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Ventures, Inc. and Steve Vachani

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FACEBOOK, INC.,

Plaintiff,

Case No. 5:08-cv-05780

-against-

POWER VENTURES, INC. d/b/a POWER.COM, a
California corporation; POWER VENTURES, INC.
a Cayman Island Corporation, STEVE VACHANI,
an individual; DOE 1, d/b/a POWER.COM, an
individual and/or business entity of unknown nature;
DOES 2 through 25, inclusive, individuals and/or
business entities of unknown nature,

Defendants.

**REPLY MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO
DISMISS OR, IN THE
ALTERNATIVE, FOR A MORE
DEFINITE STATEMENT**

Judge: Honorable Jeremy Fogel
Date: May 8, 2009
Time: 9:00 a.m.

Courtroom: 3

REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO SIDMISS,
OR IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT

1 Defendants Power Ventures, Inc. and Steve Vachani (hereafter collectively referred to as
2 “Defendants” or “Power”) respectfully submit this Reply Memorandum of Points and Authorities
3 in support of their motion to dismiss this action for failure to state a claim under Fed. R. Civ. P. 8,
4 9(b), and 12(b)(6) or, in the alternative, for a more definite statement under Fed. R. Civ. P. 12(e).

5 Power’s opening brief asserted that Counts I through III fail to state a claim because they all
6 sound in fraud and fail to comply with Rule 9(b)’s requirement that fraud be pleaded with
7 particularity. After reviewing Facebook’s opposition to the motion, Power withdraws this
8 argument with respect to Counts I through III. Those counts are meritless, and the allegations
9 underlying them are false. Power will address them on the merits at the appropriate time.

10 **I. THE COMPLAINT FAILS TO STATE A CLAIM FOR COPYRIGHT**
11 **INFRINGEMENT**

12 Plaintiffs opening brief argued that Count IV of the complaint fails to state a claim for
13 copyright infringement:

14 “[T]he Complaint does not identify either the copyrighted work or
15 the allegedly infringing work. It refers generically to ‘Facebook’s
16 website,’ but does not identify any portion of the website, any
17 graphics or text, or any computer program that is alleged to have
18 been copied ‘and/or’ the source for a derivative work.
19 *Id.* [Complaint ¶ 125.] The complaint also refers generically to
20 ‘copies and/or derivative works created by Defendants,’ *id.* ¶ 127,
21 but it does not identify the ‘copies and/or derivative works’ in any
22 intelligible way. At a minimum, an allegation of infringement must
23 identify the allegedly protected and infringing works. This
24 Complaint does neither. It is utterly impossible to respond to an
25 allegation so devoid of content. Count IV thus fails to meet even
26 Rule 8’s standard of notice pleading.”

27 Opening Br. at 2:24-3:5. Facebook contends that the complaint is sufficiently specific because it
28 “specifically alleges that Defendants ‘accessed and copied the Facebook *website*,’ including, but
not limited to, creating cached copies of the website.” Opp. Br. at 9:13-15. The crux of this issue
is whether generically referencing the Facebook “website” as the copyrighted work is sufficiently
specific to put Power on notice of the alleged copyright claim. It is not.

The Facebook website is massive. It includes many different elements – some of which are
subject to copyrights owned by Facebook and some of which clearly are not. The bulk of the
Facebook site is comprised of “User Content.” This “User Content” includes “photos, profiles,

1 messages, notes, text, information, music, video, advertisements, listings, and other content that
2 [users] upload, publish or display” on the Facebook site. *See* Facebook Terms of Use (rev. Sept.
3 23, 2008), available at <http://www.facebook.com/terms.php>, attached hereto as Exhibit 1 (section
4 headed “User Content Posted on the Site”). Facebook owns no copyright to such User Content.
5 Indeed, Facebook’s own Terms of Use expressly state that “Facebook does not assert any
6 ownership over your User Content.” *Id.* The Facebook site also contains “articles, photographs,
7 text, graphics, pictures, designs, music, sound, video, information applications, software and other
8 content or items belonging to or originating from third parties.” *Id.* (section headed “Third Party
9 Websites and Content”). Facebook does not own the copyrights to these third party materials.

10 Broadly asserting that Power “accessed and copied the Facebook *website*,” without
11 identifying the copyrighted or infringing work does not put Power on notice of the nature of the
12 infringement claim. The Facebook website is massive – obviously Facebook does not contend that
13 the entire site was copied. And, since most of the site is comprised of User Content and third party
14 materials that are not subject to Facebook copyrights, it is essential that a claim of infringement
15 identify exactly what was copied. Power’s services primarily consist of utilities that allow users to
16 copy their own User Content for purposes of updating it and making it portable to other sites –
17 without copying other elements of the Facebook website. If the claim for infringement is based on
18 the copying of User Content, that would be a very different claim than one for copying the site as a
19 whole, or for copying other elements of the site that may be subject to Facebook’s copyrights. But
20 the Complaint gives no indication as to what was copied beyond a vague reference to “the
21 Facebook *website*.” This is insufficient to allege that any element of the site subject to a Facebook
22 copyright was in fact copied.

