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16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**

18 Case No.: 3:20-cv-03863-EMC

19 Assigned to the Hon. Edward M. Chen

20 SEAN D. RANDALL, on behalf of himself
21 and all others similarly situated,

22 Plaintiff,

23 vs.

24 CHANGE.ORG, PBC,

25 Defendant.

26 **DEFENDANT’S NOTICE OF MOTION**
27 **AND MOTION TO DISMISS OR STRIKE**
28 **CLASS ALLEGATIONS;**
SUPPORTING MEMORANDUM OF
POINTS AND AUTHORITIES

(Proposed Order filed concurrently)

Hearing Date: November 19, 2020

Time: 1:30 p.m.

Pretrial Conference:

Trial Date:

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1 **NOTICE OF MOTION & MOTION TO DISMISS OR STRIKE CLASS ALLEGATIONS**
2 **TO THE COURT AND ALL PARTIES AND COUNSEL:**

3 **PLEASE TAKE NOTICE** that on November 19, 2020 at 1:30 p.m., or as soon there-
4 after as counsel may be heard, in the United States District Court, Northern District of Califor-
5 nia, San Francisco Division, located at 450 Golden Gate Avenue, San Francisco, California,
6 Courtroom 5, before the Honorable Edward M. Chen, Defendant Change.org, PBC
7 (“Change.org”) will and hereby does move for an order dismissing, or in the alternative strik-
8 ing the class action allegations from, the Second Amended Complaint (“2AC”) of Plaintiff
9 Sean D. Randall (“Randall”). *See* Fed. R. Civ. P. 12(b)(6), 12(f), 23(d)(1)(D).

10 Change.org’s motion is made on the following grounds: The 2AC, which asserts a sin-
11 gle claim for breach of contract, fails to plead the required elements of breach or damages. In
12 the alternative, the 2AC’s class-action allegations fail as a matter of law, because Randall can-
13 not possibly establish that class treatment of this case is appropriate under Fed. R. Civ. P. 23.

14 This motion is based on Change.org’s Notice of Motion; its Memorandum of Points
15 and Authorities; the previously filed Declaration of Benjamin Joffe-Walt (“Joffe-Walt Decl.”)
16 (ECF No. 15-1); Randall’s 2AC; all other pleadings and filings in this matter; and such other
17 matters as may be presented to the Court at the time of the hearing or otherwise.

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 Change.org respectfully submits this memorandum in support of its motion to dismiss
20 or, in the alternative, to strike class allegations.

21 **PRELIMINARY STATEMENT**

22 Plaintiff Sean Randall calls this “a very simple breach of contract case.” 2AC ¶ 18. He
23 is right—but not for the reason he thinks. Randall alleges that Change.org breached the parties’
24 contract in two ways: (1) by doing something that the contract *expressly authorized* Change.org
25 to do; and (2) by failing to do something that Change.org *never promised* to do. The parties’
26 contract is before the Court, and even a cursory review makes clear that Randall’s theories of
27 breach have no grounding in the actual terms of that instrument and should be dismissed.

1 Change.org allows members of the public to create, promote and sign online petitions on
2 matters of public concern. In June of this year, Randall signed a petition on Change.org seeking
3 justice for George Floyd, an unarmed Black man killed by police. Upon signing, Randall re-
4 ceived a solicitation from Change.org urging him to “chip in” to advertise the petition to a
5 broader audience. Specifically, Change.org promised that, for each \$1 he contributed,
6 Change.org would display an advertisement for the petition 12.5 times. Randall contributed \$3
7 in response to that solicitation, thereby purchasing 38 advertising displays.

8 Just five days later, Randall filed this putative class action, asserting that Change.org had
9 breached its contract with him by “pocket[ing]” his \$3 contribution as “profit.” Change.org
10 moved to dismiss or, in the alternative, for summary judgment. It pointed out that Randall’s
11 allegations of breach were utterly conclusory and contradicted by a magazine article quoted in
12 the complaint that said the opposite of what Randall alleged. Change.org also filed a declara-
13 tion from its Chief Operating Officer, Benjamin Joffe-Walt, documenting that Change.org had
14 provided all 38 advertising displays it had promised Randall (and one extra), plus additional ad-
15 vertising via billboards and social media, and had not kept any of his contribution as profit.

16 Randall then filed an Amended Complaint, followed quickly by the operative 2AC. He
17 no longer alleges that Change.org “pocketed” his \$3. Instead, he accepts and incorporates by
18 reference all of the statements in the Joffe-Walt Declaration and tweaks his theory of breach in
19 an attempt to plead around them. First, Randall alleges that Change.org breached the parties’
20 contract by advertising the Floyd petition on the Change.org website, instead of promoting it
21 exclusively via “billboards ..., social media ... and email[.]” In doing so, he conveniently ig-
22 nores that the solicitation materials expressly stated—in multiple places—that the advertising
23 displays he purchased could appear “on Change.org.” Second, Randall alleges that Change.org
24 breached the parties’ contract by pledging some of the money he had contributed to a variety of
25 “laudable” racial justice programs, rather than using every last cent to advertise the Floyd peti-
26 tion. But he ignores that Change.org never promised that *all* contributed funds would go exclu-
27 sively toward advertising the petition. Change.org simply promised 12.5 ad displays per dollar
28

1 contributed, and there is no dispute that it more than fulfilled that promise. Once it had done so,
2 there were no contractual restrictions on how Change.org used any leftover funds.

3 Even if these theories of breach had any merit, dismissal would be required for another
4 reason: Randall fails to plead any actual damages resulting from the alleged breach. The 2AC is
5 utterly devoid of allegations concerning damages. Nor is it evident how Randall *could* have
6 been “damaged” by the purported breaches he asserts.

7 Finally, if the Court elects not to dismiss this case, at minimum, it should strike the
8 2AC’s class allegations. It is manifest that Randall’s idiosyncratic theories of breach cannot
9 satisfy Rule 23’s “stringent requirements” for class certification, and no amount of discovery
10 could possibly change that. The Court should therefore make clear that, to the extent this case
11 proceeds, it may do so only as a \$3 individual claim.

12 **STATEMENT OF ISSUES TO BE DECIDED**

- 13 1. Should the 2AC be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) because Randall fails
14 to plead adequately that Change.org breached any contractual promise to Randall or that Ran-
15 dall suffered any resulting damages?
- 16 2. In the alternative, should the 2AC’s class allegations be stricken pursuant to Fed. R. Civ.
17 P. 23(d)(1)(D) and/or Fed. R. Civ. P. 12(f) because it is evident that the class-certification re-
18 quirements of Fed. R. Civ. P. 23 cannot be satisfied in this case?

