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7 Attorneys for Plaintiffs
DAVID A. COHEN, a minor, by and
8 through ROBIN S. COHEN as Guardian
ad Litem; SHELBY A. ORLAND, a
9 minor, by and through MARCIA J.
ORLAND as Guardian ad Litem;
10 for all others similarly situated,

11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT
13

14
15 DAVID A. COHEN, a minor, by and
through ROBIN S. COHEN as Guardian ad
16 Litem; SHELBY A. ORLAND, a minor,
by and through MARCIA J. ORLAND as
17 Guardian ad Litem; for all others similarly
situated,

18 Plaintiffs,

19 v.

20 FACEBOOK, INC., a Delaware
corporation, and DOES 1 through 100,
21 Inclusive,

22 Defendants.
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

AUG 26 2010

John A. Clarke, Executive Officer/Clerk
By Mary E. Garcia Deputy
MARY E. GARCIA

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90012
complex

Case No. **BC 444482**

CLASS ACTION COMPLAINT for Violation of:

- (1) Civil Code sec. 3344;
- (2) Cal. Constitution Art. I, sec. 1
- (3) Unfair Competition Law (Bus. & Prof. Code sec. 17200)

DEMAND FOR TRIAL BY JURY

1 representing to advertisers that the use of the name and/or likeness of the child as an
2 endorsement of the advertiser's product can increase marketing returns by 400%
3 compared to advertising that does not include an endorsement from the name or likeness
4 of a child. The consent of the child for this commercial use of name and likeness is not
5 obtained by Facebook, and under California law cannot be obtained without the consent
6 of the parent or guardian. Facebook makes no effort to obtain parental consent.

7

8

VENUE

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

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THE PARTIES

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PLAINTIFFS

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19 5. Plaintiff David A. Cohen is a minor residing in the County of Los Angeles,
20 State of California, and is a member of the Facebook social networking site where his
21 name and likeness has been appropriated by defendant Facebook for commercial
22 advantage without the consent of his parents. Robin S. Cohen is the parent and Guardian
23 ad Litem of David A. Cohen, and is a resident of the County of Los Angeles, State of
24 California. The amount in controversy as to plaintiff David A. Cohen individually does
25 not exceed \$75,000, however calculated.

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28 6. Plaintiff Shelby A. Orland is a minor residing in the County of Los Angeles,
State of California, and is a member of the Facebook social networking site where her

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1 name and likeness has been appropriated by defendant Facebook for commercial
2 advantage without the consent of her parents. Marcia J. Orland is the parent and
3 Guardian ad Litem of Shelby A. Orland, and is a resident of the County of Los Angeles,
4 State of California. The amount in controversy as to plaintiff Shelby A. Orland
5 individually does not exceed \$75,000, however calculated.
6

7 **DEFENDANTS**

8 7. Defendant Facebook, Inc. is a corporation organized and existing under the
9 laws of the State of Delaware, and has its headquarters and principal place of business in
10 the State of California, operating under and by authority of the laws of the State of
11 California.
12

13 **CLASS ACTION ALLEGATIONS**

14 8. Plaintiffs bring this action on behalf of themselves and all others similarly
15 situated, as a class action pursuant to section 382 of the California Code of Civil
16 Procedure. The class and subclass which plaintiffs seek to represent is composed of and
17 defined as follows:
18

19 All persons who, within the last three years: (1) were under the age
20 of 18 years; (2) were California residents; and (3) were members of the
Facebook social networking site;

21 and a subclass that includes all persons who additionally:

22 (4) while under the age of 18 years, had their names or likenesses
23 used on a landing page for Facebook or in an advertisement sold by
Facebook, without the consent of their parent or guardian;
24

25 9. This action has been brought and may properly be maintained as a class
26 action pursuant to California Civil Code section 382 because there is a well-defined
27 community of interest in the litigation and the proposed class is easily ascertainable.
28

1 (a) Numerosity: The Plaintiff Class is so numerous that the individual
2 joinder of all members is impracticable under the circumstances of this case. While the
3 exact number of class members is unknown to plaintiffs at this time, based upon the
4 amount of posting on the Facebook social networking site, plaintiffs are informed and
5 believe that in excess of one million instances of commercial appropriation of the name
6 and likeness of minors on the Facebook social networking site has been arranged by
7 defendant Facebook, Inc. Given the size of the putative class, joinder of all members of
8 the Plaintiff Class is not practicable.