23 For these reasons, the complaint also fails to meet the requirements of 17 U.S.C. § 512,
24 which requires a notification of copyright infringement to include “[i]dentification of the
25 copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single
26 online site are covered by a single notification, a representative list of such works at that site.” 17
27 U.S.C. § 512(c)(3)(A)(ii). It also requires “[i]dentification of the material that is claimed to be
28 infringing or the subject of infringing activity.” *Id.* § 512(c)(3)(A)(iii). Indeed, even Facebook’s

1 own DMCA Notice of Copyright Infringement, which it uses to address reports of potential
2 copyright infringement on its own site, *requires* this information. *See* Facebook DMCA Notice of
3 Copyright Infringement, available at http://www.facebook.com/copyright.php?copyright_notice=1,
4 attached hereto as Exhibit 2 (“Identify the copyrighted work that you claim has been infringed. ...
5 Identify the content on our site that you claim infringes your copyright. ... Where does the
6 infringing content appear on our site? In almost all instances the best way to help us locate the
7 content you are reporting is to provide us with the URL.”).

8 Consistent with federal law, and with Facebook’s own practices, it should, at a minimum,
9 be required to identify the alleged copyrighted and infringing works. In addition, Facebook should
10 be required to identify the URL where any such materials appear. Without this information it is
11 difficult, if not impossible, for Power to respond to the allegation.

12 **II. THE COMPLAINT FAILS TO STATE A CLAIM FOR A VIOLATION OF THE** 13 **DMCA**

14 Count V of the complaint, for violation of the DMCA, fails for the same reasons as Count
15 IV, because the first element of a DMCA claim is “ownership of a valid copyright on a work.” *See*
16 *Opp. Mem.* at 10:1-2. As explained above, Facebook does not own a copyright to all of the
17 elements of its website, as Facebook concedes that it has no ownership interest in User Content and
18 third party materials that comprise the bulk of the site.

19 Count V also suffers from a second defect. Facebook contends that the claim is based on
20 “unauthorized use of other users’ account names and passwords,” which Facebook characterizes as
21 the “method[] [Power] employed to circumvent Facebook’s efforts to prevent [Power] from
22 accessing Facebook’s copyrighted material.” *Opp. Mem.* at 11:3-6. But Facebook does not allege
23 even a single instance in which Power used other users’ account names or passwords without
24 authorization. Power provides a utility that allows users to access Facebook through Power.com by
25 entering their own usernames and passwords. In every instance, it is the user himself or herself
26 that enters the account name and password. And in every instance, the user is authorizing
27 Power.com to make use of the account name and password to allow the user to access Facebook
28 through Power.com. This type of device – allowing the entry of usernames and passwords to

1 access a website through a third-party site – is commonplace in the industry. Indeed, it is a device
2 that Facebook itself employs on its own site to allow its users to access other websites through
3 Facebook. For example, below is a screen capture from

4 <http://www.facebook.com/gettingstarted.php?>

5

Step 1 Find Friends	Step 2 Profile Information	Step 3 Join a Network
------------------------	-------------------------------	--------------------------

Find friends using your email account

Searching your email account is the fastest and most effective way to find your friends on Facebook.

Your Email:

Password:

Valid webmail address

We won't store your password or contact anyone without your permission.

Find people you Instant Message

[Skip this step](#)

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19 On this page, Facebook solicits users to enter their account names and passwords for users' email
20 accounts at Google's Gmail, AOL, Yahoo, Hotmail, or other third party websites. Facebook then
21 uses the account information to allow the user to access those accounts through Facebook, and to
22 import information from those third-party sites into Facebook. Power does the same thing to allow
23 users to access Facebook through Power.com.

24 Against this background, Facebook's allegation of "unauthorized use of other users'
25 account names and passwords" is difficult to understand. If Facebook alleges that Power permits
26 users to enter their account information to access the Facebook site through Power.com, just as
27 Facebook does with respect to other sites, such use is not "unauthorized." It is clearly authorized
28 by the user who enters the account information. If Facebook's allegation is that Power is doing

1 something different – that is, making some other use of account names and passwords – the
2 complaint is devoid of any facts alleged to support such a claim.

3 For these two reasons at least – the failure to specify the copyrighted work, and the failure
4 to identify the method of circumvention of protections for the copyrighted work – the complaint
5 fails to state a claim for violation of the DMCA. At a minimum, to state a DMCA claim, Facebook
6 should be required to identify the copyrighted work, the technological measure protecting that
7 work, and the alleged means by which it was circumvented. If the means of circumvention is the
8 allegedly “unauthorized” use of account information, the complaint should specify the nature of the
9 alleged use and in what sense it was unauthorized.

10 **III. DEFENDANTS SHOULD BE REQUIRED TO PROVIDE A MORE DEFINITE**
11 **STATEMENT WITH RESPECT TO THE TRADEMARK CLAIMS**

12 Counts VI and VII allege trademark infringement under federal and California law. The
13 complaint, however, does not identify any instance of the use of the Facebook mark on the Power
14 website. The only specific instance of the use of the Facebook mark is in the email discussed at
15 ¶¶ 68-70 of the complaint. If Facebook alleges instances of use of the Facebook mark other than in
16 connection with that email, Facebook should be required to identify each instance of such use or at
17 least to provide exemplars of the uses of the mark, including the URL where any infringing use of
18 the mark is alleged to have been made.