19 **STATEMENT OF FACTS**

20 **A. Change.org’s Business**

21 Launched in 2007, Change.org is a public benefit corporation¹ and certified B Corpora-
22 tion² organized under Delaware law and based in San Francisco. 2AC ¶ 5; Joffe-Walt Decl.

23 _____
24 ¹ A public benefit corporation has stockholders and is allowed to generate profit, but is required
25 “to operate in a responsible and sustainable manner” and to pursue a stated public-interest pur-
26 pose set out in its certificate of incorporation. *See* 8 Del. Code Ann. § 362.

27 ² Certified B Corporations are “businesses that meet the highest standards of verified social and
28 environmental performance, public transparency, and legal accountability to balance profit and
purpose.” The certification process is administered by B Lab, an independent nonprofit organi-
zation. *See* <https://bcorporation.net/about-b-corps>.

¶ 3.³ Change.org hosts and promotes petitions created by members of the public on issues of public concern. *Id.* ¶ 4. Popular petition topics include economic and criminal justice, human rights, education, environmental protection, animal rights, public health and sustainable food. *Id.* More than 600 million users worldwide have created or signed Change.org petitions. *Id.*

There is no cost to create a petition on Change.org. *Id.* ¶ 5. After starting a petition, organizers can share and promote it with friends, families and other supporters, who can do the same in turn. *Id.* In addition, Change.org cross-promotes petitions to users most likely to be interested in them. For example, Change.org may promote a new petition on an environmental issue to Change.org users who have signed other environmental petitions. *Id.*

Change.org petitions often succeed in creating positive change at the local, national and global levels. To date, they have resulted in over 64,000 policy victories in 196 different countries. *Id.* ¶ 6. Just for example, Change.org petitions have recently helped:

- pass a law banning female genital mutilation in Massachusetts
- win exoneration for a wrongfully convicted man serving a 50-year sentence
- implement price caps on insulin in the state of Colorado
- secure paid parental leave for teachers in New York City
- spur the British government to create a new ministry for suicide prevention
- obtain release of almost 100 whales confined inhumanely in Russia
- persuade Starbucks to switch to recyclable and compostable cups
- convince India to abolish its statute of limitations on child-abuse cases

Id.

Change.org accepts no outside advertising. *Id.* ¶ 7. Instead, its revenue comes from two sources. First, Change.org has over 250,000 members who make small monthly contributions that go toward funding the infrastructure that makes its operations possible. *Id.* Second—and

³ The Court may consider the Joffe-Walt Declaration without converting this motion to one for summary judgment because Randall's 2AC incorporates it by reference and affirmatively relies on it. *See* 2AC ¶¶ 3, 4, 16, 17; *cf. Superior Consulting Servs., Inc. v. Steeves-Kiss*, 786 F. App'x 648, 650-51 (9th Cir. 2019).

1 relevant here—Change.org invites users who sign petitions to purchase further advertising of
 2 the petition they have just signed. *Id.* Through the close of its most recent reporting period
 3 (*i.e.*, December 2019), Change.org has never generated a profit. *Id.* ¶ 8.

4 **B. The George Floyd and Breonna Taylor Petitions**

5 As the 2AC rightly observes, the May 28, 2020 killing of George Floyd by Minneapolis
 6 police officers “shocked and horrified the nation and the world.” 2AC ¶ 1. “Millions of people
 7 have decided to speak up, to protest in the streets, and to engage in various forms of activism
 8 online.” *Id.* One such activist, a user named Kellen S., chose to create a petition on Change.org
 9 titled “Justice for George Floyd,” calling on government officials to prosecute the police offic-
 10 ers involved in Floyd’s death (the “Floyd Petition”). *Id.* ¶¶ 2, 8; *see* Joffe-Walt Decl., Ex. A.
 11 Another activist created an analogous petition seeking justice for Breonna Taylor, another Black
 12 victim of police violence (the “Taylor Petition”). 2AC ¶¶ 2, 12; Joffe-Walt Decl. ¶ 28.

13 The Floyd Petition quickly snowballed, becoming the most popular ever created on
 14 Change.org. To date, it has been signed by nearly 20 million people. 2AC ¶ 8; Joffe-Walt Decl.
 15 ¶ 9. Moreover, as discussed further below, signatories of the Floyd Petition have contributed
 16 approximately \$7.7 million toward further promoting that petition. Joffe-Walt Decl. ¶ 10. Sig-
 17 natories of the Taylor Petition have contributed another \$2 million. *Id.* ¶ 28; 2AC ¶ 2. These
 18 numbers are orders of magnitude larger than those associated with any previous Change.org pe-
 19 tition. Joffe-Walt Decl. ¶ 9. By comparison, in 2019, the average U.S.-based Change.org peti-
 20 tion collected just \$45 in contributions, from an average of 3.6 people. *Id.* Change.org was as
 21 surprised as anyone by the unprecedented popularity of these petitions. *Id.*

22 **C. Change.org’s Solicitation of Contributions from Floyd Petition Signers**

23 As noted above, Change.org solicits petition signatories to purchase further advertise-
 24 ments of the petitions they have signed. An explanatory page in the “Support” section of
 25 Change.org’s site (“Promoted Petitions Page”) explains the process. As of the date of Randall’s
 26 contribution, the Promoted Petitions Page stated that “promoted petitions let you pay to show
 27 any petition ... to other potential supporters *on Change.org* or our distribution channels.”
 28 Joffe-Walt Decl. ¶ 12 & Ex. B. (emphasis added). The page further explained that “the more

1 you or other supporters chip in, the more people will see the petition.” *Id.* Thus, the Promoted
2 Petitions Page made clear that contributions purchase “advertising” for petitions and that such
3 advertising may appear “on [the] Change.org” website itself. *Id.*

4 Between May 26, 2020 and June 9, 2020, Floyd Petition signatories such as Randall re-
5 ceived a Promoted Petitions solicitation immediately after signing. *Id.* ¶ 13. As of June 6,
6 2020, when Randall contributed, the initial solicitation screen shown to signatories (the “Solicitation
7 tation Screen”) read as follows:

8 Can you chip in \$3 to get this petition on the agenda?

9 You’ve just signed the biggest petition ever on Change.org – and
10 while George Floyd’s killers have been charged – we are still a
11 long way from reaching justice. The more signatures this petition
12 gets the more influence it will have. ***Chipping in allows***
13 ***Change.org to put this petition on billboards across [the] country,***
blanket social media with calls to join, and email the petition to
millions of people. Can you help out?

