

1 Franco Caraccioli
2 1281 9th Avenue #2905
3 San Diego, California 92101
4 832-782-3298

FILED
2015 SEP 21 P 5:08
SUSAN Y. SOONG
CLERK, US DISTRICT COURT
ND, DIST. OF CA.

6 UNITED STATES DISTRICT COURT
7 NORTHERN DISTRICT OF CALIFORNIA

9 FRANCO CARACCIOLI, an individual,

10 Plaintiff,

11 v.

12 FACEBOOK, INC., a Delaware corporation,
13 and Does 1-10,

14 Defendants.

) Case No. CV-15-04145-NC
) Hon. Judge Nathanael M. Cousins
)

) **FIRST AMENDED COMPLAINT FOR
) PUNITIVE DAMAGES:**

-) (1) **Defamation;**
-) (2) **Libel;**
-) (3) **Invasion of Privacy Upon the Solitude
) or Seclusion;**
-) (4) **Invasion of Privacy by Public
) Disclosure of Private Facts;**
-) (5) **Invasion of Privacy in False Light;**
-) (6) **Intentional Infliction of Emotional
) Distress;**
-) (7) **Negligent Infliction of Emotional
) Distress;**
-) (8) **Breach of Contract;**
-) (9) **Negligent Supervision and Retention;
) AND**
-) (10) **Unfair Business Practices in Violation
) of Cal. Bus. & Prof. Code §§ 17000, et
) seq. through §§ 17210, et seq.**

1 **INTRODUCTION**

2 Plaintiff, FRANCO CARACCIOLI (hereinafter as “Mr. Caraccioli”), alleges as follows:

3 **NATURE OF THE ACTION**

4 1. This is a case about one of the most powerful corporations in the world, a corporation
5 that maliciously recreated obscene or pornographic sexual content on a personal profile account
6 named “Franco Caracciolijerkingman” (hereinafter as “JERKINGMAN ACCOUNT” or “Account”),
7 inside its online digital community (hereinafter as “Website”) because in Exhibit 1 (hereinafter as
8 “ADMISSION,”) Defendant Facebook ADMITS that after Defendant Facebook “REVIEWED”
9 JERKINGMANT ACCOUNT which contained blatant pornographic obscenity, and recklessly
10 “DETERMINED” that it was legitimate lawful content and NOT in violation of its community
11 standards, thus, Defendant Facebook recreated, sponsored, republished, and/or acted as a speaker of
12 the content by deciding to continue displaying it as opposed to deleting it.

13 2. Franco Caracciolijerkingman conspicuously contained pictures and videos of sexually
14 obscene or pornographic content regarding Mr. Caraccioli. Mr. Caraccioli did not give consent,
15 create, nor has any knowledge of the person or entity that originally created the JERKINGMAN
16 ACCOUNT.

17 3. It is indisputably evident that the Defendant clearly and convincingly entertained [see
18 Exhibit 1] the sexual content in the JERKINGMAN ACCOUNT because the Defendant emailed Mr.
19 Caraccioli ADMITTING that after “REVIEWING” the “Franco Caracciolijerkingman,” account,
20 Defendant “DETERMINED,” evidently through willful blindness, that the [obviously sexual]content
21 inside the JERKINGMAN ACCOUNT “. . . follows the Facebook Community Standards.”

22 4. After entertaining or “reviewing” the [sexual]content in the JERKINGMAN
23 ACCOUNT, Defendant republished or recreated the JERKINGMAN ACCOUNT, in whole, by
24 continuing to display its content online through because the Defendant recklessly or maliciously
25 “determined” that the JERKINGMAN ACCOUNT is following the Defendants’ own community
26 standards when it blatantly was not.

27 5. Reviewing blatantly obvious sexually obscene material and concluding that it is not
28 sexually obscene and not in violation of the Defendant’s own “Terms of Service,” when in fact it

1 obviously is, constitutes actionable conduct that is grossly negligent, conscious, or with reckless
2 disregard towards the truth or falsity of the JERKINGMAN ACCOUNT personal/private rights of
3 others. This type of behavior is commonly referred to as MALICE under federal law which awards
4 exemplary damages even in absence of actual damages.

5 6. The Defendant recklessly republished the sexually pornographic content because the
6 Defendant continued to display the JERKINGMAN ACCOUNT along with its obvious sexual
7 content in the Defendant's Website after the Defendant received and entertained several
8 notifications from Mr. Caraccioli and other people, notifying the Defendant to delete the
9 JERKINGMAN ACCOUNT because it was obscene and violating the Defendant's very own online
10 community standards due to the sexual content of the JERKINGMAN ACCOUNT.

11 7. By recklessly or maliciously disregarding DEFENDANT FACEBOOKS' very own
12 corporate laws, the Defendant is engaging in deceptive or fraudulent business practice and in
13 violation of state and federal law.

14 8. After entertaining the notifications, the Defendant recklessly or maliciously and in
15 willful blindness, disregarded its own corporate policies regarding online community standards
16 because the Defendant republished or recreated in whole the JERKINGMAN ACCOUNT by
17 continued to display the ACCOUNT along with its blatantly obscene sexual content.

18 9. Subsequently, after the Defendant sent an email to Mr. Caraccioli notifying him that
19 the JERKINGMAN ACCOUNT along with its pornographic content would continue in the
20 Website, Mr. Caraccioli emailed the corporation to notify them of their reckless disregard to the
21 sexual content and to their own community standards, and that legal action would follow, which
22 caused the corporation to delete the ACCOUNT within a day thereafter.

23 **THE PARTIES**

24 10. Mr. Caraccioli is an individual, currently in his third year at the Thomas Jefferson
25 School of Law, residing in the County of San Diego, California.

26 11. Defendant is a corporation registered in the California Secretary of State as
27 FACEBOOK, INC., and DOES 1 through 10 (hereinafter as "DEFENDANT FACEBOOK," or
28

1 “Defendant,” or “Facebook”) are located in their with its primary place of business at 1601 S.
2 California Ave. Palo Alto, CA 94304.

3 12. DEFENDANT FACEBOOK is incorporated under the laws of Delaware.

4 13. DEFENDANT FACEBOOK is a multi-billion dollar corporation that is publicly
5 traded in the New York Stock Exchange under the ticker “FB”.

6 14. The DEFENDANT FACEBOOK provides a social networking Website that connects
7 people with their friends, families, and other online communities.

8 15. The true names and capacities, whether individual, corporate, associate, or otherwise
9 of the Defendants named herein as DOES 1 through 10, are unknown to Mr. Caraccioli at this time.
10 Mr. Caraccioli therefore sues said Defendants by such fictitious names pursuant to § 474 of the
11 California Code of Civil Procedure. Mr. Caraccioli will seek leave to amend this Complaint to
12 allege the true names and capacities of DOES 1 through 10 when their names are ascertained.

13 16. Mr. Caraccioli is informed and believes, and based thereon alleges, that each of the
14 DOE Defendants is in some manner liable to Mr. Caraccioli for the events and actions alleged
15 herein. All named Defendants, and DOES 1 through 10, will be collectively referred to as
16 “Defendants.”

17 17. Mr. Caraccioli is informed and believes and thereon alleges that at all times herein
18 mentioned each of the Defendants was the agent or employee of Facebook Inc., in doing the things
19 hereinafter alleged, and was acting within the course and scope of such agency and employment.
20 Mr. Caraccioli is further informed and believes, and thereon alleges, that each of the Defendants
21 herein gave consent to, ratified, approved, and authorized the acts alleged herein to each of the
22 remaining Defendants.

23 18. Mr. Caraccioli is informed and believes, and based thereon alleges, that each of the
24 DOE Defendants is in some manner liable to Mr. Caraccioli for the events and actions alleged
25 herein. All named Defendants, and DOES 1 through 10, will be collectively referred to as
26 “Defendants” or “DEFENDANT FACEBOOK.”

27 19. Mr. Caraccioli is informed and believes, and based thereon alleges, that each of the
28 DOE Defendants is in some manner liable to Mr. Caraccioli for the events and actions alleged

1 herein. All named Defendants, and DOES 1 through 10, will be collectively referred to as
2 “Defendants.”

3 20. Mr. Caraccioli is informed and believes and thereon alleges that at all times herein
4 mentioned each of the Defendants was the agent or employee of Facebook, in doing the things
5 hereinafter alleged, and was acting within the course and scope of such agency and employment.
6 Mr. Caraccioli is further informed and believes, and thereon alleges, that each of the Defendants
7 herein gave consent to, ratified, approved, and authorized the acts alleged herein to each of the
8 remaining Defendants.

9 21. Mr. Caraccioli is informed and believes, and based thereon alleges, that at all times,
10 DEFENDANT FACEBOOK and DOES 1 through 10 were acting as an agent for each of the other
11 Defendants and each were co-conspirators with respect to the acts and the wrongful conduct alleged
12 herein so that each is responsible for the acts of the other in connection with the conspiracy in such
13 wrongful acts in connection with the other Defendants.

14 22. DOES 1 through 10, were at all times relevant employees, supervisors and/or
15 managers in managerial positions and were responsible for hiring or implementing policies of said
16 Defendants, and in fact, in doing the actions complained of in this Complaint, were implementing
17 and following the policies of DEFENDANT FACEBOOK.

18 **JURISDICTION AND VENUE**

19 23. Subject matter jurisdiction over Mr. Caraccioli's federal claims is proper under this
20 court's original jurisdiction because this case involves substantial issues of federal law involving the
21 Communications Decency Act 47 U.S.C. § 230, more precisely, *whether Congress intended to*
22 *protect reckless or malicious worldwide dissemination of pornographic content with § 230.* § 230
23 provides broad immunity, however, following relevant precedent established by this United States
24 District Court Northern District of California, and the United States Court of Appeals for the Ninth
25 Circuit, RECKLESS or MALICIOUS conduct towards the rights and privacy of others is NOT
26 protected from liability because it would go against the legislative's intent thrusting § 230 immunity,
27 and the particular facts in this complaint involve CLEAR AND CONVINCING evidence amounting
28 to RECKLESS or MALICIOUS conduct, at best.