19 With respect to Count VIII, for violation of Cal. Bus. & Prof. Code § 17,200, Facebook’s
20 opposition brief states that the claim is premised on the alleged violation of the Lanham Act. Opp.
21 Mem. at 13:18-19. But the complaint itself does not make this clear. If Facebook is alleging a
22 violation of the unlawful prong of § 17,200 premised on a violation of the Lanham Act, that should
23 be clarified through an amended pleading or a more definite statement. As it stands now, the
24 allegations in Count VIII provide no indication as to which of the five prongs of § 17,200 is at
25 issue, or what the nature of the violation is alleged to be. Power should not be required to respond
26 to such a broad allegation if, in reality, the only allegation is violation of the unlawful prong
27 premised on an alleged Lanham Act violation.

1 **IV. CONCLUSION**

2 For the foregoing reasons, the Complaint should be dismissed for failure to state a claim. In
3 the alternative, plaintiff should be ordered to provide a more definite statement under Fed. R. Civ.
4 P. 12(e).

5 Dated: April 24, 2009

6 Respectfully submitted,
7 BRAMSON, PLUTZIK, MAHLER &
8 BIRKHAUSER, LLP

9 By _____ /s/
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EXHIBIT 1

 Remember Me[Forgot your password?](#)

steve@power.com

Login

[Sign Up](#)

Facebook helps you connect and share with the people in your life.

Terms of Use

Date of Last Revision: September 23, 2008

Welcome to Facebook, a social utility that connects you with the people around you. The Facebook service and network (collectively, "Facebook" or "the Service") are operated by Facebook, Inc. and its corporate affiliates (collectively, "us", "we" or "the Company"). By accessing or using our web site at www.facebook.com or the mobile version thereof (together the "Site") or by posting a Share Button on your site, you (the "User") signify that you have read, understand and agree to be bound by these Terms of Use ("Terms of Use" or "Agreement"), whether or not you are a registered member of Facebook. We reserve the right, at our sole discretion, to change, modify, add, or delete portions of these Terms of Use at any time without further notice. If we do this, we will post the changes to these Terms of Use on this page and will indicate at the top of this page the date these terms were last revised. Your continued use of the Service or the Site after any such changes constitutes your acceptance of the new Terms of Use. If you do not agree to abide by these or any future Terms of Use, do not use or access (or continue to use or access) the Service or the Site. It is your responsibility to regularly check the Site to determine if there have been changes to these Terms of Use and to review such changes.

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User Conduct

You understand that except for advertising programs offered by us on the Site (e.g., Facebook Flyers, Facebook Marketplace), the Service and the Site are available for your personal, non-commercial use only. You represent, warrant and agree that no materials of any kind submitted through your account or otherwise posted, transmitted, or shared by you on or through the Service will violate or infringe upon the rights of any third party, including copyright, trademark, privacy, publicity or other personal or proprietary rights; or contain libelous, defamatory or otherwise unlawful material.

In addition, you agree not to use the Service or the Site to:

- harvest or collect email addresses or other contact information of other users from the Service or the Site by electronic or other means for the purposes of sending unsolicited emails or other unsolicited communications;
- use the Service or the Site in any unlawful manner or in any other manner that could damage, disable, overburden or impair the Site;
- use automated scripts to collect information from or otherwise interact with the Service or the Site;
- upload, post, transmit, share, store or otherwise make available any content that we deem to be harmful, threatening, unlawful, defamatory, infringing, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, invasive of privacy or publicity rights, hateful, or racially, ethnically or otherwise objectionable;
- upload, post, transmit, share, store or otherwise make available any videos other than those of a personal nature that: (i) are of you or your friends, (ii) are taken by you or your friends, or (iii) are original art or animation created by you or your friends;
- register for more than one User account, register for a User account on behalf of an individual other than yourself, or register for a User account on behalf of any group or entity;
- impersonate any person or entity, or falsely state or otherwise misrepresent yourself, your age or your affiliation with any person or entity;
- upload, post, transmit, share or otherwise make available any unsolicited or unauthorized advertising, solicitations, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;
- upload, post, transmit, share, store or otherwise make publicly available on the Site any private information of any third party, including, addresses, phone numbers, email addresses, Social Security numbers and credit card numbers;
- solicit personal information from anyone under 18 or solicit passwords or personally identifying information for commercial or unlawful purposes;
- upload, post, transmit, share or otherwise make available any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- intimidate or harass another;
- upload, post, transmit, share, store or otherwise make available content that would constitute, encourage or provide instructions for a criminal offense, violate the rights of any party, or that would otherwise create liability or violate any local, state, national or international law;
- use or attempt to use another's account, service or system without authorization from the Company, or create a false identity on the Service or the Site.
- upload, post, transmit, share, store or otherwise make available content that, in the sole judgment of Company, is objectionable or which restricts or inhibits any other person from using or enjoying the Site, or which may expose Company or its users to any harm or liability of any type.

Without limiting any of the foregoing, you also agree to abide by our [Facebook Code of Conduct](#) that provides further information regarding the authorized conduct of users on Facebook.