9
10 (b) Common Questions Predominate: Common questions of law and fact exist
11 as to all members of the Plaintiff Class and predominate over any questions which affect
12 only individual members of the class. These common questions of law and fact include,
13 without limitation:

- 14 (i) whether defendants violated Civil Code section 3344;
15 (ii) whether defendants violated the Unfair Competition Law;
16 (iii) whether defendants violated the California Constitution;
17 (iv) the amount of gross revenue and profit obtained by defendants
18 attributable to their violations of Civil Code section 3344; and
19 (vi) the appropriate nature of class-wide injunctive and equitable relief.

20 (c) Typicality: Plaintiffs' claims are typical of claims of the members of the
21 Plaintiff Class. Plaintiffs and all members of the Plaintiff Class sustained injuries and
22 damages arising out of defendants' common course of conduct in violation of law as a
23 complained of herein. The injuries and damages of each member of the Plaintiff Class
24 were caused directly by defendants' wrongful conduct in violation of law as alleged
25 herein.

26 (d) Adequacy: Plaintiffs will fairly and adequately protect the interests of the
27 members of the Plaintiff Class. Plaintiffs are persons who are or were minors who reside
28

1 in California, and who joined the Facebook social networking site in response to the
2 claims of defendant Facebook that they would have an authentic experience sharing
3 personal information with their friends on the social networking site. Plaintiffs are
4 adequate representatives of the Plaintiff Class as they have no interest which are adverse
5 to the interests of absent class members. Plaintiffs have retained counsel who have
6 substantial experience and success in the prosecution of complex cases involving privacy
7 issues, modern technology issues, and financial gain from novel or unorthodox activities.

8 (e) Superiority: A class action is superior to other available means for the fair
9 and efficient adjudication of this controversy because the individual joinder of all
10 members of the class is impracticable. Class action treatment will permit a large number
11 of similarly situated persons to prosecute their common claims in a single forum
12 simultaneously, efficiently, and without the unnecessary duplication of effort and expense
13 that numerous individual actions would engender. Furthermore, as the damages suffered
14 by each individual member of the class may be relatively small, the expenses and burden
15 of individual litigation would make it difficult or impossible for individual members of
16 the class to redress the wrongs done to them, while an important public interest will be
17 served by addressing the matter as a class action. The cost to the court system of
18 adjudication of such individualized litigation would be substantial. Individualized
19 litigation would also present the potential for inconsistent or contradictory judgments.

20
21 10. Plaintiffs are unaware of any difficulties that are likely to be encountered in
22 the management of this action that would preclude its maintenance as a class action.

23
24 **FACEBOOK SOCIAL NETWORKING SITE**

25 11. The Facebook social networking site was started in or about February, 2004
26 by Mark Zuckerberg, Eduardo Saverin, Dustin Moskovitz and Chris Hughes, who were
27 students at Harvard University, based on a concept in place at Philips Exeter Academy

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1 which had long published a manual of students and faculty. The Facebook program has
2 since become successful worldwide, with other persons or entities having investment or
3 ownership interests therein.

4
5 12. The model of the Facebook social network was to create an apparently
6 authentic experience for individuals to connect and share with friends, new and old, over
7 the internet.

8
9 13. The internet home page for the Facebook social network is
10 <http://www.facebook.com/>.

11
12 14. There are currently believed to be more than 500 million members on the
13 Facebook social network who have been active on the network within the last thirty days.
14 The number of children under the age of 18, residing in California, who are members of
15 the Facebook social network is currently unknown but based on the demographics is
16 believed to be very large. Because Facebook is a privately held company, figures
17 regarding the sources of its revenue are not publically available, but because younger
18 persons are generally seen to be early adapters to new technologies for communication,
19 the number of children under the age of 18 years who are active on Facebook is believed
20 to be equal to or greater than their proportionate share of the population at large.

21
22 15. One of the primary reasons people use Facebook is to share information
23 with others. Examples include uploading photographs or videos to share with others,
24 sharing links to other web sites, creating an event or a group with a specific interest,
25 sharing comments, or sending messages.

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1 16. An important aspect of the success of the Facebook social network was to
2 create the sense of an “authentic experience” in sharing personal information with friends.

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**THE FACEBOOK SOCIAL NETWORKING SITE
AS A REVENUE GENERATING SYSTEM**

17. The Facebook social networking site is a system designed to generate a stream of income through the utilization of information captured from the social networking activities of its members. This social networking activity generates detailed information about the interests and preferences of the members. This is extremely valuable information for marketing purposes.