1 24. *See* Batzel v. Smith, 333 F.3d 1018, 1034 (9th Cir. 2003)(Immunizing providers and
2 users of “interactive computer service[s]” for republishing material when they have reason to know
3 that the material is not intended for publication therefore contravenes the Congressional purpose of
4 encouraging the “development of the Internet,” or the “marketplace of ideas.”)

5 25. This Court also has subject matter jurisdiction over Mr. Caraccioli's related state law
6 claims under 28 U.S.C. § 1367 (supplemental jurisdiction) because all the causes of action arise
7 from the same common nucleus of operative fact.

8 26. Venue is proper in this Court because the Defendants purposefully availed
9 themselves of the privilege of doing business in California and DEFENDANT FACEBOOK has its
10 corporate headquarters and principal place of business within the Northern District of California.

11 **GENERAL ALLEGATIONS**

12 **(Facts Common To All Causes of Actions)**

13 27. On September 14, 2014, an account who's creator is still unascertainable to Mr.
14 Caraccioli, created the JERKINGMAN ACCOUNT hereon alleged, inside Facebook's online
15 community without Mr. Caraccioli's consent under the name “Franco Caracciolijerkingman,”

16 28. Mr. Caraccioli became aware of the JERKINGMAN ACCOUNT because that same
17 ACCOUNT, “Franco Caracciolijerkingman,” sent Mr. Caraccioli a friend request.

18 29. The JERKINGMAN ACCOUNT included videos and pictures of Mr. Caraccioli
19 sexually arousing or pleasuring himself and was republished or recreated in whole by consciously
20 continuing to display its [sexual] content because after DEFENDANT FACEBOOK “reviewed” its
21 [sexual] content, DEFANDANT FACEBOOK “determined” that the account is following the
22 Defendant's community standards.

23 30. After receiving the friend request, Mr. Caraccioli reported and notified
24 DEFENDANT FACEBOOK of the JERKINGMAN ACCOUNT and demanded for the
25 JERKINGMAN ACCOUNT to be deleted because of the humiliating sexual nature of the content
26 inside the JERKINGMAN ACCOUNT.

27 ///

28 ///

1 31. Mr. Caraccioli believes that the JERKINGMAN ACCOUNT was sent to every
2 friend that Mr. Caraccioli has in his community because of the amount of messages or calls he
3 received that day, requests which several friends did in fact accept.

4 32. Given that hundreds of Mr. Caraccioli's closest family members, friends, professors,
5 employers, and acquaintances are in Mr. Caraccioli's digital community of friends, Mr. Caraccioli
6 decided to click on several photos and videos published in the JERKINGMAN ACCOUNT in order
7 to report or notify DEFENDANT FACEBOOK of the JERKINGMAN ACCOUNT'S sexual content
8 by more than one occasion.

9 33. Mr. Caraccioli sent these notifications using his own personal ACCOUNT named
10 "Franco Caraccioli" at the time of the incident and using DEFENDANT FACEBOOK'S Website.

11 34. Immediately thereafter, Mr. Caraccioli received a telephone call from a very close
12 friend, informing him of the JERKINGMAN ACCOUNT and told Mr. Caraccioli that he would
13 report the ACCOUNT and request DEFENDANT FACEBOOK to delete the JERKINGMAN
14 ACCOUNT and its obscene sexual content.

15 35. The phone call alleged in paragraph 33 was shortly followed by another call, from a
16 family member this time, notifying Mr. Caraccioli about the JERKINGMAN ACCOUNT and
17 reassuring Mr. Caraccioli that she would report the ACCOUNT to DEFENDANT FACEBOOK and
18 request to DEFENDANT FACEBOOK to delete the ACCOUNT and its obscene content.

19 36. These were a couple out of many calls, text messages, or emails, notifying Mr.
20 Caraccioli of the JERKINGMAN ACCOUNT and informing him that a request had been made for
21 DEFENDANT FACEBOOK to delete the ACCOUNT.

22 37. Some of these calls and/or messages were done solely to humiliate, mock, ridicule,
23 or embarrass Mr. Caraccioli and were coming from people both in the United States and from other
24 countries.

25 38. The following day, DEFENDANT FACEBOOK sent Mr. Caraccioli an email
26 ADMITTING that DEFENDANT FACEBOOK had received the previous notifications of the
27 alleged JERKINGMAN ACCOUNT and claimed, "We reviewed the ACCOUNT and determined
28

1 that Franco Caraccioli Jerkingman is a person who's using Facebook in a way that follows the
2 Facebook Community Standards."

3 39. That email sent in paragraph 37 of this Complaint from DEFENDANT FACEBOOK
4 to Mr. Caraccioli, is an ADMISSION that DEFENDANT FACEBOOK reviewed and entertained the
5 content in the JERKINGMAN ACCOUNT which was conspicuously sexual in nature, establishing
6 prima facie evidence that DEFENDANT FACEBOOK republished or recreated the JERKINGMAN
7 ACCOUNT in WHOLE by continuing to display its sexual content with reckless disregard towards
8 privacy or truth.

9 40. The facts in paragraph 38 constitutes republishing or recreating in whole the sexual
10 content because it shows prima facie evidence that DEFENDANT FACEBOOK took affirmative
11 steps by "reviewing and determining" to evaluate the [sexual] content in the JERKINGMAN
12 ACCOUNT and recklessly disregarded its obscenity because DEFENDANT FACEBOOK claimed
13 that the JERKINGMAN ACCOUNT was satisfying its community standards, thus, sponsoring,
14 republishing, or recreating in whole the ACCOUNT by continuing to display its sexual content.

15 41. Taking affirmative steps to review sexually explicit pornographic videos and images
16 and determining that the content is in accordance with or following DEFENDANT FACEBOOK'S
17 "Terms of Service," is at best a conscious, gross negligent, intentional, willful or wonton, or
18 RECKLESS DISREGARD towards DEFENDANT FACEBOOK'S own "Terms of service" and in
19 violation of the legislative intent thrusting the CDA because children could and did in fact view the
20 sexual obscene content in a place that is not protected or reserved for sexual content.

21 42. Following Section 3 and Section 5 of DEFENDANT FACEBOOK's "Terms of
22 Service," DEFENDANT FACEBOOK's ADMISSION that the JERKINGMAN ACCOUNT
23 "Franco Caraccioli Jerkingman" is following Facebook Community Standards is a *per se* violation of
24 DEFENDANT FACEBOOK's own "Terms of Service" because those sections explicitly forbid
25 publication of obscene sexual nature while assuring that such publications would be deleted. This
26 ADMISSION constitutes reckless disregard because Defendant recklessly "reviewed" or entertained
27 the blatant sexual content in the JERKINGMAN ACCOUNT and instead of deleting it, recreated its
28 obscenity by continuing to displaying the sexual content for the world and children to see.

1 43. Subsequently, Mr. Caraccioli sent DEFENDANT FACEBOOK an email stating that
2 Defendants' malicious, fraudulent, or reckless conduct in disregard to their own policies, "Terms of
3 Service," community standards, and most importantly the privacy and rights of others, constitutes
4 legal action and that such would be taken.

5 44. The following day and after ridiculing Mr. Caraccioli, DEFENDANT FACEBOOK
6 deleted the JERKINGMAN ACCOUNT and its content, but only after the damage from
7 contemplated republication or republication which was entertained, had already occurred and
8 affected Mr. Caraccioli's reputation by recreating or republishing the JERKINGMAN ACCOUNT
9 because DEFENDANT FACEBOOK continued displaying the JERKINGMAN ACCOUNT after
10 numerous indications to not do so.

11 45. Although Mr. Caraccioli did not save all of the images republished by DEFENDANT
12 FACEBOOK in the JERKINGMAN ACCOUNT, however, upon discovery or from this court's
13 request, Mr. Caraccioli can prove the conspicuous sexual content in the JERKINGMAN ACCOUNT
14 through ALL of the sexual images and videos that DEFENDANT FACEBOOK republished.

15 **This Action Is Brought Pursuant to the Communications and Decency Act of 1996 47 U.S.C. §**
16 **230**

17 46. The Communications Decency Act (hereinafter "CDA") provides that (1) "[n]o
18 provider or user of an interactive computer service shall be treated as the publisher or speaker of any
19 information provided by another information content provider" and (2) "[n]o cause of action may be
20 brought and no liability may be imposed under any State or local rule that is inconsistent with this
21 section." *See 47 U.S.C. §§ 230(c)(1) & (e)(3); and, Anthony v. Yahoo Inc.*, 421 F. Supp. 2d 1257,
22 1262 (N.D. Cal. 2006).

23 47. Section 230(f)(2) defines "interactive computer service" as "any information service,
24 system, or access software provider that provides or enables computer access by multiple users to a
25 computer service, including specifically a service or system that provides access to the Internet[.]"

26 48. An "information content provider" is "any person or entity that is responsible, in
27 whole or in part, for the creation or development of information provided through the Internet or any
28 other interactive computer service." 47 U.S.C. § 230(f)(3). Here, DEFENDANT FACEBOOK is

1 acting as both, because after DEFENDANT FACEBOOK recklessly or maliciously “reviewed and
2 determined” that the JERKINGMAN ACCOUNT is following the Defendant’s own community
3 standards, DEFENDANT FACEBOOK decided to recreate the JERKINGMAN ACCOUNT
4 content by continuing to provide its publication of content that was obviously not meant for
5 republication, recreation, global dissemination, and especially not meant for DEFENDANT
6 FACEBOOK’S own Website because it would specifically violate the “community standards.”

7 49. “Congress clearly enacted § 230 to forbid the imposition of publisher liability on a
8 service provider for the exercise of its editorial and self-regulatory functions.” See Anthony v.
9 Yahoo Inc., at 1262; *citing*, Ben Ezra, Weinstein, & Company, Inc. v. America Online Inc., 206 F.3d
10 980, 986 (10th Cir.2000). However, Congress did not intend to provide absolute immunity or for
11 these editorial functions to go completely un-scrutinized because this would allow defendants to
12 mask, hide, or absolve liability for malicious, reckless, or even criminal republications. See
13 *generally* Batzel v. Smith, at 1034.