User Content Posted on the Site

You are solely responsible for the photos, profiles (including your name, image, and likeness), messages, notes, text, information, music, video, advertisements, listings, and other content that you upload, publish or display (hereinafter, "post") on or through the Service or the Site, or transmit to or share with other users (collectively the "User Content"). You may not post, transmit, or share User Content on the Site or Service that you did not create or that you do not have permission to post. You understand and agree that the Company may, but is not

obligated to, review the Site and may delete or remove (without notice) any Site Content or User Content in its sole discretion, for any reason or no reason, including User Content that in the sole judgment of the Company violates this Agreement or the [Facebook Code of Conduct](#), or which might be offensive, illegal, or that might violate the rights, harm, or threaten the safety of users or others. You are solely responsible at your sole cost and expense for creating backup copies and replacing any User Content you post or store on the Site or provide to the Company.

When you post User Content to the Site, you authorize and direct us to make such copies thereof as we deem necessary in order to facilitate the posting and storage of the User Content on the Site. By posting User Content to any part of the Site, you automatically grant, and you represent and warrant that you have the right to grant, to the Company an irrevocable, perpetual, non-exclusive, transferable, fully paid, worldwide license (with the right to sublicense) to use, copy, publicly perform, publicly display, reformat, translate, excerpt (in whole or in part) and distribute such User Content for any purpose, commercial, advertising, or otherwise, on or in connection with the Site or the promotion thereof, to prepare derivative works of, or incorporate into other works, such User Content, and to grant and authorize sublicenses of the foregoing. You may remove your User Content from the Site at any time. If you choose to remove your User Content, the license granted above will automatically expire, however you acknowledge that the Company may retain archived copies of your User Content. Facebook does not assert any ownership over your User Content; rather, as between us and you, subject to the rights granted to us in these Terms, you retain full ownership of all of your User Content and any intellectual property rights or other proprietary rights associated with your User Content.

Facebook Mobile Services

The Service includes certain services that are available via your mobile phone, including (i) the ability to upload content to Facebook via your mobile phone (Mobile Uploads), (ii) the ability to receive and reply to Facebook messages, to poke and receive pokes and to write wall posts using text messaging (Mobile Texts), (iii) the ability to browse Facebook from your mobile phone (Mobile Web), and (iv) the ability to access certain Facebook features through a mobile application you have downloaded and installed on your mobile phone (Mobile Client) (collectively the "Mobile Services"). We do not charge for these Mobile Services. However, your carrier's normal messaging, data and other rates and fees will still apply. You should check with your carrier to find out what plans are available and how much they cost. In addition, downloading, installing, or using certain Mobile Services may be prohibited or restricted by your carrier, and not all Mobile Services may work with all carriers or devices. Therefore, you should check with your carrier to find out if the Mobile Services are available for your mobile devices, and what restrictions, if any, may be applicable to your use of such Mobile Services. By using the Mobile Services, you agree that we may communicate with you regarding Facebook and other entities by SMS, MMS, text message or other electronic means to your mobile device and that certain information about your usage of the Mobile Services may be communicated to us. In the event you change or deactivate your mobile telephone number, you agree to promptly update your Facebook account information to ensure that your messages are not sent to the person that acquires your old number.

Copyright Complaints

We respect the intellectual property rights of others and we prohibit users from uploading, posting or otherwise transmitting on the Facebook website or service any materials that violate another party's intellectual property rights. When we receive proper Notification of Alleged Copyright Infringement as described in our [Facebook Copyright Policy](#), we promptly remove or disable access to the allegedly infringing material and terminate the accounts of repeat infringers as described herein in accordance with the Digital Millennium Copyright Act. If you believe that any material on the Site infringes upon any copyright which you own or control, you may send a written notification of such infringement to our Designated Agent. Please see our [Facebook Copyright Policy](#) for more information on how to report infringement of your copyright.

Repeat Infringer Policy

In accordance with the Digital Millennium Copyright Act (DMCA) and other applicable law, Company has adopted a policy of terminating, in appropriate circumstances and at Company's sole discretion, members who are deemed to be repeat infringers. Company may also at its sole discretion limit access to the Site and/or terminate the memberships of any users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

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The Site contains (or you may be sent through the Site or the Service) links to other web sites ("Third Party Sites") as well as articles, photographs, text, graphics, pictures, designs, music, sound, video, information, applications, software and other content or items belonging to or originating from third parties (the "Third Party Applications, Software or Content"). Such Third Party Sites and Third Party Applications, Software or Content are not investigated, monitored or checked for accuracy, appropriateness, or completeness by us, and we are not responsible for any Third Party Sites accessed through the Site or any Third Party Applications, Software or Content posted on, available through or installed from the Site, including the content, accuracy, offensiveness, opinions, reliability, privacy practices or other policies of or contained in the Third Party Sites or the Third Party Applications, Software or Content. Inclusion of, linking to or permitting the use or installation of any Third Party

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In the event that the Share Link is a button that contains any icons or other graphic images, trademarks or other proprietary materials of the Company, Online Content Provider is granted permission to use such images, trademarks or other materials solely for the purpose of placing the Share Link on Online Content Provider's site and solely in the current form provided by the Company. In the event that the Share Link is a text link, it must include the word "Facebook" as part of the link. The rights granted in this paragraph may be revoked by Company at any time with or without cause in its sole discretion, and upon such termination, Online Content Provider agrees to immediately remove all Share Links from its site.

