

1 T. Matthew Phillips, Esq.
2 TMatthewPhillips@humanoid.net
3 10040 West Cheyenne Avenue #170
4 Las Vegas, Nev. 89129
5 Telephone: (323) 314-6996

6 *Plaintiff's Counsel*

7
8 **CALIFORNIA SUPERIOR COURT**

9 **LOS ANGELES COUNTY, CALIFORNIA**

10
11 _____) **Case No: BC 714084**
12 **CHRISTIE SCARBOROUGH,**)
13 **GREG FESSLER,**) **FIRST AMENDED COMPLAINT**
14 **RUDY TWOMOON,**) **FOR DAMAGES AND INJUNCTION.**
15 **GENA SIMKINS,**)
16) **Violation of the 'Right to Freely Speak'**
17 ***Plaintiffs,***) **[Calif. Const., Art. 1, Sec. 2]**
18)
19 **vs.**)
20)
21 **FACEBOOK, INC.,**)
22 **a Delaware Corporation**)
23 **and DOES 1 – 9,**)
24)
25 ***Defendants.***) **Hon. Samantha P. Jessner, Judge**
26) **Dept. 31 – (No Trial Date)**
27 _____)
28

////

////

////

1 (7) Defendants, DOES 1 – 9 are sued under fictitious names. When Plaintiffs
2 learn their true and correct names, Plaintiffs will amend. Plaintiffs allege that all
3 DOE Defendants are a proximate cause of Plaintiffs’ harm.

4 (8) This Court has jurisdiction to hear this matter because Defendants do
5 business in California and the Court may resolve these issues under California law.
6 Plaintiffs seek damages in a dollar amount that exceeds the jurisdictional minimum
7 of this Court. Plaintiffs also seek injunctive relief. Plaintiffs demand a jury trial.

8 ////

9 ////

10 ////

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

☞ CAUSE of ACTION No. 1 ☞

1
2 (9) Violation of the Right to Freely Speak: Plaintiffs, and each of them,
3 now bring this Cause-of-Action No. 1—*violation of the Right to Freely Speak*—
4 as against Defendant, FACEBOOK, INC., (“FACEBOOK”), pursuant to California
5 Constitution, Art. 1, Sec. 2.

6 (10) The California Constitution: The California Constitution, Art. 1, Sec. 2,
7 in relevant part provides—

8 “(a) Every person may freely speak, write and publish his or her
9 sentiments on all subjects, *being responsible for the abuse of this right.*
10 *A law may not restrain or abridge liberty of speech or press.*”

11 [Calif. Const., Art. 1, Sec. 2; underscores and italics added]

12 (11) The Right to Freely Speak: California law guarantees to all persons the
13 right to “freely speak,” [Calif. Const., Art. 1, Sec. 2]. Under California state law,
14 Plaintiffs enjoy the constitutional right to “freely speak, write and publish [their]
15 sentiments on all subjects,” [Calif. Const., Art. 1, Sec. 2].

16 (12) State vs. Federal Constitutions: Notably, while the First Amendment merely
17 restrains government, (“Congress shall make no law”), the California Constitution
18 affirmatively empowers individuals—to “freely speak, write and publish [their]
19 sentiments on all subjects,” [Calif. Const., Art. 1, Sec. 2].

20 (13) Plaintiffs Demand Their Right to Freely Speak: By bringing this lawsuit,
21 Plaintiffs demand their constitutional right to “freely speak, write and publish”—
22 at FACEBOOK’S website—“[their] sentiments on all subjects”—as guaranteed by
23 California Constitution, Art. 1, Sec. 2.

24 (14) Defendant Denies to Plaintiffs the Right to Freely Speak: At its website,
25 FACEBOOK wrongfully denies to Plaintiffs the constitutional right to “freely speak,
26 write and publish [their] sentiments on all subjects,” [Calif. Const., Art. 1, Sec. 2].
27 Indeed, FACEBOOK engages in continuous and systematic violations of the
28 constitutional “right to freely speak.”

1 (15) FACEBOOK is a Business Establishment: FACEBOOK is a website where
2 members of the public post opinions, comments, criticisms, and photographs.
3 FACEBOOK is a business establishment because it is open to the general public.
4 FACEBOOK’S website is *not* private, but rather, a place of public accommodations.

5 (16) How FACEBOOK Violates the Law: FACEBOOK violates California law by
6 infringing on the constitutional “right to freely speak,” [Calif. Const., Art. 1, Sec. 2].
7 *First*, FACEBOOK censors Plaintiffs, *i.e.*, by deleting their posts, and *second*,
8 FACEBOOK punishes Plaintiffs, *i.e.*, by suspending their ability to post, which is
9 known as being sentenced to “Facebook Jail.” (Note: “Facebook Jail” sentences
10 range from 24 hours to 30 days; first-time offenders receive 24-hour sentences,
11 while repeat offenders, like Plaintiffs, receive 30-day sentences.)