14 *Id.* ¶ 14 & Ex. C at 1 (bold/italic emphasis added). Below this text were two clickable buttons:
15 “Yes, I’ll chip in \$3 or more” and “No, I’ll share instead.” *Id.*; see also 2AC ¶ 9.

16 Directly above this message, a link stated: “More on how chipping in helps this peti-
17 tion.” Clicking that link was not required to make a contribution. Joffe-Walt Decl. ¶ 15 & Ex.
18 C at 1. If a signatory did so, he or she was taken to a Frequently Asked Questions page on
19 Change.org’s website (the “FAQ Page”), with the headline: “What happens when someone
20 chips in on Change.org?” The FAQ Page contained the following additional statements:

21 1. “Where does the money go? How does the contribution help my petition?”

22 When someone chips in to promote a petition it helps us share it with wide
23 audiences of action-takers in the Change.org community. Each contribution
24 helps cover the costs of distributing the petition to hundreds, thousands, even
25 millions more people in the Change.org community, many of whom go on to
26 sign the petition. Together, the signatures help the petition gain media atten-
tion, influence decision makers and propel the petition toward victory.

27 * * *

1 3. “Where does Change.org display a promoted petition to make sure it’s seen
 2 by more people?”

3 Once a petition is promoted, we will immediately start to display that petition
 4 to other action-takers who are most likely to support the cause. It’s what a
 5 contributor is paying for, and we take it seriously. *You’ll see promoted peti-*
 6 *tions displayed in a number of places including our homepage, nearly every*
 7 *page of the website*, in our Change.org emails that are sent to millions of peo-
 8 ple, on social media and more....

9 4. “When someone chips in, do they know how their money will be spent?”

10 *...The amount of money the supporter wants to give correlates to the num-*
 11 *ber of times we’ll display the petition. For example, contributing \$8 will re-*
 12 *sult in the petition being displayed to 100 people....* [N.B.: This is a ratio of
 13 12.5 displays for each dollar contributed.]

14 *Id.* ¶ 15 & Ex. D (bold/italic emphasis added).

15 After clicking the button on the Solicitation Screen labeled “Yes, I’ll chip in \$3 or
 16 more,” a reader would be taken to another screen (the “Contribution Screen”) with the headline:
 17 “You are a hero, [Name]! Chip in what you can.” Below that headline were several clickable
 18 buttons with preset contribution amounts, as well as a blank space where the reader could enter
 19 a different amount. Joffe-Walt Decl. ¶ 16 & Ex. C at 2; *see also* 2AC ¶ 11. Below those but-
 20 tons, the following text appeared: “Help this petition reach its signature goal! **Every \$20 will**
 21 **advertise this petition 250 extra times on Change.org.**” Joffe-Walt Decl. ¶ 16 & Ex. C at 2; *see*
 22 *also* 2AC ¶ 11 (emphasis added). In case this wasn’t already clear, several lines below, the
 23 Contribution Screen reiterated: “Impression Calculation: \$20 will advertise this petition 250
 24 extra times to new supporters.” Joffe-Walt Decl. ¶ 16 & Ex. C at 2 (emphasis added); 2AC ¶ 11
 25 (emphasis added).⁴ Again, that is a ratio of 12.5 ad displays for each dollar contributed.

26 ⁴ The word “impression” has a specific meaning in the Web advertising context: one display of
 27 an ad. 2AC ¶ 12; *see* Google Ads Help, *Impressions: Definition*, <https://support.google.com/google-ads/answer/6320?hl=en> (“How often your ad is shown. An impression is counted
 28 each time your ad is shown on a search result page or other site....”); Wikipedia, *Impression (online media)*, [https://en.wikipedia.org/wiki/Impression_\(online_media\)](https://en.wikipedia.org/wiki/Impression_(online_media)) (“Counting impres-
 sions is the method by which most Web advertising is accounted and paid for....”).

1 Below that text on the Contribution Screen were several fields for the reader to enter his
2 or her name and payment information and a button labeled “Chip In” that would complete the
3 transaction. Joffe-Walt Decl. ¶ 16 & Ex. C at 2; *see also* 2AC ¶ 11. Finally, at the bottom of
4 the Contribution Screen, a red-highlighted link stated, “please visit our refund policy & FAQ for
5 more information.” Clicking this link would bring up the Promoted Petitions Page discussed
6 above. Joffe-Walt Dec. ¶ 16 & Ex. C at 2.

7 Upon clicking “Chip In,” contributors were shown a final confirmation screen with a
8 large “Thank you!” message, along with the text: “*Your \$[X] will advertise this petition [Y] ex-*
9 *tra times on Change.org.* You’re helping gather more support!” Joffe-Walt Decl. ¶ 17 & Ex. C
10 at 3 (emphasis added). Here, once again, the stated number of ad displays was always 12.5
11 times the amount of the contribution. For example, someone like Randall who contributed \$3
12 would have seen the message: “Your \$3.00 will advertise this petition 38 extra times on
13 Change.org.” *Id.* ¶ 17.

14 **D. Offsite Promotion of the Floyd Petition**

15 Because of the Floyd Petition’s immense popularity, Change.org decided to supplement
16 its ordinary method of promoting petitions—displaying advertisements to users on the
17 Change.org website and over email—with several forms of “offsite” advertising. Joffe-Walt
18 Decl. ¶ 18. Starting on June 1, 2020, Change.org spent \$102,000 advertising the Floyd Petition
19 on 118 digital billboards at locations across the United States, and another \$415,000 promoting
20 the Petition to millions of viewers on the social-media platforms Facebook and Instagram. *Id.*
21 ¶ 19. Like the advertising on Change.org’s website and via emails, this offsite advertising was
22 paid for using contributions that users had made to promote the Floyd Petition. However, it was
23 entirely supplemental to (*i.e.*, above and beyond) the number of ad displays these users had ac-
24 tually purchased, thus over-delivering on the promised advertising. *Id.* ¶ 20. Put differently, for
25 each dollar contributed, Change.org provided the promised 12.5 ad displays on the Change.org
26 website on behalf of that contributor, *plus* the additional “offsite” advertising. *Id.*

1 **E. Randall Signs the Floyd Petition and Contributes \$3**

2 Randall is an adult resident of Los Angeles County, California. 2AC ¶ 4. On June 6,
3 2020, he signed the Floyd Petition. Original Complaint (ECF No. 1) ¶¶ 10-11; Joffe-Walt Decl.
4 ¶ 21. He then received Change.org’s solicitation and decided to purchase \$3 worth of advertis-
5 ing in response. 2AC ¶ 9.