In order for an Online Content Provider to include a Share Link on its pages, the Third Party Site must not contain any web content that if shared or posted by a user would be a violation of the user conduct rules set forth above. Without limiting the foregoing, Online Content Provider agrees not to post a Share Link on any web site that contains, and represents and warrants that such web site does not and will not contain, any content that is infringing, harmful, threatening, unlawful, defamatory, abusive, inflammatory, harassing, vulgar, obscene, lewd, fraudulent, or invasive of privacy or publicity rights or that may expose Company or its users to any harm or liability of any type. Upon including of a Share Link, Online Content Provider agrees to defend, indemnify and hold the Company, its subsidiaries and affiliates, and each of their directors, officers, agents, contractors, partners and employees, harmless from and against any loss, liability, claim, demand, damages, costs and expenses, including reasonable attorney's fees, arising out of or in connection with such Share Link, any links, content or other items or materials which may be shared or posted through such Share Link, or any breach or alleged breach of the foregoing representations and warranties.

By including a Share Link, Online Content Provider automatically grants, and represents and warrants that it has the right to grant, to the Company an irrevocable, perpetual, non-exclusive, transferable, fully paid, worldwide license (with the right to sublicense) to use the Share Service in order to link to, use, copy, publish, stream, publicly perform, publicly display, reformat, translate, excerpt (in whole or in part), summarize, and distribute the content, links and other materials of any kind residing on any web pages on which Online Content Provider places the Share Link.

Facebook Marketplace

All listings posted on or through the Facebook Marketplace service and all transactions conducted in connection therewith are subject to and governed by the [Facebook Marketplace Guidelines](#) (the "Guidelines") as well as these Terms of Use. When you use Facebook Marketplace in any manner you are agreeing to abide by and be subject to the Guidelines and the other applicable rules set forth in these Terms of Use. The Guidelines are subject to change without prior notice at any time, in the Company's sole discretion, so you should review the Guidelines each time you use Facebook Marketplace. Parties to a transaction are solely responsible for all interactions with each other, for arranging for payment and the exchange of the goods or services purchased if applicable, and for the results and performance of any transaction or relationship entered into through Facebook Marketplace. You acknowledge that Facebook is not responsible or liable for any action or inaction of any party to a transaction, for any failure to perform, to pay any amounts due, or to deliver any merchandise or services as promised, or for any other aspect of the transaction. Any fees or payments collected by Facebook applicable to Facebook Marketplace are set forth on the Site, and all terms and conditions applicable to such fees are set forth in the [Facebook Terms of Sale](#). However, please note that the Terms of Sale do not apply to your purchases of products or services from third parties through Facebook Marketplace, as those transactions are strictly between you and the other party to the transaction. ALL USE OF FACEBOOK MARKETPLACE IS PROVIDED "AS IS" AND AT YOUR OWN RISK.

Facebook Platform Applications

The Facebook Platform is a set of APIs and services provided by Facebook that enable third-party developers ("Platform Developers") to create websites and applications that retrieve data made available by Facebook and its users and/or that retrieve authorized data from third-party sites for use on the Facebook Site ("Platform Applications")

Platform Developers may use the Facebook Platform and create Platform Applications only in accordance with the terms and conditions set forth in an agreement entered into between Facebook and the Platform Developer ("Developer Terms"). Our standard Developer Terms consist of the [Facebook Developer Terms of Service](#) and the related [Facebook Platform Guidelines](#). We may from time to time enter into separate agreements with certain third party Platform Developers that contain different or additional terms, provided however, that each such separate agreement will require the third party Platform Developer to only display your information in accordance with your [Facebook privacy settings](#). The standard Developer Terms are subject to change without prior notice at any time, in the Company's sole discretion, so you should review these documents from time to time. ALL USE OF THE FACEBOOK PLATFORM IS PROVIDED "AS IS" AND AT YOUR OWN RISK.

Users who install Platform Applications must agree to the terms and conditions set forth in the [Platform Application Terms of Use](#) ("Application User Terms") and in these Terms of Use. The Application User Terms are subject to change without prior notice at any time, in the Company's sole discretion, so you should review these terms each time you install an application and from time to time. Platform Developers may require you to agree to their own terms of service, privacy policies and/or other policies as a condition of using Platform Applications. Platform Applications have not been approved, endorsed, or reviewed in any manner by Facebook, and we are not responsible for your use of or inability to use any Platform Applications, including the content, accuracy, or reliability of such Application and the privacy practices or other policies of Developers. YOU USE SUCH PLATFORM APPLICATIONS AT YOUR OWN RISK.

If you, your friends or members of your network use any Platform Applications, such Platform Applications may access and share certain information about you with others in accordance with your privacy settings as further described in our [Privacy Policy](#). Platform Developers are required to agree to restrictions on access, storage and use of such information. However, while we have undertaken contractual and technical steps to restrict possible misuse of such information by such Platform Developers, we do not screen or approve Developers, and we cannot and do not guarantee that all Platform Developers will abide by such restrictions and agreements. Certain actions you take through the Platform Applications may be displayed to your friends in your profile, mini-feed and news feed, and you may opt-out of displaying your Platform Application actions on the Privacy Settings page. Please report any suspected misuse of information through the Facebook Platform as described in our [Privacy Policy](#).

You may set your preferences for your news feed and mini-feed [here](#).

