the law and the cancellation of any illegal obligations. PLAINTIFFS  
8 additionally requests an order from the Court requiring that DEFENDANT provide complete  
9 equitable relief, including that DEFENDANT disgorge profits and return or pay to PLAINTIFFS  
10 and members of the Class all of DEFENDANT’S ill-gotten gains obtained from the  
11 misappropriation, and/or pay restitution. PLAINTIFFS also requests a court order that an asset  
12 freeze or constructive trust be imposed over all monies in DEFENDANT’S possession which  
13 rightfully belongs to PLAINTIFFS and members of the Class.

14 **FIFTH CAUSE OF ACTION**

15 **VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW**

16 **(CAL. BUS. & PROF. CODE § 17500 ET SEQ.)**

17 95. PLAINTIFFS re-allege the foregoing paragraphs of this complaint and incorporate  
18 the same by reference as though set forth at length herein.

19 96. DEFENDANT committed acts of false advertising as defined by California  
20 Business & Professions Code § 17500 et seq. by disseminating statements that were untrue or  
21 misleading in connection with advertising of sponsored pages, by creating the false impression  
22 that its users liked or promoted the products, services and/or companies in said pages, and by  
23 disseminating statements, including but not limited to its terms of use (including its Statement of  
24 Rights and Responsibilities and Data Use Policy), that were intended to lead reasonable  
25 consumers, including PLAINTIFFS and Class members, to believe that Facebook was a medium  
26 intended to convey truthful information and that DEFENDANT would not create information  
27 about consumers or make false representations about them, in the manner alleged above.

28 97. DEFENDANT knew or should have known through the exercise of reasonable care



1 that the statements were untrue and misleading and that PLAINTIFFS and Class members would  
2 rely on them to their detriment.

3 98. DEFENDANT's actions in violation of California Business & Professions Code §  
4 17500 were false and misleading such that the general public was likely to be deceived in that  
5 DEFENDANT failed to inform PLAINTIFFS and Class members that DEFENDANT would  
6 falsely attribute sponsorship, endorsement, approval, and preference in the form of "Likes" to  
7 them when publishing advertisements.

8 99. PLAINTIFFS and Class members relied on DEFENDANT'S false and misleading  
9 representations and omissions in deciding to register for Facebook or remain registered with  
10 Facebook, provide personal information, and post content.

11 100. As a direct and proximate result of these acts, PLAINTIFFS have suffered injury in  
12 fact and has lost money or property, including but not limited to **loss to their reputations, the**  
13 **misappropriation of their likenesses (which has monetary value), the lessened value of**  
14 **DEFENDANT'S service to them, and the diminishment in value of their personal**  
15 **information.** Consequently, PLAINTIFFS brings this cause of action on behalf of themselves and  
16 the putative class and on behalf of the common or general interest and seeks restitution,  
17 disgorgement, injunctive relief, and all other relief allowable under § 17500 et seq.

18 **SIXTH CAUSE OF ACTION**

19 **VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT**

20 **CAL. CIV. CODE § 1750 ET SEQ.**

21 101. PLAINTIFFS incorporate by reference all of the above paragraphs of this  
22 Complaint as though fully stated herein.

23 102. This cause of action is brought for violations of the Consumer Legal Remedies Act  
24 ("CLRA"). PLAINTIFFS brings this cause of action on their own behalf and on behalf of all  
25 similarly situated consumers within the meaning of Civil Code § 1781.

26 ///

27 ///

28 ///

1           103. As set forth herein, DEFENDANT violated and continues to violate the CLRA by  
2 engaging in the following practices among others proscribed by California Civil Code § 1770(a) in  
3 transactions that were intended to result in and did result in the sale of goods and services to  
4 consumers, including PLAINTIFFS and Class members:

5           (a) misrepresenting the source, sponsorship, approval, or certification of goods  
6 or services; and

7           (b) representing that goods or services have sponsorship, approval,  
8 characteristics, ingredients, uses, benefits, or quantities which they do not  
9 have or that a person has a sponsorship, approval, status, affiliation, or  
10 connection which he or she does not have.

11           104. Specifically, DEFENDANT represented to the public that its users, including  
12 PLAINTIFFS and Class members, sponsored or liked certain products or companies without their  
13 knowledge or permission. DEFENDANT knew or should have known that its representations and  
14 advertisements regarding its services were false and misleading.

15           105. PLAINTIFFS and other Class members relied on DEFENDANT'S representations  
16 in deciding to register for Facebook or remain registered with Facebook, provide personal  
17 information, and post content.

18           106. As a direct and proximate cause of DEFENDANT'S violation of the CLRA as  
19 alleged hereinabove, PLAINTIFFS and Class members have suffered damages, including but not  
20 limited loss of money or property.