6 Change.org began performing its end of the bargain the very next day. Between June 7
7 and June 13, Change.org advertised the Petition on behalf of Randall to users on its website 39
8 times—one more than the 38 ad displays Randall was promised. Joffe-Walt Decl. ¶ 24 & Exs.
9 E–I. One of these displays that Randall paid for successfully recruited another user to sign the
10 Floyd Petition. *Id.* As stated above, Change.org also simultaneously advertised the Floyd
11 Petition on behalf of Randall and his fellow signatories to millions of people on billboards
12 across the United States as well as on Facebook and Instagram. *Id.* ¶¶ 18-20, 25.

13 **F. Events Following Randall’s Contribution**

14 As noted above, Change.org did not anticipate the unprecedented popularity of the Floyd
15 and Taylor Petitions. Altogether, about \$10 million (net of fees and adjustments) was contrib-
16 uted to promote these two petitions. *Id.* ¶ 28; 2AC ¶ 13. In addition, on June 3, 2020, the origi-
17 nal goal of the Floyd Petition—securing criminal prosecution of all four officers responsible for
18 Mr. Floyd’s killing—was accomplished.⁵ Eventually, Change.org concluded that further solici-
19 tation of contributions to advertise these petitions would not be socially beneficial. Joffe-Walt
20 Decl. ¶ 26.

21 Accordingly, on June 9, 2020, three days after Randall made his contribution,
22 Change.org stopped soliciting and accepting new ad purchases for the Floyd and Taylor Peti-
23 tions. Joffe-Walt Decl. ¶ 27. However, Change.org made good on all of its commitments to
24 those who had already contributed by displaying each Petition the number of times it had prom-
25 ised to each contributor. *Id.* In addition, given the unprecedented level of support for these pe-
26

27 _____
28 ⁵ See Washington Post, *Murder charges filed against all four officers in George Floyd’s death as protests against biased policing continue*, June 3, 2020, <https://wapo.st/3cG5Am2>.

1 titions and the historic movement unfolding around them, Change.org decided to pledge \$10
2 million—the total amount it had received in contributions from the Floyd and Taylor Peti-
3 tions—to additional racial justice efforts that resonated with the petitions’ goal. *Id.* ¶ 28. To be
4 clear, this \$10 million pledge was made *in addition to* rendering full performance of all of the
5 advertising commitments Change.org had made to its contributors. *Id.*

6 Specifically, Change.org has announced that it will put \$6 million into a fund dedicated
7 to fighting for and supporting racial justice efforts. It is presently consulting with experts and
8 movement leaders to determine which organizations should receive these funds. *Id.* ¶ 29. It
9 intends to select Black-led organizations on the front lines of racial justice work and grassroots
10 organizers driving change in their own communities. *Id.* Change.org has also announced that
11 \$2.5 million is being reinvested directly into helping these specific petitions themselves be as
12 large, visible and successful as possible in their calls for justice. *Id.* ¶ 30. Finally, Change.org
13 will dedicate \$1.5 million to create a new internal team dedicated to racial justice organizing
14 and advocacy. *Id.*

15 At least one such project is already underway: Change.org has partnered with the
16 George Floyd Foundation, run by Mr. Floyd’s family, to create the George Floyd Hologram
17 Memorial Project (the “Memorial Project”). *Id.* ¶ 32. The Memorial Project created a holo-
18 graphic image of a cloud of firefly-like lights that coalesce into a rendering of Mr. Floyd’s face.
19 The hologram is currently being shown across the American South, traveling along the route of
20 the 1961 Freedom Ride. *Id.* The Memorial Project aims to “transform spaces that were former-
21 ly occupied by racist symbols of America’s dark Confederate past into a message of hope, soli-
22 darity and forward-thinking change.” *Id.* Mr. Floyd’s brother, Rodney Floyd, said in a press
23 release: “Since the death of my brother George, his face has been seen all over the world...
24 Now, by partnering with Change.org, the hologram will allow my brother’s face to be seen as a
25 symbol for change in places where change is needed most.” *Id.*

26 **G. Randall’s Original Complaint and Change.org’s Motion to Dismiss**

27 As noted above, on June 11, 2020—just five days after making his \$3 contribution—
28 Randall filed his original Complaint, purporting to represent a class of “[a]ll individuals in the

1 United States who donated to a [Change.org] petition including, but not limited to, the [Floyd
 2 Petition].” Compl. (ECF No. 1) ¶ 15. Randall asserted, in conclusory fashion, that Change.org
 3 “ha[d] not used [the contributed funds] as promised.” *Id.* ¶ 4. Instead, he maintained, it had
 4 “pocket[ed]” some unspecified portion of those funds as “profit.” *Id.* ¶ 12. Based on this theo-
 5 ry, Randall asserted a single count sounding in breach of contract. The only matter that the
 6 Complaint cited in support of its claims was a June 3, 2020 article from *Business Insider* maga-
 7 zine. *See* Compl. ¶¶ 3, 12. That article, however, undermined Randall’s theory of liability, as it
 8 recognized—contrary to Randall’s allegations—that Change.org did, in fact, use contributors’
 9 money to promote the Floyd Petition. *See* Joffe-Walt Decl., Ex. J (emphasis added).

10 Change.org filed a motion to dismiss or, in the alternative, for summary judgment (ECF
 11 No. 15). In the Rule 12(b)(6) portion of its motion, Change.org pointed out that Randall’s alle-
 12 gations of breach were conclusory and directly contradicted by the *Business Insider* article that
 13 the Complaint incorporated by reference. In the summary judgment portion, Change.org cited
 14 the declaration of its COO, Benjamin Joffe-Walt, as well as several contemporaneous company
 15 records, to demonstrate that Change.org had rendered the performance it had promised to Ran-
 16 dall and had not kept any of his \$3 contribution as “profit.”