14 50. Following 47 U.S.C. section 230(e)(3), nothing within its section shall be construed
15 to prevent any State from enforcing any State law that is consistent with this section.

16 51. Although the legislative intent thrusting the CDA generally provides immunity for
17 negligent republication, however, the CDA does not afford protection to RECKLESS or
18 MALICIOUS conduct pertaining to the truth/falsity or privacy interests of the published or
19 republished content. Carafano v. Metrosplash.com Inc., 339 F.3d 1119 (9th Cir. 2003).

20 52. Reckless disregard or WILLFUL BLINDNESS is NOT immune under §§ 230(e)(3);
21 (d)(1)(B), and should not be tolerated by this court because “[i]mmunizing individuals and entities
22 in such situations also interferes with Congress's objective of providing incentives for providers and
23 users of interactive computer services to remove offensive material, especially obscene and
24 defamatory speech.” Batzel v. Smith, at 1034.

25 53. Causes of action might be premised on the publication or republication of actionable
26 content such as *negligent* or intentional infliction of emotional distress, *negligent* misrepresentation,
27 and *ordinary negligence*, for false light, or even for *negligent* publication of advertisements that
28 cause harm to third parties, thus, what matters is whether the cause of action inherently requires the

1 court to treat the defendant as the “publisher or speaker” of content provided by another, and if so,
2 section 230(c)(1) precludes liability. Barnes v. Yahoo!, Inc., 570 F.3d 1096, 1101-02 (9th Cir.
3 2009). Here, DEFENDANT FACEBOOK was RECKLESS or malicious, not negligent.

4 54. The CDA only entitles defendants not to be “the publisher or speaker” of the profiles,
5 it does not absolve defendants from liability for any accompanying misrepresentations. Anthony v.
6 Yahoo Inc., 421 F. Supp. 2d 1257, 1263 (N.D. Cal. 2006). Here, DEFENDANT FACEBOOK
7 became a “publisher or speaker” on behalf of the JERKINGMAN ACCOUNT by “reviewing and
8 determining” that it is in accordance with its “community standards, and because DEFENDANT
9 FACEBOOK misrepresented its legality, constituting fraud or malice/reckless disregard, the CDA
10 should not absolve DEFENDANTS FACEBOOK’S reckless conduct, and punitive damages should
11 be reasonably considered by this court in order to deter future wrongdoers.

12 55. Following precedent from this court, Barnes’ dicta stands for the two propositions:
13 (1) that section 230(c)(1) grants immunity for *negligent* undertakings, promises, or steps taken to
14 edit or publish an online post, or (2); when a party engages in promises giving rise to an independent
15 and enforceable contractual obligation, that party may be liable, not as a publisher or speaker of
16 third-party content, but rather as a counter-party to a contract, as a promisor who has breached.”
17 Goddard v. Google, Inc., 640 F. Supp. 2d 1193, 1200 (N.D. Cal. 2009).

18 56. Mr. Caraccioli kindly reminds this court that DEFENDANT FACEBOOK engaged in
19 RECKLESS or MALICIOUS undertakings or steps in “reviewing” actual pornographic content and
20 “determined” it was not obscene, because unless one is blind, pornographic content should be self-
21 evident, especially if the words JERKINGMAN precede it’s content. Following the words of Mr.
22 Chief Justice Stewart when depicting determining the imagery of pornographic content, “I know it
23 when I see it.”Jacobellis v. State of Ohio, 378 U.S. 184, 197 (1964).

24 57. Immunizing malicious or reckless behavior would render § 230 unconstitutionally
25 under and over-inclusive if challenged by the First, Fifth, and/or Fourteenth Amendments of the
26 United States Constitution. Reno v. Am. Civ. Liberties Union, 521 U.S. 844, 868, 874-86 (1997).

27 58. “A publisher reviews material submitted for publication, perhaps edits it for style or
28 technical fluency, and then decides whether to publish it.” Id.

1 59. A publishers conduct is actionable under the CDA when such conduct involves
2 contemplating or entertaining publication of offensive profiles. Id. at 1103. Here, it is evident that
3 DEFENDANT FACEBOOK's conduct is actionable because by "reviewing" Facebook entertained
4 the sexual in the JERKINGMAN ACCOUNT [See Exhibit 1] and endorsed its content by
5 republishing or recreating in whole or continuing to display its sexual content online with reckless
6 disregard pertaining to its obscene content, Mr. Caraccioli's privacy rights, and the sociological or
7 psychological repercussions of such reckless republication due to its sensible and offensive content.

8 **FIRST CAUSE OF ACTION**

9 **(Defamation)**

10 (Against All Defendants)

11 60. The true names of defendants DOES 1 through 10, inclusive, are unknown to Mr.
12 Caraccioli at this time. Mr. Caraccioli sues those defendants by such fictitious names pursuant to
13 section 474 of the Code of Civil Procedure.

14 61. Mr. Caraccioli is informed and believes, and based on that information and belief
15 alleges, that each of the defendants designated as a DOE is legally responsible for the events and
16 happenings referred to in this complaint, and unlawfully caused the injuries and damages to Mr.
17 Caraccioli alleged in this complaint.

18 62. Mr. Caraccioli is informed and believes, and based on that information and belief
19 alleges, that at all times mentioned in this complaint, DOES 1 through 10 were the agents and
20 employees of their codefendants or DEFENDANT FACEBOOK, and in doing the things alleged in
21 this complaint were acting within the course and scope of such agency and employment.

22 63. "Agency is the fiduciary relationship that arises when one person (a 'principal')
23 manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and
24 subject to the principal's control, and the agent manifests assent or otherwise consents so to act."
25 Batzel v. Smith, 333 F.3d 1018, 1035 (9th Cir. 2003). Here, there is an agency relationship
26 presumption between DOES 1 through 10 and DEFENDANT FACEBOOK because only the
27 Defendant's employees should be allowed to review and determine lawful content publication.

28 ///

1 64. On September 14, 2014, DEFENDANT FACEBOOK intentionally or recklessly
2 republished sexually obscene content about Mr. Caraccioli in its Website because DEFENDANT
3 FACEBOOK entertained the JERKINGMAN ACCOUNT's sexual content by reviewing the
4 ACCOUNTs content [see Exhibit 1] and continued to republish the content by continuing to display
5 the JERKINGMAN ACCOUNT along with its content. Therefore, DEFENDANT FACEBOOK
6 endorsed or sponsored the JERKINGMAN ACCOUNT by republishing or recreating in whole the
7 content because DEFENDANT FACEBOOK admitted that its pornographic content was not in
8 violation of its "Community Standards."

9 65. The Franco Caracciolijerkingman Account was concerning Mr. Caraccioli because
10 the JERKINGMAN ACCOUNT referred to Mr. Caraccioli by name throughout, was made of and
11 concerning Mr. Caraccioli physically, and was so understood by those who read or saw it.

12 66. The entire JERKINGMAN ACCOUNT was false as it pertains to Mr. Caraccioli in
13 name, imagery, and display and diminished his reputation based on the mock and ridicule he
14 experienced.

15 67. The JERKINGMAN ACCOUNT was libelous on its face because it clearly exposed
16 Mr. Caraccioli to hatred, contempt, ridicule and obloquy. Further, the JERKINGMAN
17 ACCOUNT's content was pertaining Mr. Caraccioli's privacy and involved extremely sensitive
18 material under a reasonable person standard because any person holds their genitalia as a private part
19 due to is sensitive material.

20 68. Moreover, the republishing or recreating in whole constitutes libel per se because of
21 the amount of people that were exposed to Mr. Caraccioli's privacy though set forth herein.

22 69. Mr. Caraccioli is informed and believes, and based thereon alleges, that on or about
23 September 14, 2014 DEFENDANT FACEBOOK and DOES 1 through 10, conspired to republish
24 the JERKINGMAN ACCOUNT.

25 70. The JERKINGMAN ACCOUNT referenced above was false and defamatory and
26 were made by DEFENDANT FACEBOOK with knowledge of their falsity or with reckless
27 disregard for their truth pursuant to a conspiracy. DEFENDANT FACEBOOK referred to Mr.
28

1 Caraccioli by name or innuendo and those who read or saw the JERKINGMAN ACCOUNT
2 understood they concerned Mr. Caraccioli.

3 71. The JERKINGMAN ACCOUNT was seen and read on or about September 14, 2014
4 by thousands of individuals worldwide, children, or anyone who received a friend request or saw the
5 JERKINGMAN ACCOUNT. Specific names are ascertainable and can be given upon discovery.

6 72. The above-described republication was not privileged because it was published by
7 DEFENDANT FACEBOOK with conscious or reckless disregard as to the falsity or obscene sexual
8 content, therefore establishing malice, hatred and ill will toward Mr. Caraccioli or the desire to
9 injure Mr. Caraccioli.

10 73. Because of DEFENDANT FACEBOOKS' amount to willful blindness, reckless
11 disregard, or malice in republishing or recreating in whole, Mr. Caraccioli seeks punitive damages in
12 a total amount to be established by proof at trial.

13 74. As a proximate result of the above-described republication, Mr. Caraccioli has
14 suffered loss of his reputation, shame, mortification, and injury to his feelings, in a total amount to
15 be established by proof at trial.

16 75. Punitive damages are awarded whenever malice, gross negligent, or
17 conscious/reckless disregard conduct as to the falsity of the statement, is found against the defendant
18 on the underlying claims, regardless of whether actual damages are neither found nor shown. New
19 York Times Co. v. Sullivan, 376 U.S. 254, 262 (1964).

20 76. DEFENDANT FACEBOOK acted with malice or reckless disregard towards Mr.
21 Caraccioli's the truth or falsity of the JERKINGMAN ACCOUNT because DEFENDANT
22 FACEBOOK reviewed the obscenity of the JERKINGMAN ACCOUNT which conspicuously
23 showed Mr. Caraccioli naked, and determined it was good for republication.