Facebook Connect

Facebook Connect ("Connect") enables participating third party websites to work just like Facebook Platform applications. Once you allow a third party website to connect with Facebook, you will be able to use your Facebook login information to log into that website. The third party website will be able to: generate and publish news feed and other stories about actions you take on their website; access Facebook information related to you (including your profile information, friends, and privacy settings) so you can use your Facebook information on the third party site; and allow you to interact with your friends on the website. In order to make Connect possible, you agree to allow Facebook to check your Facebook cookies when you are visiting participating third party websites, and allow Facebook to receive information concerning the actions you take on those third party websites. In addition, once you allow a participating third party website to connect with Facebook, you agree to allow Facebook and such third party website to generate and publish news feed and other stories about actions you take on the website without any additional permission. In the event you no longer want the third party website to publish stories about you, you can always disable this feature by changing your [application settings](#).

When your friends connect their Facebook account with a participating third party website, Facebook Connect will enable them to find Facebook friends that may also be users of that third party website, and invite them to use Connect as well. If you do not want your friends to be able to invite you, you may change your [privacy settings](#) to disable this feature.

Connect also gives you the ability to permit Facebook and participating third party websites to generate and publish news feed and other stories about actions you have taken on such websites, even if you have not gone through the Connect process. In such cases, you will be asked whether you want to publish the story on Facebook, and will be given the opportunity to save your answer for future stories. In the event you want to change your settings for that website, visit your [application settings](#).

Like Platform Applications, third party websites that participate in Connect are required, among other things, to protect your privacy consistent with your Facebook privacy settings and Facebook's [privacy policy](#).

Facebook Pages

Facebook Pages are special profiles used solely for commercial, political, or charitable purposes. You may not set

up a Facebook Page on behalf of another individual or entity unless you are authorized to do so. This includes fan Facebook Pages, as well as Facebook Pages to support or criticize another individual or entity.

FACEBOOK DOES NOT PRE-SCREEN OR APPROVE FACEBOOK PAGES, AND CANNOT GUARANTEE THAT A FACEBOOK PAGE WAS ACTUALLY CREATED AND IS BEING OPERATED BY THE INDIVIDUAL OR ENTITY THAT IS THE SUBJECT OF A FACEBOOK PAGE. NOR IS FACEBOOK RESPONSIBLE FOR THE CONTENT OF ANY FACEBOOK PAGE, OR ANY TRANSACTIONS ENTERED INTO OR OTHER ACTIONS TAKEN ON OR IN CONNECTION WITH ANY FACEBOOK PAGE, INCLUDING HOW THE OWNER OF THE FACEBOOK PAGE COLLECTS, HANDLES, USES AND / OR SHARES ANY PERSONAL INFORMATION IT MAY COLLECT FROM USERS (PLEASE REVIEW THE [FACEBOOK PRIVACY POLICY](#) IF YOU HAVE ANY QUESTIONS OR CONCERNS REGARDING THE USE OR SHARING OF YOUR PERSONAL INFORMATION). YOU SHOULD BE CAREFUL BEFORE PROVIDING ANY PERSONAL INFORMATION TO OR ENTERING INTO ANY TRANSACTION IN CONNECTION WITH A FACEBOOK PAGE.

In addition to these Terms of Use, Facebook Pages are subject to and governed by certain [Additional Terms Applicable to Facebook Pages](#). The Additional Terms Applicable to Facebook Pages control in the event of any conflict between them and the Terms of Use.

Terms of Sale

Please refer to our [Terms of Sale](#) for the terms, conditions and policies applicable to your purchase of products or services from Company. By ordering products or services from Company through the Site, you agree to be bound by and accept the Terms of Sale. The Terms of Sale are subject to change without prior notice at any time, in Company's sole discretion so you should review the Terms of Sale each time you make a purchase.

User Disputes

You are solely responsible for your interactions with other Facebook users. We reserve the right, but have no obligation, to monitor disputes between you and other users.

Privacy

We care about the privacy of our users. Click [here](#) to view the Facebook's Privacy Policy. By using the Site or the Service, you are consenting to have your personal data transferred to and processed in the United States.

Disclaimers

The Company is not responsible or liable in any manner for any User Content or Third Party Applications, Software or Content posted on the Site or in connection with the Service, whether posted or caused by users of the Site, by Facebook, by third parties or by any of the equipment or programming associated with or utilized in the Site or the Service. Although we provide rules for user conduct and postings, we do not control and are not responsible for what users post, transmit or share on the Site and are not responsible for any offensive, inappropriate, obscene, unlawful or otherwise objectionable content you may encounter on the Site or in connection with any User Content or Third Party Applications, Software or Content. The Company is not responsible for the conduct, whether online or offline, of any user of the Site or Service.

The Site and the Service may be temporarily unavailable from time to time for maintenance or other reasons. Company assumes no responsibility for any error, omission, interruption, deletion, defect, delay in operation or transmission, communications line failure, theft or destruction or unauthorized access to, or alteration of, User communications. The Company is not responsible for any technical malfunction or other problems of any telephone network or service, computer systems, servers or providers, computer or mobile phone equipment, software, failure of email or players on account of technical problems or traffic congestion on the Internet or at any Site or combination thereof, including injury or damage to User's or to any other person's computer, mobile phone, or other hardware or software, related to or resulting from using or downloading materials in connection with the Web and/or in connection with the Service, including any Mobile Client software. Under no circumstances will the Company be responsible for any loss or damage, including any loss or damage to any User Content or personal injury or death, resulting from anyone's use of the Site or the Service, any User Content or Third Party Applications, Software or Content posted on or through the Site or the Service or transmitted to Users, or any interactions between users of the Site, whether online or offline.