17 **H. The Second Amended Complaint**

18 Rather than oppose Change.org’s motion, Randall filed an Amended Complaint, fol-
 19 lowed quickly by the operative 2AC. Importantly, the 2AC accepts as true and incorporates by
 20 reference the Joffe-Walt Declaration that Change.org submitted in connection with its original
 21 dispositive motion. *See* 2AC ¶¶ 3, 14, 16, 17. In an attempt to plead around that Declaration,
 22 the 2AC revamps Randall’s theory of breach, which now has two separate parts.

23 First, Randall alleges that Change.org promised to use his contribution to advertise the
 24 Floyd Petition *exclusively* via “billboards, ... social media ... and email,” and that Change.org
 25 breached that purported promise by advertising the Floyd Petition on the Change.org website in
 26 addition to promoting it in those other media. 2AC ¶¶ 3, 13, 15, 29. Second, Randall alleges, at
 27 least implicitly, that Change.org promised to spend *the entirety* of his \$3 contribution promoting
 28

1 the Floyd Petition, and that Change.org breached that purported promise by spending part of it
2 on other “laudable” racial justice programs. 2AC ¶¶ 16, 18.

3 STANDARD OF REVIEW

4 ***Motion to dismiss.*** “To survive a motion to dismiss, a complaint must contain sufficient
5 factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft*
6 *v. Iqbal*, 556 U.S. 662, 678 (2009) (cleaned up). “Determining whether a complaint states a
7 plausible claim” is “a context-specific task that requires the reviewing court to draw on its judi-
8 cial experience and common sense.” *Id.* at 679. In conducting this evaluation, a court should
9 “no[t] ... accept as true allegations that are merely conclusory, unwarranted deductions of fact,
10 or unreasonable inferences.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.
11 2001). The court may consider not just the allegations of the complaint itself, but also other
12 materials that the complaint incorporates by reference and any other matter subject to judicial
13 notice. *See United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003).

14 ***Motion to Strike Class Allegations.*** Rule 23(d)(1)(D) permits a district court to “require
15 that the pleadings be amended to eliminate allegations about representation of absent persons.”⁶
16 “[A] defendant may move to strike class allegations prior to discovery, provided that the com-
17 plaint demonstrates that the class action cannot be maintained on the facts alleged.” *Velazquez*
18 *v. Costco Wholesale Corp.*, 2011 U.S. Dist. LEXIS 161590, at *2 (C.D. Cal. July 14, 2011) (cit-
19 ing *Sanders v. Apple, Inc.*, 672 F. Supp. 2d 978, 990 (N.D. Cal. 2009)). “Plaintiffs bear the
20 burden of establishing, by a preponderance of the evidence, that class certification is appropriate
21 under Rule 23.” *Camilo v. Ozuna*, 2019 U.S. Dist. LEXIS 83794, at *17-18 (N.D. Cal. May 16,
22 2019) (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). That rule “imposes
23 stringent requirements for certification that in practice exclude most claims.” *Am. Express v.*
24 *Italian Colors Rest.*, 570 U.S. 228, 234 (2013); *see* Fed. R. Civ. P. 23(a), (b)(3).

25
26 ⁶ Some courts have analyzed motions to strike class allegations under Fed. R. Civ. P. 12(f),
27 which permits motions to “strike from a pleading an insufficient defense or any redundant, im-
28 material, impertinent or scandalous matter.” Change.org believes that Rule 23(d)(1)(D) is more
appropriate for a motion to strike class allegations, but it invokes Rule 12(f) in the alternative.

ARGUMENT

I. RANDALL FAILS TO STATE A CLAIM FOR BREACH OF CONTRACT

Randall’s sole cause of action is for breach of contract under California law. Such a claim requires well-pled allegations that a contract existed; that the plaintiff performed his or her obligations thereunder; that the defendant breached the contract; and that the plaintiff suffered damages as a result. 2AC ¶ 26 (citing *Oasis W. Realty, LLC v. Goldman*, 250 P.3d 1115, 1121 (Cal. 2011)). For purposes of this motion, Change.org assumes that a valid contract existed based on the text of Change.org’s website and that Randall performed his side of the contract. Randall’s 2AC nonetheless fails to state a claim because it does not adequately plead the required elements of breach and damages.

A. Randall Fails To Plead that Change.org Breached the Contract

To plausibly plead breach, a complaint must “set[] out the terms of the [contract]” and “how [the defendant] violated them.” *Raup v. Wells Fargo Bank, NA*, 2013 U.S. Dist. LEXIS 88922, at *14 (D. Ariz. June 25, 2013). A complaint lacking such allegations “fails to ‘permit the court to infer more than the mere possibility of misconduct.’” *Id.* (quoting *Iqbal*, 556 U.S. at 679). “[C]onclusory statements” that a defendant “breached” particular promises are insufficient. *In re Anthem Data Breach Litig.*, 162 F. Supp. 3d 953, 979 (N.D. Cal. 2016). Rather, a complaint must “articulate[] ... specific facts by which the Court would be able to determine that [a] breach ... actually occurred.” *Cavallo v. Donahoe*, 2015 U.S. Dist. LEXIS 81622, at *3 (D. Nev. Apr. 27, 2015), *adopted at* 2015 U.S. Dist. LEXIS 80635 (D. Nev. June 22, 2015).

1. Change.org Did Not Breach the Contract by Rendering Some of the Promised Advertising on the Change.org Website

Randall’s first theory is that Change.org breached the contract by rendering some of the promised advertising displays of the Floyd Petition on the Change.org website, rather than advertising the Floyd Petition *exclusively* via “billboards ..., social media ... and email[s].” 2AC ¶¶ 3, 10, 11, 13-15, 29. In other words, Randall interprets the contract as promising to advertise the Floyd Petition only in those three media, and not elsewhere.