24 77. As a proximate result from republishing or recreating in whole the sexual content in
25 the JERKINGMAN ACCOUNT referenced above, Mr. Caraccioli has suffered, and will continue to
26 suffer, loss of reputation along with shame, mortification, and hurt feelings because of the quantity
27 of people who saw the JERKINGMAN ACCOUNT and/or personally kept or copied the images or
28 videos in the ACCOUNT. Therefore, Mr. Caraccioli suffered and will suffer in the future, general

1 and special damages including but not limited to, damages for psychological expenses, lost income
2 and damage to her trade, profession, and occupation in a sum not yet capable of ascertainment other
3 than the fact that the sum exceeds this Court's jurisdictional minimum, but in no event less than
4 \$100,000.00.

5 78. The aforementioned wrongful acts of Defendants were done intentionally or with a
6 conscious/reckless disregard of Mr. Caraccioli rights, and with the intent to vex, injure or annoy Mr.
7 Caraccioli such as to constitute oppression, fraud, or malice, thus entitling Mr. Caraccioli to
8 exemplary and punitive damages in an amount appropriate to punish or to set an example of
9 Defendants and each of them, and to deter such conduct in the future, which amount will be proved
10 at trial, but in no event should be less than \$1,000,000.00.

11 79. The Communications Decency Act 47 U.S.C.A. § 230 does not grant immunity for
12 reckless conduct in disregard for the truth because the congressional objectives in passing § 230 are
13 not furthered by providing immunity in instances where posted reposted material is clearly not
14 meant for publication. Batzel v. Smith, 333 F.3d 1018, 1034 (9th Cir. 2003).

15 **SECOND CAUSE OF ACTION**

16 **(LIBEL PER SE)**

17 (Against All Defendants)

18 80. A libel which is defamatory of Mr. Caraccioli without the necessity of explanatory
19 matter, such as an inducement, innuendo or other extrinsic fact, is said to be a libel on its face.
20 Defamatory language not libelous on its face is not actionable unless Mr. Caraccioli alleges and
21 proves that he has suffered special damage as a proximate result thereof. Cal. Civ. Code Ann. § 45a.

22 81. In other words, a defamatory statement about Mr. Caraccioli that is communicated in
23 a fixed medium and is considered to be so harmful on its face, Mr. Caraccioli need not prove special
24 damages. Examples of libel per se are statements that: (i) relate to the person's business or
25 profession to the person's detriment; (ii) falsely claim that the person committed a crime of moral
26 turpitude; (iii) imputes unchastity on the person; or (iv) claim that the person suffers from a
27 loathsome disease.

28 ///

1 82. DEFENDANT FACEBOOK's conduct constitutes libel per se because Facebook
2 republished the JERKINGMAN ACCOUNT that imputes unchastity upon Mr. Caraccioli and
3 republication was over the internet, which is a fixed medium.

4 83. The libelous statement was concerning Mr. Caraccioli because the JERKINGMAN
5 ACCOUNT mentioned Mr. Caraccioli by name and depicted actual sexual videos or images of Mr.
6 Caraccioli.

7 84. The JERKINGMAN ACCOUNT was seen and read on or about September 14, 2014
8 by thousands of individuals worldwide, children, or anyone who received a friend request from the
9 JERKINGMAN ACCOUNT. Specific names are ascertainable and can be given upon discovery.

10 85. The above-described republication was not privileged because it was published by
11 Defendants with conscious or reckless disregard as to the falsity or obscene sexual content,
12 establishing malice, hatred and ill will toward Mr. Caraccioli or the desire to injure Mr. Caraccioli.

13 86. Because of DEFENDANT FACEBOOKS' malice in republishing or recreating in
14 whole, Mr. Caraccioli seeks punitive damages in a total amount to be established by proof at trial.

15 87. As a proximate result of the above-described republication, Mr. Caraccioli has
16 suffered loss of his reputation, shame, mortification, and injury to his feelings, in a total amount to
17 be established by proof at trial.

18 88. The JERKINGMAN ACCOUNT referenced above are false and defamatory and
19 were made by DEFENDANT FACEBOOK with knowledge of their falsity or with reckless
20 disregard for their truth pursuant to a conspiracy. They referred to Mr. Caraccioli by name or
21 innuendo and those who read or saw the JERKINGMAN ACCOUNT understood they concerned
22 Mr. Caraccioli.

23 89. The JERKINGMAN ACCOUNT referenced above was libelous on its face or per se
24 and thus, damages are presumed and exemplary. The JERKINGMAN ACCOUNT clearly exposed
25 Mr. Caraccioli to hatred, contempt, ridicule and/or obloquy because they charge Mr. Caraccioli with
26 crimes and have the tendency to injure Mr. Caraccioli's general and professional reputation because
27 they suggest Mr. Caraccioli is a criminal and untrustworthy.

28

1 90. Punitive damages are awarded whenever malice, gross negligent, or
2 conscious/reckless disregard conduct as to the falsity of the statement, is found against the defendant
3 on the underlying claims, regardless of whether actual damages are neither found nor shown. New
4 York Times Co. v. Sullivan, 376 U.S. 254, 262 (1964).

5 91. DEFENDANT FACEBOOK acted with malice or reckless disregard towards Mr.
6 Caraccioli's pertaining to the truth or falsity of the JERKINGMAN ACCOUNT because
7 DEFENDANT FACEBOOK reviewed the obscenity of the JERKINGMAN ACCOUNT which
8 conspicuously showed Mr. Caraccioli naked, and determined it was good for republication.

9 92. As a proximate result from republishing or recreating in whole the sexual content in
10 the JERKINGMAN ACCOUNT referenced above, Mr. Caraccioli has suffered, and will continue to
11 suffer, loss of reputation along with shame, mortification, and hurt feelings because of the quantity
12 of people who saw the JERKINGMAN ACCOUNT and personally kept and/or copied the images or
13 videos in the ACCOUNT. Therefore, Mr. Caraccioli suffered and will suffer in the future, general
14 and special damages including but not limited to, damages for psychological expenses, lost income
15 and damage to her trade, profession, and occupation in a sum not yet capable of ascertainment other
16 than the fact that the sum exceeds this Court's jurisdictional minimum, but in no event less than
17 \$100,000.00.

18 87. The aforementioned wrongful acts of Defendants were done intentionally or with a
19 conscious disregard of Mr. Caraccioli's rights, and with the intent to vex, injure or annoy Mr.
20 Caraccioli such as to constitute oppression, fraud, or malice, thus entitling Mr. Caraccioli to
21 exemplary and punitive damages in an amount appropriate to punish or to set an example of
22 Defendants and each of them, and to deter such conduct in the future, which amount will be proved
23 at trial, but in no event should be less than \$1,000,000.00.

24 93. The Communications Decency Act 47 U.S.C.A. § 230 does not grant immunity for
25 reckless conduct in disregard for the truth because the congressional objectives in passing § 230 are
26 not furthered by providing immunity in instances where posted reposted material is clearly not
27 meant for publication. Batzel v. Smith, 333 F.3d 1018, 1034 (9th Cir. 2003).

28 ///

THIRD CAUSE OF ACTION

(Invasion of Privacy Upon the Solitude or Seclusion of Mr. Caraccioli)

(Against All Defendants)

1
2
3
4 94. Mr. Caraccioli realleges and incorporates by reference the allegations contained in
5 paragraphs 1 through 93 above.

6 95. All Defendants violated Mr. Caraccioli's personal privacy by continuing to broadcast
7 worldwide over its Website, sexually obscene content regarding Mr. Caraccioli that was not meant
8 for public dissemination.

9 96. The sexual content exposing Mr. Caraccioli in the JERKINGMAN ACCOUNT
10 would be highly offensive to a reasonable person because it involved showing Mr. Caraccioli's
11 genitalia.

12 97. The precise republishing or recreating in whole of the JERKINGMAN ACCOUNT
13 constituted the invasion of privacy are set forth in the aforementioned paragraphs and are
14 incorporated herein by reference.

15 98. The JERKINGMAN ACCOUNT was seen and read on or about September 14, 2014
16 by thousands of individuals worldwide, children, or anyone who received a friend request from the
17 JERKINGMAN ACCOUNT or saw the JERKINGMAN "Franco Caracciolijerkingman"
18 ACCOUNT. Specific names are ascertainable and can be given upon discovery.

19 99. The above-described republication was not privileged because it was published by
20 DEFENDANT FACEBOOK with conscious or reckless disregard as to the falsity or obscene sexual
21 content, establishing malice, hatred and ill will toward Mr. Caraccioli or the desire to injure Mr.
22 Caraccioli.

23 100. Because of DEFENDANT FACEBOOKS' malice in republishing or recreating in
24 whole, Mr. Caraccioli seeks punitive damages in a total amount to be established by proof at trial.

25 101. Under invasion of privacy cases involving punitive damages, the applicable standard
26 is common-law malice—frequently expressed in terms of either reckless or wanton disregard of Mr.
27 Caraccioli's rights or personal ill will—focuses on the defendant's attitude toward Mr. Caraccioli's
28

1 privacy, not toward the truth or falsity of the material published. Cantrell v. Forest City Pub. Co.,
2 419 U.S. 245, 252 (1974).

3 102. DEFENDANT FACEBOOK acted with malice or reckless disregard towards Mr.
4 Caraccioli's privacy rights because DEFENDANT FACEBOOK reviewed the obscenity of the
5 JERKINGMAN ACCOUNT which conspicuously showed Mr. Caraccioli engaging in pornographic
6 content, and determined it was good for republication and worldwide dissemination, which would
7 include children viewing it or the possibility thereof.

8 103. As a proximate result of the above-described republication, Mr. Caraccioli has
9 suffered loss of his reputation, shame, mortification, and injury to his feelings, in a total amount to
10 be established by proof at trial.