18. Facebook has been able to sell advertising directed to very specific markets that are indicated by the information disclosed in the social networking activities of Facebook members. This is a marketing technique that is becoming more common on the internet due to the development of more sophisticated technologies.

19. In addition to the foregoing technique of marketing based on information generated through the social networking activities of its members, Facebook also generates advertising revenue by utilizing the names and/or likenesses of Facebook members in advertisements it sells to merchants of goods and services. The apparent endorsement of a good or service in an advertisement by one member who is recognizable to other persons will generate higher “click-throughs” and greater revenues to a paying advertiser, and thereby to Facebook.

20. Facebook also creates special “landing” web pages designed to be a destination for people conducting Google or other internet search engine searches of names of persons who are Facebook members, so that the search result will not lead to the

1 Facebook pages where the recognized data was located, but instead to a special “landing
2 page” created by Facebook. The purpose of the “landing page” is not to reveal the
3 content of a member’s page, but solely to give the searcher the opportunity and incentive
4 to become a member of the Facebook social networking site. The landing page permits
5 the searcher to do only one thing – to become a member of Facebook – and, with such
6 membership, presumably continue the search within the Facebook network. The landing
7 page solicitation to join the Facebook network is made more effective by including the
8 name and likeness of the person being sought in the search, as well the names and
9 likenesses of many of that person’s friends.

10

11 21. In the course of using the names and likenesses of Facebook members in
12 advertising and on special landing pages, Facebook regularly and frequently includes the
13 names and likenesses of minors without obtaining consent for that use. Children are a
14 large marketing audience, so that endorsements that include the names and likenesses of
15 other children in advertisements and solicitations generate a great increase in the revenue
16 and profits to Facebook. This increased revenue and profit occurs in the case of the
17 special landing pages by increasing the size of the Facebook social network, and in the
18 case of the endorsement advertisements, by increasing the chance that the advertisement
19 will achieve its purpose, thereby enabling Facebook to demand a higher price for the
20 advertisement.

21 22. The marketing and advertising made available to merchants on the Facebook
22 social network site is enhanced by inclusion within the advertisements of the names and
23 frequently the likenesses of Facebook members when their social interaction has indicated
24 that they like a particular web site, person, product or service. Facebook encourages its
25 members to communicate such ‘likes,’ characterizing these indications of like as
26 something that contributes to the social nature of communication within the Facebook
27 network. Facebook then uses this information for targeted marketing of endorsement ads

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1 to the effect that “[your friend] Billy Smith likes this product.” In the forgoing example,
2 Billy Smith is a Facebook member and a child whose name (and often likeness) is being
3 used to endorse paid advertisements without legal consent.
4

5 23. The revenue for defendant Facebook associated with its social networking
6 site has been reported to be close to or approximately \$800 million in the year 2009.
7 Defendant Facebook, Inc. is not a publically held or traded company so its income figures
8 are not generally available to the public.
9

10 24. Defendant Facebook, Inc., appears to be continually seeking new ways to
11 use the names and likenesses of its members, including children, for its own marketing
12 purposes. Facebook is currently using the names and likenesses of its members on
13 advertising segments that request other members to supply Facebook with the e-mail lists
14 of the member. The acquisition of the e-mail list of a member, by an advertisement using
15 the names and likenesses of other members who have supplied their own e-mail lists, is
16 for the purpose of generating more members for Facebook, which increases the size of its
17 advertising market, and generates significantly more revenue for Facebook. This is a
18 further commercial use of the names and often likenesses of children without legal
19 consent.
20

21 25. The business model of Facebook indicates that using the names and
22 likenesses of its members, including children, for marketing and revenue generating
23 purposes is inherent to its operating system, and will continue and likely increase in the
24 future.
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1 **FACEBOOK DOES NOT OBTAIN THE CONSENT OF ITS MEMBERS**
2 **TO USE THEIR NAMES AND/OR LIKENESSES**
3 **FOR MARKETING PURPOSES.**
4

5 26. The current Statement of Rights and Responsibilities posted by Facebook
6 on its social networking site includes the following section regarding advertising:

7 **“10. About Advertisements on Facebook**

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

10 “1. You can use your privacy settings to limit how your name and profile picture
11 may be associated with commercial or sponsored content served by us. You give us
12 permission to use your name and profile picture in connection with that content, subject to
13 the limits you place.

14 “2. We do not give your content or information to advertisers without your
15 consent.