1 This theory of breach is premised on a single phrase, ripped out of context, from one of
2 the several screens of text that Randall was shown before he finalized his contribution. Specifi-
3 cally, the Solicitation Screen contained the sentence: “Chipping in allows Change.org to put this
4 petition on billboards across the country, blanket social media with calls to join, and email the
5 petition to millions of people.” Joffe-Walt Decl. ¶ 14 & Ex. C at 1; 2AC ¶¶ 9-10. If this were
6 the only text that Randall had been shown, he *might* have a point (although even then, this lan-
7 guage does not actually say that these three media would be exclusive). However, it is black-
8 letter law that a court must “consider the contract as a whole and interpret its language in con-
9 text . . . , rather than interpret contractual language in isolation.” *Legacy Vulcan Corp. v. Superi-*
10 *or Court*, 185 Cal. App. 4th 677, 688 (2020) (citing Cal. Civ. Code § 1641). As the Ninth Cir-
11 cuit recently emphasized, “the intention of the parties is to be collected from the entire instru-
12 ment and not detached portions thereof, it being necessary to consider all of the parts to deter-
13 mine the meaning of any particular part as well as of the whole.” *Int’l Bhd. of Teamsters, Local*
14 *396 v. NASA Servs., Inc.*, 957 F.3d 1038, 1042 (9th Cir. 2020) (citations omitted). “California
15 case law consistently reaffirms the primacy of this principle.” *Id.*

16 Under this fundamental rule of interpretation, Randall’s reading cannot stand. True, the
17 initial Solicitation Screen mentioned billboards, social media and emails. But it also urged us-
18 ers more generally to “chip in . . . to get this petition on the agenda” and help garner “more sig-
19 natures.” Moreover, the Contribution Screen, where Randall was required to enter his financial
20 information and finalize the transaction, expressly stated: “Every \$20 will advertise this petition
21 250 extra times *on Change.org*.” Joffe-Walt Decl. ¶ 16 & Ex. C at 2; 2AC ¶ 11 (emphasis add-
22 ed). No reasonable person who read all of this language together could come away with the un-
23 derstanding that all purchased advertising would take place exclusively via billboards, social
24 media and email, and that advertising on the Change.org website was forbidden.

25 Randall admits—as he must—that he read the Contribution Screen and that its plain text
26 stated that contributions would go toward “advertis[ing] the petition . . . on Change.org.” 2AC
27 ¶ 11. However, Randall summarily declares that “[t]his screen did not modify [Change.org’s]
28 earlier promise [on the Solicitation Screen] to use the money for three purposes: billboards, so-

1 cial media advertising, and emailing the petition....” *Id.* Of course, Randall’s view as to
2 whether the text on the Contribution Screen “modifi[ed]” the earlier Solicitation Screen is a le-
3 gal conclusion entitled to no deference. *See Iqbal*, 556 U.S. at 678 (“[T]he tenet that a court
4 must accept as true all of the allegations contained in a complaint is inapplicable to legal con-
5 clusions.”). As discussed above, the correct legal rule provides that it is “necessary to consider
6 all of the parts [of a contract] to determine the meaning of any particular part as well as of the
7 whole.” Under that rule, the Contribution Screen most certainly *does* “modify” the Solicitation
8 Screen, and Randall’s first theory of breach plainly fails.

9 If that weren’t enough, at two different points during the contribution process, Randall
10 was invited to click through to another page to learn “[m]ore on how chipping in helps this peti-
11 tion.” Joffe-Walt Decl. ¶ 15 & Ex. C at 1; *see also id.* ¶ 16 & Ex. C at 2 (“[P]lease visit our re-
12 fund policy & FAQ for more information.”). The first of these invitations linked to the FAQ
13 Page, which stated: “You’ll see promoted petitions displayed in a number of places **including**
14 **our homepage, nearly every page of the website**, in our Change.org emails that are sent to mil-
15 lions of people, on social media and more.” *Id.* ¶ 15 & Ex. D (emphasis added). The second
16 linked to the Promoted Petitions Page, which stated that “promoted petitions let you pay to
17 show any petition ... to other potential supporters **on Change.org** or our distribution channels.”
18 *Id.* ¶ 12 (emphasis added). Considering these two pages together with the Solicitation Screen
19 and Contribution Screen removes any hypothetical doubt: rendering the promised advertising in
20 part on the Change.org website was not a breach. Whether Randall actually clicked through to
21 read those two pages is immaterial, because contracting parties are “presumed” as a matter of
22 law to have reviewed the instrument “in its entirety.” *Rahimi v. Mid Atl. Prof’ls, Inc.*, 2018 U.S.
23 Dist. LEXIS 109462, at *12 (S.D. Cal. June 29, 2018); *see also State Farm Mut. Auto Ins. Co.*
24 *v. Kelleher*, 1994 U.S. App. LEXIS 30023, at *4 (9th Cir. Oct. 26, 1994) (“[I]t is axiomatic that
25 the signer of a contract is presumed to have read and understood all he signs regardless of
26 whether he actually examined the document.”).

1 **2. Change.org Did Not Breach the Contract by Pledging Funds to Racial**
 2 **Justice Programs After Rendering the Promised Performance**

3 Randall’s second theory is that Change.org breached its contract by failing to spend his
 4 *entire* \$3 contribution advertising the Floyd Petition, and instead pledging a part of that contri-
 5 bution to other racial justice efforts (such as the Memorial Project). In Randall’s words, “Plain-
 6 tiff ... did not give Change.org [his] money to do with as it pleased, or even to use in its best
 7 judgment to further laudable causes”; rather, he gave that money for the sole purpose of adver-
 8 tising the Floyd Petition. *Id.* ¶ 18.

9 But that is not what the contract’s terms actually say. As discussed above, the relevant
 10 screens and webpages show that Change.org was making a specific quantitative commitment:
 11 for every dollar a user contributes, Change.org would ensure that an ad for the petition was dis-
 12 played 12.5 times. The Contribution Screen, where Randall was required to enter his payment
 13 information and finalize his contribution, said this not once, but twice. First, it stated that
 14 “[e]very \$20 will advertise this petition 250 extra times” (a ratio of 1 to 12.5). Joffe-Walt Decl.
 15 ¶ 16 & Ex. C at 2; 2AC ¶ 11 (emphasis added). Several lines down, the Contribution Screen
 16 reiterated, “Impression Calculation: \$20 will advertise this petition 250 extra times.” *Id.* (em-
 17 phasis added). In addition, the FAQ Page, which Randall was urged to consult for more infor-
 18 mation, stated: “The amount of money the supporter wants to give *correlates to the number of*
 19 *times we’ll display the petition.* For example, *contributing \$8 will result in the petition being*
 20 *displayed to 100 people*” (a ratio of 1 to 12.5). *Id.* ¶ 15 & Ex. D (emphasis added).

