

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

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

I.B., by and through his guardian ad litem
GLYNNIS BOHANNON, et al.,

Plaintiffs,

v.

FACEBOOK, INC.,

Defendant.

Case No. [12-cv-01894-BLF](#)

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
MOTION FOR CLASS
CERTIFICATION**

[Re: ECF 82]

United States District Court
Northern District of California

As teenagers’ use of online social media has become ubiquitous, juvenile behaviors that previously occurred offline have migrated onto the Internet. One such behavior – a minor spending a parent’s money without permission – gives rise to this case.

Defendant Facebook, like many Internet companies, permits its users, including minors, to make purchases through its website. The named minor Plaintiffs in this case, I.B. and J.W., both spent a parent’s money without permission over Facebook, in slightly different ways: I.B. asked his mother for \$20 to make purchases in a game called “Ninja Saga,” but then spent more than he was permitted; while J.W. took his parent’s debit card without permission and began making purchases. As parents across the United States know all too well, such situations are not unique to purchases made over the Internet.

Now, these two minors seek to invoke the protections of century-old protections enshrined in California law, which recognize that minors will occasionally use their lack of judgment to enter into contractual relationships and later assert the right to walk away from the contract. The named Plaintiffs contend that Facebook’s policy of representing that purchases made through its website are final, or otherwise non-refundable, violates Section 6701(c) of the California Family Code, which states that a contract is void if the minor “make[s] a contract relating to any personal

1 property not in the immediate control of the minor.” In the alternative, the named Plaintiffs
 2 contend that Facebook’s policy violates Family Code Section 6710, which permits a minor to
 3 disaffirm *any* contract “before majority or within a reasonable time afterwards.”

4 I.B. and J.W., each through a parent as guardian ad litem, presently move the Court to
 5 certify the following class and subclass under Federal Rule of Civil Procedure 23(b)(2):

6 All Facebook users who are or were minor children according to
 7 Facebook’s own records for the four years preceding the date on
 8 which the original complaint was filed through the date on which a
 9 class is certified (“the Minor Class”). Within the Minor Class is a
 subclass of Minors from whose Facebook accounts Facebook
 Credits were purchased. (“the Minor Purchasing Subclass”).

10 Third Amended Complaint (“TAC”) ¶ 36.

11 The parties appeared for oral argument on December 18, 2014. The Court then requested
 12 supplemental briefing on the question of whether it could certify a nationwide class of minors
 13 pursuant to the California Family Code, which the parties provided on January 9, 2015. Having
 14 reviewed the briefing and oral argument of the parties, and for the reasons outlined below, the
 15 Court GRANTS IN PART AND DENIES IN PART Plaintiffs’ motion for class certification.

16 I. BACKGROUND

17 A. Factual Background and Class Allegations

18 In October 2011, Plaintiff I.B., a minor, asked his mother Glynnis Bohannon for
 19 permission to spend \$20 on his Facebook account to purchase Facebook Credits to use in a game
 20 called Ninja Saga.¹ I.B. gave his mother \$20, and used her Wells Fargo MasterCard to purchase
 21 Facebook Credits. I.B. claims he was unaware that Facebook would store this credit card
 22 information, and thereafter continued to make in-game purchases in Ninja Saga. I.B. believed
 23 these purchases were being made with virtual currency, and that his mother’s credit card was not
 24 being charged for these purchases. Glynnis Bohannon’s card was ultimately charged several
 25

26 _____
 27 ¹ Facebook Credits were developed by Facebook as a virtual currency payment system. A user
 28 who wanted to make a purchase within Facebook would buy Facebook Credits, which could then
 be redeemed for various items or applications on Facebook. In 2013, Facebook Credits were
 discontinued and replaced with a system called Facebook Payments.

1 hundred dollars. Ms. Bohannon sought a refund from Facebook, but was not provided one until
2 after this action was filed. *See* TAC ¶ 28; Second Amended Compl., ECF 18 at ¶ 28 (“Since being
3 served with the initial complaint in this action, Facebook has apparently provided a ‘courtesy’
4 refund to Ms. Bohannon.”). I.B. is a resident of Arizona. TAC ¶ 8.