11 104. As a proximate result from republishing or recreating in whole the sexual content in
12 the JERKINGMAN ACCOUNT referenced above, Mr. Caraccioli has suffered, and will continue to
13 suffer, loss of reputation along with shame, mortification, and hurt feelings because of the quantity
14 of people who saw the JERKINGMAN ACCOUNT and personally kept and/or copied the images or
15 videos in the ACCOUNT. Therefore, Mr. Caraccioli suffered and will suffer in the future, general
16 and special damages including but not limited to, damages for psychological expenses, lost income
17 and damage to her trade, profession, and occupation in a sum not yet capable of ascertainment other
18 than the fact that the sum exceeds this Court's jurisdictional minimum, but in no event less than
19 \$100,000.00.

20 105. The aforementioned wrongful acts of Defendants were done intentionally or with a
21 conscious disregard of Mr. Caraccioli's rights, and with the intent to vex, injure or annoy Mr.
22 Caraccioli such as to constitute oppression, fraud, or malice, thus entitling Mr. Caraccioli to
23 exemplary and punitive damages in an amount appropriate to punish or to set an example of
24 Defendants and each of them, and to deter such conduct in the future, which amount will be proved
25 at trial, but in no event should be less than \$1,000,000.00.

26 106. The Communications Decency Act 47 U.S.C.A. § 230 does not grant immunity for
27 reckless conduct in disregard for the truth because the congressional objectives in passing § 230 are
28

1 not furthered by providing immunity in instances where posted reposted material is clearly not
2 meant for publication. Batzel v. Smith, 333 F.3d 1018, 1034 (9th Cir. 2003).

3 **FOURTH CAUSE OF ACTION**

4 **(Invasion of Privacy through Public Disclosure of Private Facts)**

5 (Against All Defendants)

6 107. A claim of invasion of privacy by public disclosure of private facts, under California
7 law, requires (1) public disclosure (2) of a private fact (3) which would be offensive and
8 objectionable to the reasonable person and (4) which is not of legitimate public interest. Carafano v.
9 Metrosplash.com Inc., 207 F. Supp. 2d 1055 (C.D. Cal. 2002).

10 108. Mr. Caraccioli realleges and incorporates by reference the allegations contained in
11 paragraphs 1 through 106 above.

12 109. Since Mr. Caraccioli is not a public figure, exposing his genitalia is not in the
13 public's interest.

14 110. This sexual content would be highly offensive and objectionable to a reasonable
15 person because it involved the showing of Mr. Caraccioli's genitalia.

16 111. The precise republishing or recreating in whole of the JERKINGMAN ACCOUNT
17 constituted the invasion of privacy are set forth in the aforementioned paragraphs and are
18 incorporated herein by reference.

19 112. The JERKINGMAN ACCOUNT was seen and read on or about September 14, 2014
20 by thousands of individuals worldwide, children, or anyone who received a friend request from the
21 JERKINGMAN ACCOUNT or saw the JERKINGMAN "Franco Caracciolijerkingman"
22 ACCOUNT. Specific names are ascertainable and can be given upon discovery.

23 113. The above-described republication was not privileged because it was published by
24 DEFENDANT FACEBOOK with conscious or reckless disregard as to the falsity or obscene sexual
25 content, establishing malice, hatred and ill will toward Mr. Caraccioli or the desire to injure Mr.
26 Caraccioli.

27 114. Because of DEFENDANT FACEBOOKS' malice in republishing or recreating in
28 whole, Mr. Caraccioli seeks punitive damages in a total amount to be established by proof at trial.

1 115. Under invasion of privacy cases, the applicable standard is common-law malice—
2 frequently expressed in terms of either reckless or wanton disregard of Mr. Caraccioli's rights or
3 personal ill will—would focus on the defendant's attitude toward Mr. Caraccioli's privacy, not
4 toward the truth or falsity of the material published. Cantrell v. Forest City Pub. Co., 419 U.S. 245,
5 252 (1974).

6 116. DEFENDANT FACEBOOK acted with malice or reckless disregard towards Mr.
7 Caraccioli's privacy rights because DEFENDANT FACEBOOK reviewed the obscenity of the
8 JERKINGMAN ACCOUNT which conspicuously showed Mr. Caraccioli naked, and determined it
9 was good for republication.

10 117. As a proximate result of the above-described republication, Mr. Caraccioli has
11 suffered loss of his reputation, shame, mortification, and injury to his feelings, in a total amount to
12 be established by proof at trial.

13 118. As a proximate result from republishing or recreating in whole the sexual content in
14 the JERKINGMAN ACCOUNT referenced above, Mr. Caraccioli has suffered, and will continue to
15 suffer, loss of reputation along with shame, mortification, and hurt feelings because of the quantity
16 of people who saw the JERKINGMAN ACCOUNT and personally kept and/or copied the images or
17 videos in the ACCOUNT. Therefore, Mr. Caraccioli suffered and will suffer in the future, general
18 and special damages including but not limited to, damages for psychological expenses, lost income
19 and damage to her trade, profession, and occupation in a sum not yet capable of ascertainment other
20 than the fact that the sum exceeds this Court's jurisdictional minimum, but in no event less than
21 \$100,000.00.

22 119. The aforementioned wrongful acts of Defendants were done intentionally or with a
23 conscious disregard of Mr. Caraccioli's rights, and with the intent to vex, injure or annoy Mr.
24 Caraccioli such as to constitute oppression, fraud, or malice, thus entitling Mr. Caraccioli to
25 exemplary and punitive damages in an amount appropriate to punish or to set an example of
26 Defendants and each of them, and to deter such conduct in the future, which amount will be proved
27 at trial, but in no event should be less than \$1,000,000.00.

28 ///

1 120. The Communications Decency Act 47 U.S.C.A. § 230 does not grant immunity for
2 reckless conduct in disregard for other’s privacy rights because the congressional objectives in
3 passing § 230 are not furthered by providing immunity in instances where posted reposted material
4 is clearly not meant for publication. Batzel v. Smith, 333 F.3d 1018, 1034 (9th Cir. 2003).

5 **FIFTH CAUSE OF ACTION**

6 **(Invasion of Privacy by Portraying Mr. Caraccioli in False Light)**

7 (All Defendants)

8 121. The Supreme Court of The United States has said that recovery for false light must
9 meet the same constitutional standards applied in defamation action. Time, Inc. v. Hill, 385 U.S.
10 374, 388-91 (1967).

11 122. Mr. Caraccioli realleges and incorporates by reference the allegations contained in
12 paragraphs 60 through 79 above.

13 123. The JERKINGMAN ACCOUNT’S sexual content would be highly offensive to a
14 reasonable person because it involved showing Mr. Caraccioli’s genitalia.

15 124. Mr. Caraccioli is informed and believes, and thereupon alleges, that on or about
16 September 14, 2014, Defendants, without Mr. Caraccioli’s consent, conspired to place Mr.
17 Caraccioli in a false light, and did in fact, place Mr. Caraccioli in a false light by republishing or
18 recreating in whole the JERKINGMAN ACCOUNT via Defendant’s Website, which wrongly and
19 falsely depicted Mr. Caraccioli as being a person who engages in unethical, illegal and improper
20 behavior.

21 125. The precise republishing or recreating in whole of the JERKINGMAN ACCOUNT
22 constituted the invasion of privacy are set forth in the aforementioned paragraphs and are
23 incorporated herein by reference.

24 126. The republishing or recreating the JERKINGMAN ACCOUNT in whole by
25 DEFENDANT FACEBOOK placed Mr. Caraccioli in a false light in the public eye by conveying
26 the message that Mr. Caraccioli was engaged in unethical, illegal, and improper behavior including,
27 but not limited to, fraud or deceit.

28 ///

1 127. DEFENDANT FACEBOOK'S republishing or recreating the JERKINGMAN
2 ACCOUNT in whole was offensive and objectionable to Mr. Caraccioli, and would be to a
3 reasonable person of ordinary sensibilities. The republishing or recreating in whole injured Mr.
4 Caraccioli's professional reputation and made Mr. Caraccioli the object of scorn and ridicule to Mr.
5 Caraccioli's current employer, thus causing extreme emotional distress and injury to Mr. Caraccioli.

6 128. The JERKINGMAN ACCOUNT was seen and read on or about September 14, 2014
7 by thousands of individuals worldwide, children, or anyone who received a friend request from the
8 JERKINGMAN ACCOUNT. Specific names are ascertainable and can be given upon discovery.

9 129. The above-described republication was not privileged because it was published by
10 Defendants with conscious or reckless disregard as to the falsity or obscene sexual content,
11 establishing malice, hatred and ill will toward Mr. Caraccioli or the desire to injure Mr. Caraccioli.

12 130. Because of DEFENDANT FACEBOOKS' malice in republishing or recreating in
13 whole, Mr. Caraccioli seeks punitive damages in a total amount to be established by proof at trial.

14 131. Under invasion of privacy cases, the applicable standard is common-law malice—
15 frequently expressed in terms of either reckless or wanton disregard of Mr. Caraccioli's rights or
16 personal ill will—would focus on the defendant's attitude toward Mr. Caraccioli's privacy, not
17 toward the truth or falsity of the material published. Cantrell v. Forest City Pub. Co., 419 U.S. 245,
18 252 (1974).

19 132. DEFENDANT FACEBOOK acted with malice or reckless disregard towards Mr.
20 Caraccioli's privacy rights because DEFENDANT FACEBOOK reviewed the obscenity of the
21 JERKINGMAN ACCOUNT which conspicuously showed Mr. Caraccioli naked, and determined it
22 was good for republication.

23 133. Mr. Caraccioli is informed and believes, and on that basis alleges, that the
24 aforementioned statements made by Defendants were made with actual malice and with knowledge
25 that each such statement was false and would place Mr. Caraccioli in a false light, or were published
26 with reckless disregard for the truth or falsity of such statements pursuant to a conspiracy among
27 Defendants, each and every one of them.

28 ///

1 134. As a proximate result of the above-described republication, Mr. Caraccioli has
2 suffered loss of his reputation, shame, mortification, and injury to his feelings, in a total amount to
3 be established by proof at trial.