12 (17) How FACEBOOK Violates Plaintiffs’ Rights: FACEBOOK violates Plaintiffs’
13 “right to freely speak” in two separate and distinct ways:

14 (i) FACEBOOK wrongfully censors Plaintiffs, by deleting their posts—
15 which results in violations of the “right to freely speak.”

16 [Calif. Const., Art. 1, Sec. 2]; and further,

17 (ii) FACEBOOK wrongfully punishes Plaintiffs, with “Facebook Jail”
18 by suspending their ability to post—for periods of up to 30 days—
19 which likewise results in violations of the “right to freely speak.”

20 [Calif. Const., Art. 1, Sec. 2].

21 (18) FACEBOOK Censorship & FACEBOOK Jail: On many occasions, FACEBOOK
22 has censored Plaintiffs by deleting their posts, in addition, FACEBOOK has punished
23 Plaintiffs by sentencing them to “Facebook Jail,” for periods of up to 30 days,
24 during which FACEBOOK suspended Plaintiffs’ ability to post. Again, FACEBOOK
25 violates Plaintiffs’ rights in two different ways, essentially, by restricting access:
26 (i) by deleting Plaintiffs’ posts, (*i.e.*, censorship), and (ii) by suspending Plaintiffs’
27 ability to post, (*i.e.*, “Facebook Jail”), both of which result in violations of the
28 constitutional “right to freely speak,” [Calif. Const., Art. 1, Sec. 2].

1 (19) Federal Internet Law: Under federal law, FACEBOOK is deemed an
2 interactive computer services provider, (“ICS provider”), [47 U.S.C. § 230(f)(2)].
3 Federal law allows ICS providers, at their websites, to “restrict access” to certain
4 types of objectionable content that is “obscene, lewd, lascivious, filthy, excessively
5 violent, or harassing.” [47 U.S.C. § 230(c)(2)(A)].

6 (20) Communications Decency Act: The “CDA,” 47 U.S.C. § 230, at section
7 (c)(1), allows ICS providers, like FACEBOOK, to enjoy immunity from liability for
8 content—from users—published on their websites. However, “published” content
9 is *not* here at-issue; rather, the issue in this case concerns “de-published” content,
10 and thus, the battleground for this lawsuit is section (c)(2), which allows ICS
11 providers, like FACEBOOK, to “restrict access” to content on their website—but
12 only where they demonstrate “good faith.” (Here, Plaintiffs’ case rises or falls.)

13 47 U.S.C. §230(c)(2): “CIVIL LIABILITY - No provider or user of an
14 interactive computer service shall be held liable on account of—
15 (A) any action voluntarily taken in **good faith** to restrict access to or
16 availability of material that the provider or user considers to be obscene,
17 lewd, lascivious, filthy, excessively violent, harassing, or otherwise
18 objectionable, whether or not such material is constitutionally protected;”
19 [47 U.S.C. §230(c)(2); underscores and bolding added]

20 (21) “Good Faith” Requirement: ICS providers may lawfully “restrict access”
21 to certain types of objectionable content, (including constitutionally protected
22 content); however, ICS providers must demonstrate “good faith” in order to enjoy
23 immunity from liability for their censorship decisions. [47 U.S.C. § 230(c)(2)(A)].

24 (22) Shortcoming of “Good Faith:” When FACEBOOK restricts access to content
25 it believes is objectionable, FACEBOOK demonstrates a shortcoming of “good faith”
26 because they never explain *why* they restrict access. FACEBOOK cannot show
27 “good faith” because they don’t communicate with users! Here, the stubborn
28 failure to communicate shows lack of “good faith.” [47 U.S.C. § 230(c)(2)(A)].

1 (23) FACEBOOK Lacks “Good Faith” - FACEBOOK shows “bad faith” because—

2 (i) when FACEBOOK deletes posts, they never explain *how* or *why* a
3 given post violates FACEBOOK rules (“community standards”);

4 (ii) when FACEBOOK deletes posts, they never identify the specific
5 community standard that was supposedly violated; instead, FACEBOOK states only
6 that community standards, on the whole, were violated;

7 (iii) often, when deleting posts, FACEBOOK fails to identify the offending
8 post; notably, the day after this lawsuit was served, Plaintiff’s counsel was given a
9 30-day “Facebook Jail” sentence—but FACEBOOK gave no reason for its decision,
10 and never even identified the offending post, which shows “bad faith;” FACEBOOK
11 later apologized for what it called an error; (but how did this error occur?);

12 (iv) FACEBOOK community standards are vague and ambiguous, and
13 FACEBOOK applies said standards in an arbitrary and capricious manner;

14 (v) FACEBOOK uses robots—instead of humans—to make decisions on
15 which posts to delete, but this shows “bad faith” because robots cannot understand
16 subtle free speech issues;