21           107. Pursuant to California Civil Code § 1780, PLAINTIFFS, on behalf of themselves  
22 and the Class, seek damages, restitution, injunctive relief, punitive damages, attorneys' fees, and  
23 the costs of litigation.

24           108. On or about January 08, 2014, PLAINTIFFS, on behalf of themselves and the  
25 putative class, sent by certified mail return receipt requested a notice and demand pursuant to  
26 California Civil Code § 1782 notifying DEFENDANT that it is in violation of the CLRA and must  
27 correct, repair, replace, or otherwise rectify the violations. DEFENDANT was further advised that  
28 in the event the relief requested has not been provided within 30 days, PLAINTIFFS would seek

1 monetary damages pursuant to the CLRA. If DEFENDANT fails to rectify or agree to rectify the  
2 problems associated with the actions detailed above or give notice to all affected consumers within  
3 30 days of the date of the written notice pursuant to California Civil Code § 1782, PLAINTIFFS  
4 will seek actual, punitive, and statutory damages as appropriate.

5 **SEVENTH CAUSE OF ACTION**

6 **NEGLIGENCE**

7 109. PLAINTIFFS incorporate by reference all of the above paragraphs of this  
8 Complaint as though fully stated herein.

9 110. DEFENDANT solicits and encourages PLAINTIFFS and Class members to  
10 register and use Facebook and post content on it. As part of using DEFENDANT’S service,  
11 PLAINTIFFS and members of the Class regularly post content and other personal information to  
12 be seen by other persons, including their Facebook Friends.

13 111. By soliciting and encouraging PLAINTIFFS and Class members to register and use  
14 Facebook and post content, and by agreeing to accept PLAINTIFFS’ and Class members’ content  
15 and information, DEFENDANT assumed a duty to exercise reasonable care not to misrepresent  
16 information about PLAINTIFFS and the Class in connection with advertisements or otherwise,  
17 including information they do or do not post or products, services, and/or companies they do or do  
18 not sponsor, endorse, or prefer in the form of “Likes.”

19 112. DEFENDANT breached its duty of care to PLAINTIFFS and Class members by  
20 misrepresenting their Facebook content and information and by perpetuating false information, as  
21 alleged herein.

22 113. As a direct and proximate cause of DEFENDANT’S failure to exercise reasonable  
23 care, PLAINTIFFS and Class members have suffered economic and non-economic injuries in the  
24 form the decreased value of their personal information, the lessened value to them of  
25 DEFENDANT’S Facebook service, loss of time in correcting DEFENDANT’S false  
26 representations and/or communicating with Friends to correct these false representations, loss of  
27 reputation, misappropriation of their likenesses (which have monetary value), as well as  
28 embarrassment, shock, anger, confusion, anxiety, and dismay.

1 114. In making the false representations alleged above, DEFENDANT was guilty of  
2 negligence, oppression, fraud, or malice, in that DEFENDANT made the disclosure negligent or  
3 with a willful and conscious disregard of PLAINTIFFS' and Class members' property rights.  
4 PLAINTIFFS therefore seek an award of damages, including punitive damages, in an amount to  
5 be proven at trial, on behalf of themselves and the Class.

6 115. PLAINTIFFS believe that DEFENDANT will to continue disclosing the above  
7 information. Unless and until enjoined and restrained by order of this court, DEFENDANT'S  
8 continued publication will cause PLAINTIFFS and Class members great and irreparable injury.  
9 PLAINTIFFS have no adequate remedy at law for the injuries being suffered in that a judgment  
10 for monetary damages will not put a stop to DEFENDANT'S tortious conduct as alleged herein.

11 **EIGHTH CAUSE OF ACTION**

12 **BREACH OF CONTRACT**

13 97. PLAINTIFFS incorporate by reference all of the above paragraphs of this  
14 Complaint as though fully stated herein.

15 98. DEFENDANT entered into a contract with PLAINTIFFS and Class members in  
16 part expressed in DEFENDANT'S user agreement and other terms and conditions of use whereby  
17 DEFENDANT agreed to provide its Facebook service to them in exchange for DEFENDANT'S  
18 access to their personal information and Facebook content so that it could, among other things, sell  
19 advertising space to marketers.

20 99. As part of this bargain, DEFENDANT agreed, whether explicitly or impliedly, not  
21 to interject false content and/or make false representations about PLAINTIFFS and Class  
22 members that would be visible to other Facebook users, specifically users' Friends, as this would  
23 diminish, reduce, and/or eliminate the value of the service to PLAINTIFFS and Class members.