4 135. As a proximate result from republishing or recreating in whole the sexual content in
5 the JERKINGMAN ACCOUNT, Mr. Caraccioli has suffered, and will continue to suffer, loss of
6 reputation along with shame, mortification, and hurt feelings because of the quantity of people who
7 saw the JERKINGMAN ACCOUNT and personally kept, copied, and/or distributed the images or
8 videos in the ACCOUNT. Therefore, Mr. Caraccioli suffered and will suffer in the future, general
9 and special damages including but not limited to, damages for psychological expenses, lost income
10 and damage to her trade, profession, and occupation in a sum not yet capable of ascertainment other
11 than the fact that the sum exceeds this Court's jurisdictional minimum, but in no event less than
12 \$100,000.00.

13 136. The aforementioned wrongful acts of Defendants were done intentionally or with a
14 conscious disregard of Mr. Caraccioli's rights, and with the intent to vex, injure or annoy Mr.
15 Caraccioli such as to constitute oppression, fraud, or malice, thus entitling Mr. Caraccioli to
16 exemplary and punitive damages in an amount appropriate to punish or to set an example of
17 Defendants and each of them, and to deter such conduct in the future, which amount will be proved
18 at trial, but in no event should be less than \$1,000,000.00.

19 137. The Communications Decency Act 47 U.S.C.A. § 230 does not grant immunity for
20 reckless conduct in disregard for other's privacy rights because the congressional objectives in
21 passing § 230 are not furthered by providing immunity in instances where posted reposted material
22 is clearly not meant for publication. Batzel v. Smith, 333 F.3d 1018, 1034 (9th Cir. 2003).

23 **SIXTH CAUSE OF ACTION**

24 **(Intentional Infliction of Emotional Distress)**

25 (Against All Defendants)

26 138. To prevail on such a claim, a Mr. Caraccioli must generally prove that (1) a defendant
27 engaged in "extreme and outrageous conduct," (2) the defendant intentionally or recklessly inflicted
28 emotional distress on Mr. Caraccioli, and (3) defendant's actions actually resulted in severe

1 emotional distress. Any claim of outrage must be predicated on behavior so outrageous in character,
2 and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as
3 atrocious, and utterly intolerable in a civilized society.

4 139. Mr. Caraccioli realleges and incorporates by reference the allegations contained in
5 paragraphs 1 through 137 above.

6 140. Based on the above alleged acts, DEFENDANT FACEBOOKS' misconduct was
7 extreme, outrageous and done with the intent to cause emotional distress or with reckless disregard
8 of the probability of causing Mr. Caraccioli emotional distress.

9 141. Republishing or recreating in whole pornographic content in violation of Defendant's
10 own "Terms of Service," while claiming that the pornographic content is not obscene in nature is
11 beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a
12 civilized society.

13 142. Defendants, and each of them, as aforesaid, were intentional, extreme, and
14 outrageous, causing Mr. Caraccioli emotional distress by republishing or recreating in whole the
15 sexual content in violation of Defendant's own "Terms of Service" and more importantly, in
16 violation of Legislative intent and policy pursuant to The Communications Decency Act 47
17 U.S.C.A. § 230.

18 143. The JERKINGMAN ACCOUNT was seen and read on or about September 14, 2014
19 by thousands of individuals worldwide, children, or anyone who received a friend request from the
20 JERKINGMAN ACCOUNT. Specific names are ascertainable and can be given upon discovery.

21 144. The above-described republication was not privileged because it was published by
22 Defendants with conscious or reckless disregard as to the falsity or obscene sexual content,
23 establishing malice, hatred and ill will toward Mr. Caraccioli or the desire to injure Mr. Caraccioli.

24 145. Because of DEFENDANT FACEBOOKS' malice in republishing or recreating in
25 whole, Mr. Caraccioli seeks punitive damages in a total amount to be established by proof at trial.

26 146. Punitive damages in emotional distress cases are awarded when "the defendant's
27 conduct involves reckless or callous indifference to the federally protected rights of others, or
28

1 motivated by evil motive or intent. See Smith v. Wade, 461 U.S. 30, 103 S.Ct. 1625, 1640, 75
2 L.Ed.2d 632 (1983) and Mockler v. Multnomah County, 141 F.3d 1177 (9th Cir. 1998).

3 147. DEFENDANT FACEBOOK acted with malice or reckless disregard towards Mr.
4 Caraccioli's privacy rights because DEFENDANT FACEBOOK reviewed the obscenity of the
5 JERKINGMAN ACCOUNT which conspicuously showed Mr. Caraccioli naked, and determined it
6 was good for republication.

7 148. As a direct and proximate result of the DEFENDANT FACEBOOKS' conduct, Mr.
8 Caraccioli is informed and believes, and based thereon alleges, that Mr. Caraccioli has been
9 subjected to severe emotional distress and will continue to suffer severe and permanent humiliation,
10 mental pain and anguish, and will continue to live in a constant state of emotional tension and
11 distress because of the amount of people who saw the obscene content in the JERKINGMAN
12 ACCOUNT sexually exposing Mr. Caraccioli, or kept a copy of the images or video.

13 149. As a direct and proximate result of the DEFENDANT FACEBOOKS', and each of
14 their actions, Mr. Caraccioli is informed and believes, and based thereon alleges, that Mr. Caraccioli
15 has suffered severe and serious injury to her person, all to Mr. Caraccioli's damage in a sum within
16 the jurisdiction of this Court and to be shown according to proof.

17 150. As a proximate result of the above-described republication, Mr. Caraccioli has
18 suffered loss of his reputation, shame, mortification, and injury to his feelings, in a total amount to
19 be established by proof at trial.

20 151. As a direct and proximate result of the DEFENDANT FACEBOOKS' conduct, Mr.
21 Caraccioli is informed and believes, and based thereon alleges, that Mr. Caraccioli has suffered and
22 continues to suffer substantial losses in income, earnings, and benefits and has been damaged in her
23 capacity to earn her salary, and has lost and will continue to lose employment benefits because of the
24 amount of people who saw the obscene content in the JERKINGMAN ACCOUNT sexually
25 exposing Mr. Caraccioli, or kept a copy of the images or video.

26 152. In committing the aforesaid wrongful acts, DEFENDANT FACEBOOK acted with
27 malice or reckless disregard of Mr. Caraccioli's rights and interests, thereby entitling Mr. Caraccioli
28 to an award of punitive and exemplary damages.

1 153. The JERKINGMAN ACCOUNT was seen and read on or about September 14, 2014
2 by thousands of individuals worldwide, children, or anyone who received a friend request from the
3 JERKINGMAN ACCOUNT. Specific names are ascertainable and can be given upon discovery.

4 154. The above-described republication was not privileged because it was published by
5 Defendants with conscious or reckless disregard as to the falsity or obscene sexual content,
6 establishing malice, hatred and ill will toward Mr. Caraccioli or the desire to injure Mr. Caraccioli.

7 155. Because of DEFENDANT FACEBOOKS' malice in republishing or recreating in
8 whole, Mr. Caraccioli seeks punitive damages in a total amount to be established by proof at trial.

9 156. As a direct and proximate result of DEFENDANT FACEBOOKS' conduct, Mr.
10 Caraccioli is informed and believes, and based thereon alleges, that Mr. Caraccioli has been
11 subjected to severe emotional distress and will continue to suffer severe and permanent humiliation,
12 mental pain and anguish, and will continue to live in a constant state of emotional tension and
13 distress because of the amount of people who saw the obscene content in the JERKINGMAN
14 ACCOUNT sexually exposing Mr. Caraccioli, or kept a copy of the images or video.

15 157. As a direct and proximate result of the DEFENDANT FACEBOOKS' conduct, Mr.
16 Caraccioli is informed and believes, and based thereon alleges, that Mr. Caraccioli has suffered and
17 continues to suffer substantial losses in income, earnings, and benefits and has been damaged in her
18 capacity to earn her salary, and has lost and will continue to lose employment benefits.

19 158. As a proximate result of the above-described republication, Mr. Caraccioli has
20 suffered loss of his reputation, shame, mortification, and injury to his feelings, in a total amount to
21 be established by proof at trial.

22 159. As a direct and proximate result of the Defendants, and each of their actions, Mr.
23 Caraccioli is informed and believes, and based thereon alleges, that Mr. Caraccioli has suffered
24 severe emotional distress and serious injury to her person because of the amount of people who saw
25 the JERKINGMAN ACCOUNT's sexual content and/or made a copy of the sexual images or video,
26 all to Mr. Caraccioli's damage in a sum within the jurisdiction of this Court and to be shown
27 according to proof, but in no event less than \$100,000.00.

28 87. The aforementioned wrongful acts of Defendants were done intentionally or with a

1 conscious disregard of Mr. Caraccioli's rights, interests, psychological well-being, and with the
2 intent to vex, injure or annoy Mr. Caraccioli such as to constitute oppression, fraud, or malice, thus
3 entitling Mr. Caraccioli to exemplary and punitive damages in an amount appropriate to punish or to
4 set an example of Defendants and each of them, and to deter such conduct in the future, which
5 amount will be proved at trial, but in no event should be less than \$1,000,000.00.

6 160. The Communications Decency Act 47 U.S.C.A. § 230 does not grant immunity for
7 reckless conduct in disregard for other's privacy rights because the congressional objectives in
8 passing § 230 are not furthered by providing immunity in instances where posted reposted material
9 is clearly not meant for publication. Batzel v. Smith, 333 F.3d 1018, 1034 (9th Cir. 2003).

10 **SEVENTH CAUSE OF ACTION**

11 **(Negligent Infliction of Emotional Distress)**

12 **(Against All Defendants)**

13 161. Mr. Caraccioli realleges and incorporates by reference the allegations contained in
14 paragraphs 1 through 160 above.

15 162. Facebook owed a duty to Mr. Caraccioli based on the "Terms of Service" agreed and
16 DEFENDANT FACEBOOK breached this duty by republishing or recreating in whole the
17 JERKINGMAN ACCOUNT

18 163. Defendants, and each of them, as aforesaid, were intentional, extreme, and
19 outrageous, causing Mr. Caraccioli emotional distress because DEFENDANT FACEBOOK
20 reviewed and republished the sexual content in violation of Defendant's own "Terms of Service"
21 and more importantly, in violation of Legislative intent and policy pursuant to The Communications
22 Decency Act 47 U.S.C.A. § 230.