17 (vi) apparently, FACEBOOK deletes posts based—at least in part—on the
18 total number of complaints received, and if this is true, then it shows “bad faith”
19 because FACEBOOK reduces free speech to a popularity contest;

20 (vii) Plaintiffs believe that FACEBOOK is overanxious to sentence users
21 to “Facebook Jail.” After all, FACEBOOK knows and understands that folks in
22 “Facebook Jail” invariably create second accounts—which artificially inflates
23 “growth rates”—which allows FACEBOOK to brag to investors about artificially
24 inflated “new account” totals. Plaintiffs believe this scenario led to the biggest
25 stock tumble in Wall Street history, (July 26, 2018). And, if it’s true, *i.e.*, that
26 FACEBOOK suspends users with the intent to inflate “growth rates,” then that shows
27 “bad faith”—and exposes FACEBOOK to punitive damages—because it means that
28 FACEBOOK purposely suppresses free speech—just to try to make a buck!

1 (24) No Legal Justification for “Facebook Jail:” Again, federal law, in certain
2 circumstances, allows ICS providers—acting in “good faith”—to restrict access
3 to objectionable content; however, no federal law allows ICS providers, after they
4 delete objectionable content, to punish their own users with a 30-day timeout.
5 Congress never contemplated anything as outrageous as “Facebook Jail.”

6 (25) “Terms of Service” Do Not Apply: Plaintiffs never agreed to FACEBOOK’S
7 “terms of service,” which supposedly allow FACEBOOK to punish users by
8 restricting access. But Plaintiffs never demonstrated an intent to be bound by
9 the “terms of service”—and FACEBOOK may not unilaterally impose such terms—
10 nor may FACEBOOK infer, from Plaintiffs’ silence, that they accepted such terms.

11 (26) Plaintiffs Gave No Consent to “Terms of Service:” Plaintiffs cannot be
12 bound to the FACEBOOK “terms of service” because they never gave “consent.”
13 “It is essential to the existence of a contract that there should be consent,” [C.C.
14 §1550]. To form a binding agreement, all parties must “agree upon the same
15 thing in the same sense,” [C.C. §1580]. But here, the parties agreed on nothing.
16 Plaintiffs never agreed to be bound to the FACEBOOK “terms of service,” which
17 means that Defendant may not rely on said “terms of service.”

18 (27) Plaintiffs Pay No Consideration: FACEBOOK is free to use, *i.e.*, in the
19 sense that users pay no monetary fee to use the service, which means there is no
20 “consideration” to bind Plaintiffs to the “terms of service.” Most significantly,
21 FACEBOOK users are not “customers”—rather, they are the “products” being sold!
22 (Remarkably, FACEBOOK CEO, Mark Zuckerberg, amassed a personal fortune of
23 \$82 billion—with a business whose service is free to use!)

24 (28) Plaintiffs Waived No Constitutional Rights: Plaintiffs never waived their
25 constitutional “right to freely speak,” (nor their privacy rights), and there are no
26 facts from which one might reasonably infer such waivers. In order to conclude
27 that a party waived a constitutional right, the purported waiver must have been
28 knowingly, voluntarily, and intelligently made; but here, no such waiver exists.

1 (29) Complaint-Based System: FACEBOOK maintains a complaint-based system,
2 which creates incentive for users to complain to “Facebook Police.” Users know
3 and understand that FACEBOOK complaints can lead to “Facebook Jail” sentences,
4 which can effectively silence one’s competitors.

5 (30) Silencing One’s Competitors: FACEBOOK wishes to sanitize public debate
6 to suit the palates of its most squeamish users; however, the most squeamish users
7 are all too often paid to be squeamish! Nowadays, corporations hire armies of
8 public relations personnel for FACEBOOK—to shape the content of public debate.

9 (31) FACEBOOK Trolls: These public relations personnel, called “trolls,” are on
10 FACEBOOK for two reasons: (a) to post corporate-sponsored opinions; and (b) to
11 complain about competitors’ opinions. These corporate “trolls” interact as both
12 “talking heads” and as “complaining heads.” Examples include Joshua Coleman,
13 (Roseville, Calif.), Andrew Liebich, (Lodi, Calif.), and Brittney Kara McLaughlin,
14 (L.A., Calif.)—who complain with the specific intent that FACEBOOK will delete
15 competitor’s posts—thus silencing the competition. This lawsuit aims to prevent
16 corporatized “troll” armies from trying to control public debate. Free speech must
17 be governed by constitutional principles, not by mob rule.