21 Nowhere in any of the relevant screens or webpages did Change.org state that it would
 22 go beyond this commitment of 12.5 displays per dollar and expend every cent contributed on
 23 petition advertising. That is, Change.org never promised that there would be no “margin” left
 24 over for other purposes after it rendered the promised ad displays. Randall may have assumed
 25 as much, but it is black-letter law that “the Court may not read additional terms into [a] contract
 26 that are not supported by its text.” *Rizzo v. Ins. Co. of Pa.*, 969 F. Supp. 2d 1180, 1194 (C.D.
 27 Cal. 2013), *aff’d in relevant part*, 632 F. App’x 889 (9th Cir. 2015); *see also Vierra v. Shaffer*,
 28 113 Cal. App. 2d 768, 772 (1952) (“A court is not at liberty to revise an agreement while pro-

1 fessing to construe it... Neither abstract justice nor the rule of liberal construction, justifies the
2 creation of a contract for the parties which they did not make themselves or the imposition upon
3 one party to a contract of an obligation not assumed.”); Cal. Code Civ. Proc. § 1858 (“In the
4 construction of [an] ... instrument, the office of the Judge is simply to ascertain and declare
5 what is in terms or substance contained therein, not to insert what has been omitted...”).

6 As such, after Change.org delivered the promised 12.5 displays per dollar to Randall—
7 and it undisputedly did that, and more—it had every right to do as it wished with the remainder
8 of his contribution. Change.org could lawfully have kept the remainder as profit, or used it to
9 help pay staff salaries, rent or other expenses. None of those things would have breached any
10 promise that Change.org made to Randall. Instead, however, Change.org pledged that money to
11 racial justice projects that are not just “laudable,” 2AC ¶ 18, but closely aligned with the goals
12 of the Floyd Petition—including working with the George Floyd Foundation on the Memorial
13 Project. For that, Change.org deserves to be praised, not sued.

14 Notably, if Randall’s theory of breach had any merit, any seller of Web advertising
15 would be in breach of its contracts any time the fees it charges exceed its costs of rendering the
16 promised advertising. A customer could always claim—as Randall does here—that he or she
17 assumed the advertising was being sold at cost, and that there would be no “margin” left over
18 for the advertiser to devote to profit, overhead, or other purposes. Plainly, however, the law
19 does not treat such unilateral assumptions as binding contractual terms. The advertising dis-
20 plays that Change.org sold to Randall may have had a nobler purpose than most advertising sold
21 on the Internet, but the same legal rules apply to it.

22 **B. Randall Fails to Plausibly Plead Damages**

23 Even if Randall had adequately pleaded a breach by Change.org, that would not be
24 enough; “a breach of contract claim [also] requires a showing of appreciable and actual dam-
25 age.” *Ruiz v. Gap, Inc.*, 380 F. App’x 689, 692 (9th Cir. 2010) (citing *Aguilera v. Pirelli Arm-
26 strong Tire Corp.*, 223 F.3d 1010, 1015 (9th Cir. 2000)). Mere “speculative harm ... do[es] not
27 suffice.” *Luxul Tech, Inc. v. Nectarlux, LLC*, 78 F. Supp. 3d 1156, 1175-76 (N.D. Cal. 2015).

28

1 Nor do “conclusory allegations [of] ... damages” lacking in supporting detail. *Adobe Sys. v. A*
2 *& S Elecs., Inc.*, 153 F. Supp. 3d 1136, 1146 (N.D. Cal. 2015).

3 The fact that Randall parted with \$3 does not mean he was damaged. That was just the
4 performance he promised. The relevant question is whether the value of what Randall *received*
5 from Change.org was less than the value of what Change.org promised to him. *See Coughlin v.*
6 *Blair*, 262 P.2d 305, 314 (Cal. 1953) (“Damages are awarded in an action for breach of contract
7 to give the injured party the benefit of his bargain and ... to place him in the same position he
8 would have been in had the promisor performed the contract.”); *New W. Charter Middle Sch. v.*
9 *Los Angeles Unified Sch. Dist.*, 187 Cal. App. 4th 831, 844 (2010) (“Contract damages ...
10 [should] place plaintiff in the same position he would have been [in] had the contract been per-
11 formed, but he should not be awarded more than the benefit which he would have received had
12 the promisor performed.”). Randall, therefore, was required to plead that he would be better
13 off, in some measurable sense, if Change.org had complied with the contract as he interprets it.

14 This he fails to do. Consider the “CLAIM FOR RELIEF” section of the 2AC, where
15 Randall recites the four elements of a breach-of-contract claim—including “resulting damages
16 to the plaintiff”— and then ticks off how they are supposedly satisfied. 2AC ¶¶ 26-29. We are
17 told that Change.org’s solicitation materials “created a valid contract.” *Id.* ¶ 27. We are told
18 that Randall “performed” his end of that contract by contributing \$3. *Id.* ¶ 28. We are told that
19 Change.org “breached the contract by failing to use the money as it promised to do.” *Id.* ¶ 29.
20 But that is all: there is literally nothing alleged to explain how Randall was damaged as a result
21 of the purported breach. Indeed, the word “damages” (or its variations) does not appear any-
22 where in the 2AC, other than Paragraph 26’s recitation of the claim’s four elements.

23 Nor can any damages be fairly inferred from the 2AC. The benefit that Change.org
24 promised Randall in exchange for his \$3 was the satisfaction of knowing that the Floyd Petition
25 would be advertised 38 additional times because of his actions. As the Joffe-Walt Declaration
26 shows, Change.org more than provided that benefit: it displayed the petition **39** additional times
27 on its own website; advertised it to millions more people on billboards and social media; and
28 pledged \$10 million to related racial justice programs on top of that. There is nothing pleaded

1 in the 2AC to suggest that, if Change.org had rendered all its advertising via billboards, social
 2 media and emails, rather than on its website, Randall would be materially better off. Likewise,
 3 there is nothing in the 2AC to suggest that, if Change.org had promoted the Floyd Petition even
 4 more extensively, instead of making contributions to racial justice programs, Randall would be
 5 in a better position. This deficiency requires dismissal. *See Svenson v. Google Inc.*, 65 F. Supp.
 6 3d 717, 724 (N.D. Cal. 2014) (dismissing breach-of-contract claim where “Plaintiff d[id] not
 7 allege that what she received ... was worth less than what she allegedly bargained for”).