16 “3. You understand that we may not always identify paid services and
17 communications as such.”
18

19 27. The foregoing section 10 of the Statement of Rights and Responsibilities,
20 once agreed to by a Facebook member, does not amount to “consent” by that member for
21 the use of the name and likeness of the member for Facebook’s own commercial and
22 marketing activities.
23

24 28. The foregoing section 10 of the Statement of Rights and Responsibilities,
25 once agreed to by a Facebook member, does not amount to consent by that member for
26 Facebook to sell to other merchants, persons or entities, the right to use the name and
27 likeness of the member for commercial and marketing purposes.
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**FACEBOOK, INC. DOES NOT OBTAIN CONSENT TO
USE THE NAMES AND LIKENESSES OF MINORS FOR
COMMERCIAL AND MARKETING PURPOSES.**

29. Facebook does not obtain consent to use the names and likenesses of minors for commercial and marketing purposes. At no time, does Facebook seek to or obtain the consent of any parent or guardian of the minor child to use or sell the name and likeness of the child for commercial use by Facebook.

**FIRST CAUSE OF ACTION
FOR VIOLATION OF CIVIL CODE §3344**

For a First Cause of Action against defendant Facebook, Inc. and Does 1 through 100, and each of them, for violation of Civil Code section 3344, plaintiffs allege as follows:

30. Plaintiffs hereby incorporate and reallege by reference the preceding paragraphs 1 through 29, inclusive, of this complaint as if each were here separately set forth in full.

31. Throughout the last three years, previous thereto, and continuing to the present, defendants Facebook and Does 1 through 100, and each of them, have regularly and repeatedly used the names and/or likenesses of plaintiffs and the members of the Plaintiff Class for the commercial purpose of marketing, advertising, selling, and soliciting the purchase of goods and services.

1 32. Defendants Facebook and Does 1 through 100, and each of them, did not
2 first obtain the consent of plaintiffs and members of the Plaintiff Class, or any of them,
3 before using their names or likenesses for commercial and marketing purposes.
4

5 33. Defendants Facebook and Does 1 through 100, and each of them, did not
6 first obtain the prior consent of the parents or legal guardians of the plaintiffs and
7 members of the Plaintiff Class, before using their names or likenesses for commercial and
8 marketing purposes.
9

10 34. Plaintiffs have sustained and will continue to sustain economic damages for
11 loss of advertising revenue as a result of the unauthorized, commercial use of their names
12 and likenesses in an amount to be determined in accordance with proof at the time of trial.
13

14 35. Plaintiffs have sustained and will continue to sustain non-economic
15 damages as a result of the unauthorized, commercial use of their names and likenesses.
16 The amount of such damages will be stated according to proof at the time of trial.
17

18 36. California Civil Code section 3344 provides statutory damages in the sum
19 of \$750 person for the violation of its provisions, or actual damages, whichever is greater,
20 and plaintiffs assert their right to such damages legally caused by the defendants and each
21 of them.
22

23 37. Plaintiffs have incurred attorneys fees and costs which are recoverable
24 under Civil Code section 3344, in an amount to be determined according to proof at the
25 time of trial.
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**SECOND CAUSE OF ACTION FOR VIOLATION OF
CALIFORNIA CONSTITUTION, ARTICLE I, SECTION 1**

For a Second Cause of Action against defendants Facebook, Inc., and Does 1 through 100, and each of them, for violation of the California Constitution, Article I, section 1, plaintiffs allege as follows:

38. Plaintiffs here incorporate and reallege by reference the preceding paragraphs 1 through 37 of this complaint as if each were here separately set forth in full.

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

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

40. The inalienable right to privacy under the California Constitution includes the right to be free from “. . . the improper use of information properly obtained . . . [and] the use of it for another purpose or the disclosure of it to some third party.” *White v. Davis*, 13 Cal.3d 757, 775 (1975). The State Constitutional right of privacy “. . . is self-executing and confers a judicial right of action on all Californians.” *Id.* Privacy is protected not merely against state action; it may not be violated by anyone. *Porten v. University of San Francisco*, 64 Cal. App. 3d 825, 829 (1976).

41. The conduct of defendants Facebook and Does 1 through 100 and each of them as hereinbefore alleged constitutes a violation of the right of privacy of plaintiffs

1 and of the Plaintiff Class as guaranteed by the California Constitution, Article I, Section
2 1.

3 42. As a direct and legal result of the Constitutional violation herein alleged,
4 plaintiffs and the Plaintiffs Class have sustained economic and non-economic damages in
5 an amount to be determined according to proof at trial.