THE SITE, THE SERVICE (INCLUDING THE MOBILE SERVICES, THE SHARE SERVICE AND THE MARKETPLACE SERVICE), ANY PLATFORM APPLICATIONS AND THE SITE CONTENT ARE PROVIDED "AS-IS" AND THE COMPANY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. THE COMPANY CANNOT GUARANTEE AND DOES NOT PROMISE ANY SPECIFIC RESULTS FROM USE OF THE SITE AND/OR THE SERVICE AND/OR ANY PLATFORM APPLICATIONS. COMPANY DOES NOT REPRESENT OR WARRANT THAT SOFTWARE, CONTENT OR MATERIALS ON THE SITE, THE SERVICE OR ANY PLATFORM APPLICATIONS ARE ACCURATE, COMPLETE, RELIABLE, CURRENT OR ERROR-FREE OR THAT THE SITE OR SERVICE ITS SERVERS, OR ANY PLATFORM APPLICATIONS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THEREFORE, YOU SHOULD EXERCISE CAUTION IN THE USE AND DOWNLOADING OF ANY SUCH SOFTWARE, CONTENT OR MATERIALS AND USE INDUSTRY-RECOGNIZED SOFTWARE TO DETECT AND

DISINFECT VIRUSES. WITHOUT LIMITING THE FOREGOING, YOU UNDERSTAND AND AGREE THAT YOU DOWNLOAD OR OTHERWISE OBTAIN CONTENT, MATERIAL, DATA OR SOFTWARE (INCLUDING ANY MOBILE CLIENT) FROM OR THROUGH THE SERVICE AND ANY PLATFORM APPLICATIONS AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR YOUR USE THEREOF AND ANY DAMAGES TO YOUR MOBILE DEVICE OR COMPUTER SYSTEM, LOSS OF DATA OR OTHER HARM OF ANY KIND THAT MAY RESULT.

The Company reserves the right to change any and all content, software and other items used or contained in the Site and any Services and Platform Applications offered through the Site at any time without notice. Reference to any products, services, processes or other information, by trade name, trademark, manufacturer, supplier or otherwise does not constitute or imply endorsement, sponsorship or recommendation thereof, or any affiliation therewith, by Company.

Limitation on Liability

IN NO EVENT WILL COMPANY OR ITS DIRECTORS, EMPLOYEES OR AGENTS BE LIABLE TO YOU OR ANY THIRD PERSON FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING FOR ANY LOST PROFITS OR LOST DATA ARISING FROM YOUR USE OF THE SITE OR THE SERVICE, ANY PLATFORM APPLICATIONS OR ANY OF THE SITE CONTENT OR OTHER MATERIALS ON, ACCESSED THROUGH OR DOWNLOADED FROM THE SITE, EVEN IF THE COMPANY IS AWARE OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE COMPANY'S LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU TO COMPANY FOR THE SERVICE DURING THE TERM OF MEMBERSHIP, BUT IN NO CASE WILL THE COMPANY'S LIABILITY TO YOU EXCEED \$1000. YOU ACKNOWLEDGE THAT IF NO FEES ARE PAID TO COMPANY FOR THE SERVICE, YOU SHALL BE LIMITED TO INJUNCTIVE RELIEF ONLY, UNLESS OTHERWISE PERMITTED BY LAW, AND SHALL NOT BE ENTITLED TO DAMAGES OF ANY KIND FROM COMPANY, REGARDLESS OF THE CAUSE OF ACTION.

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

Termination

The Company may terminate your membership, delete your profile and any content or information that you have posted on the Site or through any Platform Application and/or prohibit you from using or accessing the Service or the Site or any Platform Application (or any portion, aspect or feature of the Service or the Site or any Platform Application) for any reason, or no reason, at any time in its sole discretion, with or without notice, including if it believes that you are under 13, or under 18 and not in high school or college. When we are notified that a user has died, we will generally, but are not obligated to, keep the user's account active under a special memorialized status for a period of time determined by us to allow other users to post and view comments.

Governing Law; Venue and Jurisdiction

By visiting or using the Site and/or the Service, you agree that the laws of the State of Delaware, without regard to principles of conflict of laws, will govern these Terms of Use and any dispute of any sort that might arise between you and the Company or any of our affiliates. With respect to any disputes or claims not subject to arbitration (as set forth below), you agree not to commence or prosecute any action in connection therewith other than in the state and federal courts of California, and you hereby consent to, and waive all defenses of lack of personal jurisdiction and forum non conveniens with respect to, venue and jurisdiction in the state and federal courts of California.