8 **II. IF IT DOES NOT DISMISS, THE COURT SHOULD STRIKE THE 2AC’S**
 9 **CLASS ALLEGATIONS**

10 Even if the Court determines that the 2AC somehow states a claim, it should rule that
 11 this is, at most, an individual suit for \$3, not a multimillion-dollar class action. As the Supreme
 12 Court has noted, “[s]ometimes the issues are plain enough from the pleadings to determine
 13 whether the interests of the absent parties are fairly encompassed within the named plaintiff’s
 14 claim.” *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 160 (1982). This is such a case: even at
 15 this early juncture, it is clear that Randall will never be able to satisfy Rule 23’s “stringent re-
 16 quirements” for class certification. *Supra* at 12; *see, e.g., Bates v. Bankers Life & Cas. Co.*, 848
 17 F.3d 1236, 1237 (9th Cir. 2017) (noting that the district court had “granted [Defendant’s] mo-
 18 tion to strike the [complaint’s] class allegations” because “even with class discovery Plaintiffs
 19 would not be able to satisfy” Rule 23’s requirements); *Kamm v. Cal. City Dev. Co.*, 509 F.2d
 20 205, 209-10 (9th Cir. 1975) (affirming district court’s grant of defendant’s pleadings-stage mo-
 21 tion to strike class allegations and stating that where “[t]he propriety of a class action” can be
 22 “resolved without discovery, [discovery] is not required”).

23 *First*, Randall’s interpretation of the contract’s material terms is idiosyncratic. *See Tho-*
 24 *rogood v. Sears, Roebuck & Co.*, 547 F.3d 742, 747-48 (7th Cir. 2008) (Posner, J.) (denying
 25 certification where named plaintiff’s interpretation of defendant’s representations was “idiosyn-
 26 cratic” and it was “implausible” that the class as a whole “shared his understanding”). Randall
 27 deems it critical that Change.org’s ads for the Floyd Petition appear in diffuse channels, such as
 28 billboards, social media or emails, rather than on Change.org’s website, which has a captive au-

1 dience of millions of socially conscious users predisposed to sign petitions. The Court needs no
2 factual showing to conclude that many members of the putative class would not view things this
3 way. Similarly, Randall insists that the contract required Change.org to continue spending con-
4 tributed funds to promote the Floyd Petition *ad infinitum*, even after the petition had already
5 reached a saturation level of popularity and achieved its original objective of securing the pros-
6 ecution of Mr. Floyd’s killers. Again, it is self-evident that many members of the putative class
7 would not share this peculiar view. *See Trazo v. Nestlé USA, Inc.*, 2013 U.S. Dist. LEXIS
8 113534, at *42-44 (N.D. Cal. Aug. 9, 2013) (granting motion to strike class allegations where it
9 was clear that “Plaintiffs cannot be said to be typical” of the class as a whole).

10 **Second**, the 2AC seeks relief that many in the putative class would not want. *See Ellis*
11 *v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011) (to satisfy Rule 23(a)(4)’s ade-
12 quate representation requirement, named plaintiffs may not have “conflicts of interest with other
13 class members”). For instance, Randall would have this Court redirect \$10 million that
14 Change.org has pledged to “laudable” racial justice projects, which many (if not most) members
15 of the putative class would strongly support, to further advertising of a petition that has already
16 largely served its purpose. Meanwhile, if Randall has his way, a large chunk of that \$10 million
17 would be lost to “[t]he transaction costs of a class action,” such as delivering notice to class
18 members and paying legal fees to Randall’s counsel. *In re Aqua Dots Prods. Liab. Litig.*, 654
19 F.3d 748, 751 (7th Cir. 2011). Many class members would surely oppose this result. *See*
20 *Woods v. Google, LLC*, 2018 U.S. Dist. LEXIS 181942, at *12-13 (N.D. Cal. Oct. 23, 2018)
21 (granting motion to strike class allegations where “a conflict of interests prevent[ed] [Plaintiff]
22 from adequately representing the interests of the absent class members”).

23 **Third**, Randall does not state whether he clicked the links to the Promoted Petitions
24 Page and/or FAQ Page, which provided additional detail about how many ads his \$3 would pur-
25 chase and where those ads would appear. As discussed above, the Court should presume that he
26 did read those pages. However, if the Court declines to adopt such a presumption, and finds
27 that Randall has stated a claim for relief based on the possibility that he did not actually read
28 those webpages, then this becomes a central issue that must be answered individually for every

1 single contributor. Courts routinely deny class certification where “the terms of the contract at
 2 issue vary between class members,” as they would under such a scenario. *Weisberg v. Takeda*
 3 *Pharms. U.S.A., Inc.*, 2018 U.S. Dist. LEXIS 146376, at *14 (C.D. Cal. Aug. 21, 2018); *cf.*
 4 *Sanders*, 672 F. Supp. 2d at 991 (striking class allegations where it was evident that “the Court
 5 would be forced to engage in individual inquiries of each class member with respect to ...
 6 whether the member saw [Defendant’s] advertisements or visited [its] website”).

7 These are just a few of the readily apparent reasons why Randall could never meet his
 8 class-certification burden. Expensive discovery, briefing, expert reports and *Daubert* motions
 9 would not change any of these facts. In keeping with the Federal Rules’ mandate to “secure the
 10 just, speedy, and inexpensive determination of every action,” Fed. R. Civ. P. 1, the Court should
 11 strike the 2AC’s class allegations now, if it permits this case to proceed at all. *See Castillo v.*
 12 *Bank of Am. Nat’l Ass’n*, 2018 U.S. Dist. LEXIS 132369, at *26-27 (C.D. Cal. Feb. 1, 2018)
 13 (striking class allegations where plaintiff’s pleading “d[id] not justify putting [Defendant]
 14 through the expense of class discovery”); *Sanders*, 672 F. Supp. 2d at 990-91 (striking class al-
 15 legations “to avoid the expenditure of time and money that [would] arise from litigating spuri-
 16 ous [class] issues”).⁷

17 CONCLUSION

18 For the reasons stated, Change.org respectfully requests that the Court dismiss this ac-
 19 tion in its entirety. Because Randall has already had multiple opportunities to plead a valid
 20 claim, and because any further amendment would be futile, that dismissal should be with preju-
 21 dice. *Salameh v. Tarsadia Hotel*, 726 F.3d 1124, 1133 (9th Cir. 2013). At minimum, however,
 22 the Court should strike the 2AC’s class allegations and order that this suit be maintained as an
 23 individual action only.

24
 25
 26 ⁷ Although striking the 2AC’s class allegations would reduce the amount in controversy to a
 27 mere \$3, it would not deprive this Court of subject matter jurisdiction, as “post-filing develop-
 28 ments do not defeat jurisdiction if jurisdiction was properly invoked as of the time of filing.”
United Steel v. Shell Oil Co., 602 F.3d 1087, 1090-92 (9th Cir. 2010).

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Respectfully submitted,

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