23 164. Punitive damages in emotional distress cases are awarded when "the defendant's
24 conduct involves reckless or callous indifference to the federally protected rights of others, or
25 motivated by evil motive or intent. See Smith v. Wade, 461 U.S. 30, 103 S.Ct. 1625, 1640, 75
26 L.Ed.2d 632 (1983); and Mockler v. Multnomah County, 141 F.3d 1177 (9th Cir. 1998).

27 165. DEFENDANT FACEBOOK acted with malice or reckless disregard towards Mr.
28 Caraccioli's privacy rights because DEFENDANT FACEBOOK reviewed the obscenity of the

1 JERKINGMAN ACCOUNT which conspicuously showed Mr. Caraccioli naked, and determined it
2 was good for republication.

3 166. As a direct and proximate result of the DEFENDANT FACEBOOKS' conduct, Mr.
4 Caraccioli is informed and believes, and based thereon alleges, that Mr. Caraccioli has been
5 subjected to severe emotional distress and will continue to suffer severe and permanent humiliation,
6 mental pain and anguish, and will continue to live in a constant state of emotional tension and
7 distress because of the amount of people who saw the obscene content in the JERKINGMAN
8 ACCOUNT sexually exposing Mr. Caraccioli, or kept a copy of the images or video.

9 167. As a direct and proximate result of the Defendants, and each of their actions, Mr.
10 Caraccioli is informed and believes, and based thereon alleges, that Mr. Caraccioli has suffered
11 severe and serious injury to her person, all to Mr. Caraccioli's damage in a sum within the
12 jurisdiction of this Court and to be shown according to proof.

13 168. As a proximate result of the above-described republication, Mr. Caraccioli has
14 suffered loss of his reputation, shame, mortification, and injury to his feelings, in a total amount to
15 be established by proof at trial.

16 169. As a direct and proximate result of the DEFENDANT FACEBOOKS' conduct, Mr.
17 Caraccioli is informed and believes, and based thereon alleges, that Mr. Caraccioli has suffered and
18 continues to suffer substantial losses in income, earnings, and benefits and has been damaged in her
19 capacity to earn her salary, and has lost and will continue to lose employment benefits because of the
20 amount of people who saw the obscene content in the JERKINGMAN ACCOUNT sexually
21 exposing Mr. Caraccioli, or kept a copy of the images or video.

22 170. In committing the aforesaid wrongful acts, Defendants acted with malice, oppression,
23 and disregard of Mr. Caraccioli's rights and interests, thereby entitling Mr. Caraccioli to an award of
24 punitive and exemplary damages.

25 171. The JERKINGMAN ACCOUNT was seen and read on or about September 14, 2014
26 by thousands of individuals worldwide, children, or anyone who received a friend request from the
27 JERKINGMAN ACCOUNT. Specific names are ascertainable and can be given upon discovery.

28 ///

1 172. The above-described republication was not privileged because it was published by
2 Defendants with conscious or reckless disregard as to the falsity or obscene sexual content,
3 establishing malice, hatred and ill will toward Mr. Caraccioli or the desire to injure Mr. Caraccioli.

4 173. Because of DEFENDANT FACEBOOKS' malice in republishing or recreating in
5 whole, Mr. Caraccioli seeks punitive damages in a total amount to be established by proof at trial.

6 174. As a direct and proximate result of DEFENDANT FACEBOOKS' conduct, Mr.
7 Caraccioli is informed and believes, and based thereon alleges, that Mr. Caraccioli has been
8 subjected to severe emotional distress and will continue to suffer severe and permanent humiliation,
9 mental pain and anguish, and will continue to live in a constant state of emotional tension and
10 distress because of the amount of people who saw the obscene content in the JERKINGMAN
11 ACCOUNT sexually exposing Mr. Caraccioli, or kept a copy of the images or video.

12 175. As a direct and proximate result of the DEFENDANT FACEBOOKS' conduct, Mr.
13 Caraccioli is informed and believes, and based thereon alleges, that Mr. Caraccioli has suffered and
14 continues to suffer substantial losses in income, earnings, and benefits and has been damaged in her
15 capacity to earn her salary, and has lost and will continue to lose employment benefits.

16 176. As a proximate result of the above-described republication, Mr. Caraccioli has
17 suffered loss of his reputation, shame, mortification, and injury to his feelings, in a total amount to
18 be established by proof at trial.

19 177. As a direct and proximate result of the Defendants, and each of their actions, Mr.
20 Caraccioli is informed and believes, and based thereon alleges, that Mr. Caraccioli has suffered
21 severe emotional distress and serious injury to her person because of the amount of people who saw
22 the JERKINGMAN ACCOUNT's sexual content and/or made a copy of the sexual images or video,
23 all to Mr. Caraccioli's damage in a sum within the jurisdiction of this Court and to be shown
24 according to proof, but in no event less than \$100,000.00.

25 87. The aforementioned wrongful acts of Defendants were done intentionally or with a
26 conscious disregard of Mr. Caraccioli's rights, interests, psychological well-being, and with the
27 intent to vex, injure or annoy Mr. Caraccioli such as to constitute oppression, fraud, or malice, thus
28 entitling Mr. Caraccioli to exemplary and punitive damages in an amount appropriate to punish or to

1 set an example of Defendants and each of them, and to deter such conduct in the future, which
2 amount will be proved at trial, but in no event should be less than \$1,000,000.00.

3 178. The Communications Decency Act 47 U.S.C.A. § 230 does not grant immunity for
4 reckless conduct in disregard for other's privacy rights because the congressional objectives in
5 passing § 230 are not furthered by providing immunity in instances where posted reposted material
6 is clearly not meant for publication. Batzel v. Smith, 333 F.3d 1018, 1034 (9th Cir. 2003).

7 **EIGHTH CAUSE OF ACTION**

8 **(Breach of Contract Pursuant to DEFENDANT FACEBOOK'S "Terms of Service**
9 **Agreement"**

10 **(Against All Defendants)**

11 179. Mr. Caraccioli realleges and incorporates by reference the allegations contained in
12 paragraphs 1 through 178 above.

13 180. Pursuant to section 3 regarding safety and section 5 regarding the protection of user's
14 rights located in DEFENDANT FACEBOOK's "Terms of Service Agreement," DEFENDANT
15 FACEBOOK's ADMISSION that Franco Caracciolijerkingman is following Facebook Community
16 Standards is a *per se* violation of DEFENDANT FACEBOOK's own "Terms of Service" and
17 constitutes breach of Defendant's contractual duties because the "Terms of Service" section 3 and 5
18 [see Exhibit 2] states: "You will not post content that: is hate speech, threatening, or pornographic;
19 incites violence; or contains nudity or graphic or gratuitous violence" and "We can remove any
20 content or information you post on Facebook if we believe that it violates this Statement or our
21 policies," respectively.

22 181. DEFENDANT FACEBOOK breached their contractual duty under the "Terms of
23 Service" because DEFENDANT FACEBOOK republished sexually obscene and highly offensive
24 material about Mr. Caraccioli, material that DEFENDANT FACEBOOK was under a duty to
25 remove.

26 182. The JERKINGMAN ACCOUNT was seen and read on or about September 14, 2014
27 thousands of individuals worldwide, children, or anyone who received a friend request from the
28 JERKINGMAN ACCOUNT. Specific names are ascertainable and can be given upon discovery.

1 183. The above-described republication was not privileged because it was republished by
2 DEFENDANT FACEBOOK with conscious or reckless disregard as to the falsity or obscene sexual
3 content, establishing malice, hatred and ill will toward Mr. Caraccioli or the desire to injure Mr.
4 Caraccioli.

5 184. Because of DEFENDANT FACEBOOKS' malice in republishing or recreating in
6 whole, Mr. Caraccioli seeks punitive damages in a total amount to be established by proof at trial.

7 185. Punitive damages are generally not recoverable for breach of contract unless the
8 conduct constituting the breach is also a tort. *See In re Late Fee and Over-Limit Fee Litig.*, 741 F.3d
9 1022, 1026 (9th Cir. 2014) cert. denied sub nom: Pinon v. Bank of Am., NA, 134 S. Ct. 2878
10 (2014); and Restatement (Second) of Contracts § 355.

11 186. Because the underlying claim that gives rise to the breach involves several tort
12 actions per se, punitive damages, should be found reasonable by this court.

13 187. As a proximate result of the above-described republication, Mr. Caraccioli has
14 suffered loss of his reputation, shame, mortification, and injury to his feelings, in a total amount to
15 be established by proof at trial.

16 188. As a proximate result from republishing or recreating in whole the sexual content in
17 the JERKINGMAN ACCOUNT referenced above, Mr. Caraccioli has suffered, and will continue to
18 suffer, loss of reputation along with shame, mortification, and hurt feelings because of the quantity
19 of people who saw the JERKINGMAN ACCOUNT and personally kept and/or copied the images or
20 videos in the ACCOUNT. Therefore, Mr. Caraccioli suffered and will suffer in the future, general
21 and special damages including but not limited to, damages for psychological expenses, lost income
22 and damage to her trade, profession, and occupation in a sum not yet capable of ascertainment other
23 than the fact that the sum exceeds this Court's jurisdictional minimum, but in no event less than
24 \$100,000.00.

25 189. The aforementioned wrongful acts of Defendants were done intentionally or with a
26 conscious disregard of Mr. Caraccioli's rights, and with the intent to vex, injure or annoy Mr.
27 Caraccioli such as to constitute oppression, fraud, or malice, thus entitling Mr. Caraccioli to
28 exemplary and punitive damages in an amount appropriate to punish or to set an example of

1 Defendants and each of them, and to deter such conduct in the future, which amount will be proved
2 at trial, but in no event should be less than \$1,000,000.00.

3 190. The Communications Decency Act 47 U.S.C.A. § 230 does not grant immunity for
4 reckless conduct in disregard for the truth because the congressional objectives in passing § 230 are
5 not furthered by providing immunity in instances where posted reposted material is clearly not
6 meant for publication. Batzel v. Smith, 333 F.3d 1018, 1034 (9th Cir. 2003).