24 100. DEFENDANT materially breached this contract with PLAINTIFFS and Class  
25 members by its conduct alleged herein, namely, by projecting false information to others,  
26 including their Facebook Friends

27 101. As a direct and proximate cause of DEFENDANT's breach, PLAINTIFFS and  
28 members of the Class have incurred damages in that they did not receive the benefit of the bargain

1 for which they contracted and for which they paid valuable consideration in the form of their  
2 Facebook membership and presence, personal information, and Facebook content. Owing to  
3 DEFENDANT’S breach, PLAINTIFFS and Class members overpaid for the bargained-for service  
4 and therefore are entitled to damages in an amount to be proven at trial.

5 **NINTH CAUSE OF ACTION**

6 **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

7 102. PLAINTIFFS incorporate by reference all of the above paragraphs of this  
8 Complaint as though fully stated herein.

9 103. Members of the Class, including PLAINTIFFS, entered into a contract alleged  
10 herein above. Implied in this contract was a covenant of good faith and fair dealing by each party  
11 not to do anything that will deprive the other parties of the benefits of the contract such as falsely  
12 representing content and information to give the appearance that PLAINTIFFS and Class  
13 members sponsored or endorsed products, services, and/or companies in the form of “Likes” when  
14 in fact they did not.

15 104. PLAINTIFFS and Class members have performed all conditions, covenants, and  
16 promises required of them under the contract, namely, they have registered with DEFENDANT’S  
17 services and provided information and content.

18 105. DEFENDANT breached the implied covenant of good faith and fair dealing by  
19 falsely representing content and information to give the appearance that PLAINTIFFS and Class  
20 members sponsored or endorsed products, services, and/or companies in the form of “Likes” when  
21 in fact they did not.

22 106. As a direct and proximate cause of DEFENDANT’S breach of the implied  
23 covenant of good faith and fair dealing, PLAINTIFFS and Class members have been damaged, as  
24 alleged above, in an amount to be proven at the time of trial.

25 **TENTH CAUSE OF ACTION**

26 **RESTITUTION BASED ON QUASI-CONTRACT/UNJUST ENRICHMENT**

27 107. PLAINTIFFS incorporate by reference each allegation set forth above.  
28 PLAINTIFFS plead this cause of action in the alternative.



- 1 g. Restitution, or any other equitable relief the Court may deem just and proper as to all
- 2 Counts;
- 3 h. Pre-judgment and post-judgment interest as to all Counts;
- 4 i. Reasonable attorneys' fees and costs of the suit, including expert witness fees as to All
- 5 Counts; and
- 6 j. Any other relief the Court may deem just and proper.

7

8 **TRIAL BY JURY**

9 PLAINTIFFS hereby demand a jury trial on all issues so triable.

10

11 Dated: January 15, 2014

Respectfully Submitted

12 By: /s/ Todd M. Friedman, Esq.  
13 Todd M. Friedman, Esq.  
*Attorney for PLAINTIFFS*

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EXHIBIT C

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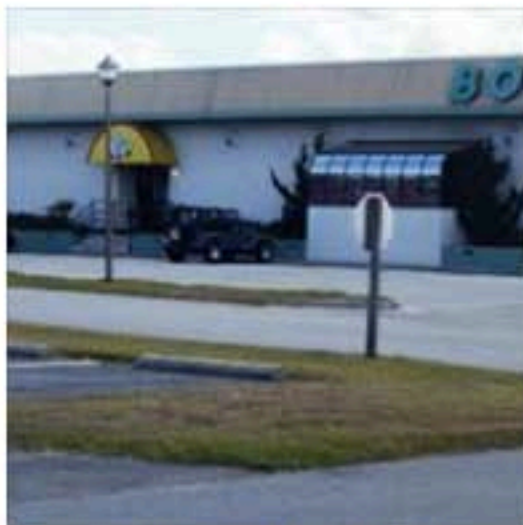




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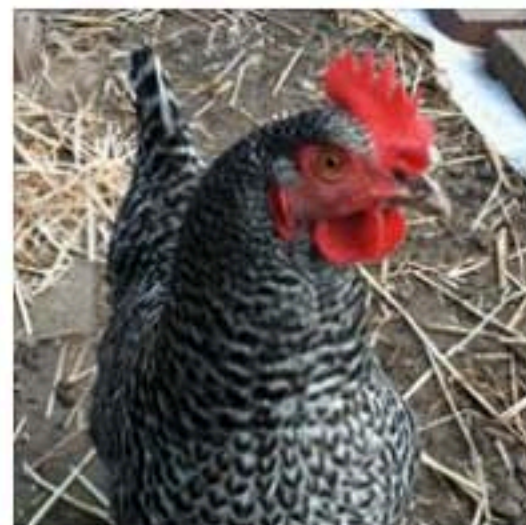
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