6

7

**THIRD CAUSE OF ACTION FOR VIOLATION OF
8 THE UNFAIR COMPETITION LAW**

9 For the Third Cause of Action against defendants Facebook, Inc. and Does 1
10 through 100, and each of them, for violation of the Unfair Competition Law, plaintiffs
11 allege as follows:

12

13 43. Plaintiffs here incorporate and reallege by reference the preceding
14 paragraphs 1 through 42 of this complaint as if each were here separately set forth in full.

15

16 44. Plaintiffs bring this Third Cause of Action under sections 17203 and 17204
17 of the California Business and Professions Code, to obtain restitution, disgorgement, and
18 other remedies from defendants for acts and business practices carried out in violation of
19 section 17200 of the California Business and Professions Code, commonly known as the
20 "Unfair Competition Law."

21

22 45. The conduct herein above alleged in this complaint, *i.e.*, the encouragement
23 of children to join the Facebook social networking site to engage in communication and
24 exchanges with their friends as an authentic experience, while defendant Facebook was
25 and is using their names and likenesses for commercial and marketing purposes without
26 their parents' consent, constituted and constitutes a common, continuous, and continuing
27 course of conduct of unfair competition by means of unlawful and/or fraudulent business

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1 acts or practices, within the meaning of California Business and Professions Code section
2 17200, *et seq.*, including and in no way limited to the following:

3

- 4 (a) violations of the California Civil Code section 3344;
5 (b) violations of the California Constitution, Article I, section 1;
6 (c) defendants' acts and practices are unfair to consumers in the State of
7 California within the meaning of California Business and Professions Code
8 section 17200.

9

10 46. Plaintiffs and the Plaintiff Class are each entitled to full restitution and/or
11 disgorgement of all revenues, earnings, profits, compensation, and benefits which may
12 have been obtained by defendants as a result of their unlawful business acts or practices.

13

14 47. The illegal conduct of defendants alleged herein is continuing, and there is
15 no indication that defendants will cease such conduct in the future.

16

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PRAYER FOR RELIEF

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WHEREFORE, plaintiffs, on behalf of themselves and the members of the
19 Plaintiff Class, pray for the Court to enter judgment as follows:

20

- (a) for a determination that this action may be maintained as a class action;
21 (b) for economic damages for defendants' commercial misappropriation of
22 names and likenesses without appropriate consent;

23

- (c) for statutory penalties under Civil Code section 3344;

24

- (d) for non-economic damages for misappropriation of the name and likeness
25 without consent;

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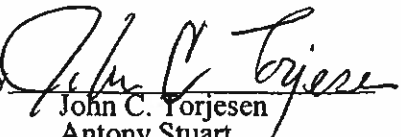
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- 1 (e) for all profits and revenues received by defendants from the unauthorized
- 2 commercial use of the names and/or likenesses of plaintiffs and Plaintiffs Class in
- 3 California;
- 4 (f) for the disgorgement of all profits and revenues received by defendants
- 5 from the unauthorized use of the names and/or likenesses of plaintiffs and the members of
- 6 the Plaintiff Class in California;
- 7 (g) for an injunction against the further commercial use by defendants of the
- 8 names and likenesses of children in California without the consent of the parents or
- 9 guardians of each of such children;
- 10 (h) for attorneys fees under Civil Code section 3344 and/or Code of Civil
- 11 Procedure section 1021.5; and
- 12 (i) for such other and further relief that the Court may deem just and proper.

13
14 DATED: August 26 2010

15 JOHN C. TORJESEN & ASSOCIATES
16 STUART LAW FIRM

17
18 By 
19 John C. Torjesen
20 Antony Stuart
21 Attorneys for Plaintiffs
22 DAVID A. COHEN, a minor, by
23 and through ROBIN S. COHEN
24 as Guardian ad Litem; SHELBY
25 A. ORLAND, a minor, by and
26 through MARCIA J. ORLAND as
27 Guardian ad Litem; for
28 themselves and all others similarly
situated.

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial of this action by jury.

Dated August 26, 2010

JOHN C. TORJESEN & ASSOCIATES
STUART LAW FIRM

By 

John C. Torjesen
Antony Stuart
Attorneys for Plaintiffs
DAVID A. COHEN, a minor, by
and through ROBIN S. COHEN
as Guardian ad Litem; SHELBY
A. ORLAND, a minor, by and
through MARCIA J. ORLAND as
Guardian ad Litem; for
themselves and all others similarly
situated.