7 **NINTH CAUSE OF ACTION**

8 **(Negligent Hiring, Supervision, or Retention)**

9 **(Against All Defendants)**

10 191. Mr. Caraccioli re-alleges and incorporates herein by this reference the allegations in
11 paragraphs 1 through 190 inclusive, as though set forth herein.

12 192. At all times mentioned in this complaint, Mr. Caraccioli is informed and believes,
13 and based thereon alleges, that DEFENDANT FACEBOOK, Inc., negligently and carelessly trained
14 and retained its employees including, but not limited to, Does 1 through 10.

15 193. Mr. Caraccioli is informed and believes, and based thereon alleges, that
16 DEFENDANT FACEBOOK, Inc., breached their duty to exercise reasonable care and acted with
17 reckless disregard in the training and retention by failing to give them adequate training to detect,
18 but not limited to, unwanted sexual publications or otherwise unlawful content pursuant to The
19 Communications Decency Act 47 U.S.C.A. § 230.

20 194. DEFENDANT FACEBOOK negligently failed to investigate the background of
21 DEFENDANT FACEBOOK employees including, but not limited to, Does 1 through 10 in order to
22 prevent republication of sexual or otherwise unlawful content in the DEFENDANT FACEBOOK's
23 Website.

24 195. The JERKINGMAN ACCOUNT was seen and read on or about September 14, 2014
25 by thousands of individuals worldwide, children, or anyone who received a friend request from the
26 JERKINGMAN ACCOUNT. Specific names are ascertainable and can be given upon discovery.

27 ///

28 ///

1 2196. The above-described republication was not privileged because it was published by
2 Defendants with conscious or reckless disregard as to the falsity or obscene sexual content,
3 establishing malice, hatred and ill will toward Mr. Caraccioli or the desire to injure Mr. Caraccioli.

4 2197. Because of DEFENDANT FACEBOOKS' malice in republishing or recreating in
5 whole, Mr. Caraccioli seeks punitive damages in a total amount to be established by proof at trial.

6 2198. Punitive Damages are awarded when there is a showing of malice or reckless
7 disregard in cases involving the negligent hiring, supervision, and retention. Phiffer v. Proud Parrot
8 Motor Hotel, Inc., 648 F.2d 548, 553 (9th Cir. 1980).

9 2199. Because the underlying claim giving rise to the negligent supervision issue, the court
10 should reasonably award punitive damages to Mr. Caraccioli.

11 2200. As a proximate result of the above-described republication, Mr. Caraccioli has
12 suffered loss of his reputation, shame, mortification, and injury to his feelings, in a total amount to
13 be established by proof at trial.

14 2201. As a proximate result from republishing or recreating in whole the sexual content in
15 the JERKINGMAN ACCOUNT referenced above, Mr. Caraccioli has suffered, and will continue to
16 suffer, loss of reputation along with shame, mortification, and hurt feelings because of the quantity
17 of people who saw the JERKINGMAN ACCOUNT and personally kept and/or copied the images or
18 videos in the ACCOUNT. Therefore, Mr. Caraccioli suffered and will suffer in the future, general
19 and special damages including but not limited to, damages for psychological expenses, lost income
20 and damage to her trade, profession, and occupation in a sum not yet capable of ascertainment other
21 than the fact that the sum exceeds this Court's jurisdictional minimum, but in no event less than
22 \$100,000.00.

23 2202. The aforementioned wrongful acts of Defendants were done intentionally or with a
24 conscious disregard of Mr. Caraccioli's rights, and with the intent to vex, injure or annoy Mr.
25 Caraccioli such as to constitute oppression, fraud, or malice, thus entitling Mr. Caraccioli to
26 exemplary and punitive damages in an amount appropriate to punish or to set an example of
27 Defendants and each of them, and to deter such conduct in the future, which amount will be proved
28 at trial, but in no event should be less than \$1,000,000.00.

1 203. The Communications Decency Act 47 U.S.C.A. § 230 does not grant immunity for
 2 reckless conduct in disregard for the truth because the congressional objectives in passing § 230 are
 3 not furthered by providing immunity in instances where posted reposted material is clearly not
 4 meant for publication. Batzel v. Smith, 333 F.3d 1018, 1034 (9th Cir. 2003).

5 **TENTH CAUSE OF ACTION**

6 **Claim for Remedies for Violations of the California Unfair Business Practices Code §§ 17001-**
 7 **17210, et seq.**

8 (Against all Defendants)

9 204. Mr. Caraccioli re-alleges and incorporates by reference the foregoing allegations in
 10 paragraphs 1 through 203, inclusive, as though set forth herein.

11 205. Defendants, and each of them, are “persons” as defined under the Business and
 12 Professions Code.

13 206. Mr. Caraccioli is informed and believes and based thereon alleges that Defendants
 14 committed the unfair business practices, as defined by Cal. Bus. & Prof. Code § 17001-17210, *et*
 15 *seq.*, by engaging in deceptive conduct that violated Mr. Caraccioli’s privacy rights and the CDA’s
 16 legislative intent with reckless or gross disregard towards the rights of others, allegations which are
 17 incorporated herein by reference and which allegations include, but are not limited to:

- 18 a) Defamation;
- 19 b) Libel;
- 20 c) Invasion of Privacy Upon the Solitude or Seclusion;
- 21 d) Invasion of Privacy in False Light;
- 22 e) Invasion of Privacy by Public Disclosure of Private Facts;
- 23 f) Intentional Infliction of Emotional Distress;
- 24 g) Negligent Infliction of Emotional Distress;
- 25 h) Breach of Contract; AND
- 26 i) Negligent Supervision and Retention.

1 207. DEFENDANT FACEBOOKS' conduct, as alleged above, constitutes unlawful,
2 unfair, and Fraudulent, or deceptive activity prohibited by Business and Professions Code
3 §§ 17001-17210., *et seq.*

4 208. Mr. Caraccioli relied on DEFENDANT FACEBOOK'S "Terms of Service" to his
5 reputational detriment because Mr. Caraccioli relied on DEFENDANT FACEBOOK to
6 block sexually obscene content and/or not recklessly disregard DEFENDANT
7 FACEBOOK'S own "Terms of Service" which lead to DEFENDANT FACEBOOK'S
8 injury causing republication of the JERKINGMAN ACCOUNT.

9 209. DEFENDANT FACEBOOK'S utility [advancing the free flow or marketplace of
10 ideas] by masking or hiding RECKLESS or MALICIOUS per se actionable conduct [i.e.
11 porn detection] is significantly outweighed by the gravity of harm done to Mr.
12 Caraccioli's reputation and emotional well-being because there was no utility in
13 RECKLESSLY or MALICIOUSLY disseminating what is pornography in a "family
14 friendly" Website at the cost someone's privacy, honor, and peace.

15 210. As a proximate cause from such reckless conduct by DEFENDANT FACEBOOK,
16 Mr. Caraccioli has suffered injury per se and therefore seeks punitive damages as afforded under, but
17 not limited to, §§ 17001-17210, *et seq* and other damages this court deems reasonable. Guglielmino
18 v. McKee Foods Corp., 506 F.3d 696, 700 (9th Cir. 2007).

19 211. As a result of their improper deceptive acts, Mr. Caraccioli also seeks punitive
20 damages because DEFENDANT FACEBOOK reaped unfair benefits or illegal profits at the expense
21 of Mr. Caraccioli in the form of advertising sales and the increase in traffic flow from online users
22 accessing the JERKINGMAN ACCOUNT in DEFENDANT FACEBOOK'S Website.

23 212. As a proximate result from republishing or recreating in whole the sexual content in
24 the JERKINGMAN ACCOUNT referenced above, Mr. Caraccioli has suffered, and will continue to
25 suffer, loss of reputation along with shame, mortification, and hurt feelings because of the quantity
26 of people who saw the JERKINGMAN ACCOUNT and personally kept and/or copied the images or
27 videos in the ACCOUNT. Therefore, Mr. Caraccioli suffered and will suffer in the future, general
28 and special damages including but not limited to, damages for psychological expenses, lost income

1 and damage to her trade, profession, and occupation in a sum not yet capable of ascertainment other
2 than the fact that the sum exceeds this Court's jurisdictional minimum, but in no event less than
3 \$100,000.00.

4 213. The aforementioned wrongful acts of Defendants were done intentionally or with a
5 conscious disregard of Mr. Caraccioli's rights, and with the intent to vex, injure or annoy Mr.
6 Caraccioli such as to constitute oppression, fraud, or malice, thus entitling Mr. Caraccioli to
7 exemplary and punitive damages in an amount appropriate to punish or to set an example of
8 Defendants and each of them, and to deter such conduct in the future, which amount will be proved
9 at trial, but in no event should be less than \$1,000,000.00.

10 214. The Communications Decency Act 47 U.S.C.A. § 230 does not grant immunity for
11 reckless conduct in disregard for the truth because the congressional objectives in passing § 230 are
12 not furthered by providing immunity in instances where posted reposted material is clearly not
13 meant for publication. Batzel v. Smith, 333 F.3d 1018, 1034 (9th Cir. 2003).

14 **DEMAND FOR TRIAL BY JURY**

15 215. Mr. Caraccioli hereby demands a trial by jury.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Mr. Caraccioli prays for judgment against defendants as follows:

- 18 1. For compensatory damages, including loss of wages, promotional opportunities, benefits
19 and other opportunities of employment, according to proof;
- 20 2. For past, present, and future mental and emotional distress damages, and damages for injury
21 to reputation;
- 22 3. For an award of interest, including prejudgment interest, at the legal rate;
- 23 4. For an award of prevailing party attorneys' fees, if counsel is appointed by the court or
24 obtained.
- 25 6. For punitive and exemplary damages in an amount sufficient to punish and deter
26 DEFENDANT FACEBOOKS' outrageous conduct;
- 27 7. For costs of suit incurred herein;
- 28 8. For such other and further relief as the court deems just and proper.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated:

By: 
FRANCO CARACCIOLI