Arbitration

YOU AND COMPANY AGREE THAT, EXCEPT AS MAY OTHERWISE BE PROVIDED IN REGARD TO SPECIFIC SERVICES ON THE SITE IN ANY SPECIFIC TERMS APPLICABLE TO THOSE SERVICES, THE SOLE AND EXCLUSIVE FORUM AND REMEDY FOR ANY AND ALL DISPUTES AND CLAIMS RELATING IN ANY WAY TO OR ARISING OUT OF THESE TERMS OF USE, THE SITE AND/OR THE SERVICE (INCLUDING YOUR VISIT TO OR USE OF THE SITE AND/OR THE SERVICE) SHALL BE FINAL AND BINDING ARBITRATION, except that: (a) to the extent that either of us has in any manner infringed upon or violated or threatened to infringe upon or violate the other party's patent, copyright, trademark or trade secret rights, or you have otherwise violated any of the user conduct rules set forth above or in the Code of Conduct then the parties acknowledge that arbitration is not an adequate remedy at law and that injunctive or other appropriate relief may be sought; and (b) no disputes or claims relating to any transactions you enter into with a third party through the Facebook Marketplace may be arbitrated.

Arbitration under this Agreement shall be conducted by the American Arbitration Association (the "AAA") under its Commercial Arbitration Rules and, in the case of consumer disputes, the AAA's Supplementary Procedures for Consumer Related Disputes (the "AAA Consumer Rules") (collectively the "AAA Rules"). The location of the arbitration and the allocation of costs and fees for such arbitration shall be determined in accordance with such

AAA Rules and shall be subject to the limitations provided for in the AAA Consumer Rules (for consumer disputes). If such costs are determined to be excessive in a consumer dispute, the Company will be responsible for paying all arbitration fees and arbitrator compensation in excess of what is deemed reasonable. The arbitrator's award shall be binding and may be entered as a judgment in any court of competent jurisdiction.

To the fullest extent permitted by applicable law, NO ARBITRATION OR CLAIM UNDER THESE TERMS OF USE SHALL BE JOINED TO ANY OTHER ARBITRATION OR CLAIM, INCLUDING ANY ARBITRATION OR CLAIM INVOLVING ANY OTHER CURRENT OR FORMER USER OF THE SERVICE, AND NO CLASS ARBITRATION PROCEEDINGS SHALL BE PERMITTED. In no event shall any claim, action or proceeding by you related in any way to the Site and/or the Service (including your visit to or use of the Site and/or the Service) be instituted more than three (3) years after the cause of action arose.

Indemnity

You agree to indemnify and hold the Company, its subsidiaries and affiliates, and each of their directors, officers, agents, contractors, partners and employees, harmless from and against any loss, liability, claim, demand, damages, costs and expenses, including reasonable attorney's fees, arising out of or in connection with any User Content, any Third Party Applications, Software or Content you post or share on or through the Site (including through the Share Service), your use of the Service or the Site, your conduct in connection with the Service or the Site or with other users of the Service or the Site, or any violation of this Agreement or of any law or the rights of any third party.

Submissions

You acknowledge and agree that any questions, comments, suggestions, ideas, feedback or other information about the Site or the Service ("Submissions"), provided by you to Company are non-confidential and shall become the sole property of Company. Company shall own exclusive rights, including all intellectual property rights, and shall be entitled to the unrestricted use and dissemination of these Submissions for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

Definitions and Constructions

Unless otherwise specified, the terms "includes", "including", "e.g.", "for example", and other similar terms are deemed to include the term "without limitation" immediately thereafter. Terms used in these Terms with the initial letter(s) capitalized will have the meaning attributed to them in these Terms.

Other

These Terms of Use constitute the entire agreement between you and Company regarding the use of the Site and/or the Service, superseding any prior agreements between you and Company relating to your use of the Site or the Service. The failure of Company to exercise or enforce any right or provision of these Terms of Use shall not constitute a waiver of such right or provision in that or any other instance. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect. If any provision of these Terms of Use shall be deemed unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these Terms of Use and shall not affect the validity and enforceability of any remaining provisions.

Questions

Please visit our [Help](#) page or these links for more information.

- [Facebook Copyright Policy](#)
- [Facebook Terms of Sale](#)
- [Facebook Marketplace Guidelines](#)
- [Facebook Platform Guidelines](#)
- [Platform Application Terms of Use](#)
- [Facebook Developer Terms of Service](#)

EXHIBIT 2


 Remember Me

[Forgot your password?](#)

Facebook helps you connect and share with the people in your life.

DMCA Notice of Copyright Infringement

 Name:

 Mailing Address:

 Telephone:

 E-Mail:

(Note that we routinely provide this email address to the user that posted the content you are reporting)

Identify the copyrighted work that you claim has been infringed.

Identify the content on our site that you claim infringes your copyright.

Where does the infringing content appear on our site? In almost all instances, the best way to help us locate the content you are reporting is to provide us with the URL.

How does the content infringe your rights?

By submitting this notice, you declare that you have a good faith belief that use of the copyrighted content described above, in the manner you have complained of, is not authorized by the copyright owner, its agent, or the law. You also declare that the information in this notice is accurate. And finally, you declare under penalty of perjury, that you are the owner or authorized to act on behalf of the owner of an exclusive copyright that is allegedly infringed.

 I Agree I Disagree Electronic Signature:

Security Check

 Enter **both words** below, **separated by a space**.

 Can't read the words below? [Try different words](#) or an [audio captcha](#).


Text in the box:

[Submit Notice](#) [Cancel](#)

**This question is optional, and is not required by the DMCA. However, providing this information may preempt any potential need for follow-up questions should your notice be unclear.