18 (32) Plaintiff Relies on the ‘Pruneyard’ Decision: Plaintiff relies on *Pruneyard*
19 *Shopping Ctr. v. Robins*, [447 U.S. 74 (1980)], which held that the California
20 Constitution allows free speech—even on private property. *Pruneyard* held that
21 the California Constitution confers greater speech rights than does its federal
22 counterpart, the First Amendment. *Pruneyard* recognized a state’s “sovereign
23 right to adopt in its own constitution individual liberties more expansive than
24 those conferred by the Federal Constitution,” [*Pruneyard*, 447 U.S. 74, at 75].
25 As earlier stated, the First Amendment serves merely to restrain government,
26 (“Congress shall make no law”), while the California Constitution affirmatively
27 empowers individuals—to “freely speak, write and publish his or her sentiments
28 on all subjects,” [Calif. Const., Art. 1, Sec. 2].

1 (33) 'Pruneyard' – The Facts: In *Pruneyard*, the owner of a shopping center
2 was concerned that political activism would deter patrons from entering shopping
3 center premises. This concern is legitimate. However, in contrast, Plaintiffs'
4 speech-related activities deter no patrons from entering FACEBOOK'S premises.
5 In *Pruneyard*, all patrons entering the shopping center were forced to endure
6 political activism; but here, patrons may enter FACEBOOK'S premises without ever
7 having to endure Plaintiffs' political activism. Plaintiffs' posts deter no one from
8 using FACEBOOK, and therefore, no legitimate basis exists for FACEBOOK to restrict
9 access: (i) by deleting Plaintiffs' posts, or (ii) by suspending their ability to post.

10 (34) Plaintiffs Seek Money Damages: Defendant wrongfully restrict Plaintiffs'
11 access—*first* by deleting their posts, and *second* by suspending their ability to
12 post—and these wrongful access restrictions result in unlawful deprivations of the
13 “right to freely speak,” [Calif. Const., Art.1, Sec.2]. Naturally, the deprivation of
14 constitutional rights results in actual harm. As compensation, Plaintiffs seek
15 money damages in an amount to be determined at trial.

16 (35) Plaintiffs Seek Injunctive Relief: Defendant commits ongoing violations
17 of the constitutional “right to freely speak” and Plaintiffs therefore seek a court
18 order forbidding Defendant from wrongfully restricting access: (i) by deleting
19 Plaintiff's their posts, and (ii) by suspending their ability to post. Unless restrained
20 by the Court, Defendant will continue to deprive others of their rights.

21 (36) Punitive Damages: FACEBOOK knows that users in “Facebook Jail” will
22 invariably create second accounts, which allows FACEBOOK to brag to investors
23 about artificially inflated “new account” totals. Plaintiffs argue that FACEBOOK
24 intends to artificially inflate its “growth rates”—by restricting users' access—
25 with actual knowledge that restricted users invariably create second accounts.
26 This shows a willful disregard for the rights of others—which subjects FACEBOOK
27 to punitive damages because FACEBOOK demonstrates “malice,” *i.e.*, they intend
28 to cause injury, [C.C. §3294(c)(1)], and “oppression,” *i.e.*, they intend to cause

1 hardship, [C.C. §3294(c)(2)]. Plaintiffs believe that FACEBOOK purposely infringes
2 on users’ lawfully protected speech activities— just to try to make a buck off
3 Wall Street investors.

4 (37) Attorney’s Fees: Plaintiffs are entitled to an award of attorney’s fees
5 because this case will result in “enforcement of an important right affecting the
6 public interest.” [CCP §1021.5] Here, the enforcement of the constitutional
7 “right to freely speak,” will confer significant benefits upon the general public,
8 as CCP §1021.5 contemplates.

9 ////

10 ////

11 ////

-PROOF-OF-SERVICE-

1
2 I am an individual over the age of eighteen and not
3 a party to the within action. My business address is
4 10040 W. Cheyenne Ave., #170-225, Las Vegas, Nev. 89129.
5 My phone number is (323) 314-6996.

6 On **Sept. 7, 2018**, I served the following:

7 **FIRST AMENDED COMPLAINT FOR DAMAGES AND INJUNCTION.**

8
9 on an interested party in the above-entitled action by
10 _____ via e-mail transmission,
11 _____ personal service on the person below listed,
12 X depositing it in the U.S. Mail, postage prepaid,
13 and addressed to the person below listed,
14 _____ overnight delivery, addressed as follows:

15
16 **JASON DE BRETTEVILLE, ESQ.**
17 **STRADLING YOCCA CARLSON & RAUTH**
18 **660 Newport Center Drive, Ste. 1600**
19 **Newport Beach, Calif. 92660-6422**

20 **BRYN WILLIAMS, ESQ.**
21 **KEKER, VAN NEST & PETERS LLP**
22 **633 Battery Street**
23 **San Francisco, Calif. 94111-1809**

24 I declare under penalty of perjury under California
25 law the foregoing is true and correct.

26 Dated: **Sept. 7, 2018**

27
28 T. Matthew Phillips
Declarant.