5 In December 2011, Plaintiff J.W., a minor, took his parents’ debit card without their
6 permission and began to make a series of charges on Facebook through the use of Facebook
7 Credits. These charges totaled over \$1,000. Unlike I.B., J.W. did not have his parents’ initial
8 permission to make charges on Facebook. Upon learning of J.W.’s actions, his father, Steven
9 Wright, contacted Facebook to dispute the charges and request a refund. In this interaction with
10 Facebook, Mr. Wright stated that neither he nor his wife had authorized the use of their debit card.
11 Facebook provided Mr. Wright with a partial refund of \$59.90, despite a Facebook representative
12 telling him that he had “refunded the charges to your funding instrument.” TAC ¶ 33. At the time
13 the TAC was filed, the Wrights had not been refunded the remaining \$999.30 spent by J.W.
14 without their permission. *See* TAC ¶¶ 31-33. J.W. is a resident of California. TAC ¶ 9.

15 Both Plaintiffs contend that Facebook misinforms its users, including minors, that “all
16 sales are final.” TAC ¶ 4; *see also* Parker Decl. Exh. B. at 1 (stating under “Payment Terms,”
17 revised on June 3, 2009, that “[p]urchases of credits are non-refundable”); Parker Decl. Exh. D at
18 32:4-16 (testimony by Bill Richardson stating that, as of 2012, Facebook’s refund policies for
19 individuals between 13 and 17 were the same as its policies for adults, but that policies for minors
20 under 13 were different). Plaintiffs contend that under its policies, Facebook “routinely refuses
21 requests by children and their parents and legal guardians to provide refunds for transactions that
22 are subject to disaffirmance under California law.” TAC ¶ 16.

23 Plaintiffs seek declaratory relief under 28 U.S.C. § 2201, requesting a determination by the
24 Court that purchases made by minors through their Facebook accounts are void or voidable. *See*
25 TAC ¶ 68. Plaintiffs also seek individualized restitution. *See* TAC at p. 20.

26 **B. Procedural Background**

27 Plaintiffs first filed this putative class action on April 17, 2012. The case has been subject
28 to several rounds of motions to dismiss. Prior orders by Judge Claudia Wilken, to whom this case

1 was assigned prior to being reassigned to the undersigned, eliminated a number of claims that the
 2 Plaintiffs sought to assert – notably, dismissing all claims by the parents of the minor children, and
 3 dismissing all of the minor children’s claims except those brought pursuant to Family Code
 4 Sections 6701(c) and 6710. *See* ECF 44, 58. Defendant ultimately answered Plaintiffs’ TAC on
 5 January 20, 2014. *See* ECF 62. This motion for class certification followed.²

6 II. LEGAL STANDARD

7 Recognizing that “[t]he class action is an exception to the usual rule that litigation is
 8 conducted by and on behalf of the individual named parties only,” Federal Rule of Civil Procedure
 9 23 demands that two requirements be met before a court certifies a class. *Comcast Corp. v.*
 10 *Behrend*, 133 S. Ct. 1426, 1432 (2013).

11 A party must first meet the requirements of Rule 23(a), which demands that the party
 12 “prove that there are in fact sufficiently numerous parties, common questions of law or fact,
 13 typicality of claims or defenses, and adequacy of representation.” *Behrend* at 1432. If a party
 14 meets Rule 23(a)’s requirements, the proposed class must also satisfy at least one of the
 15 requirements of Rule 23(b). Here, Plaintiffs invoke Rule 23(b)(2), which demands that “the party
 16 opposing the class has acted or refused to act on grounds that apply generally to the class, so that
 17 final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a
 18 whole.”

19 The party seeking class certification bears the burden of showing affirmative compliance
 20 with Rule 23. *See, e.g., Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). A court’s
 21

22 ² Plaintiffs ask the Court to take judicial notice of three documents, *see* ECF 82-4: (1) an
 23 electronic brochure entitled Clawback Management Guidelines for Visa Merchants, taken from the
 24 website *visa.com*; (2) a complaint filed in the Western District of Washington in *FTC v.*
 25 *Amazon.com, Inc.*, 2:14-cv-01038; and (3) a Federal Trade Commission complaint filed in *In the*
 26 *Matter of Apple Inc., a Corporation*, No. C-4444. Defendant has not opposed Plaintiffs’ request.
 27 The Court takes judicial notice of the Clawback Guidelines document because it is “factual
 28 information found on the world-wide web,” the authenticity of which is not disputed by either
 party. *See O’Toole v. Northrop Grumman Corp.*, 449 F.3d 1218, 1225 (10th Cir. 2007). The Court
 takes judicial notice of the complaints in *Amazon* and *Apple* because both are court filings. *See,*
e.g., Porter v. Ollison, 620 F.3d 952, 955 n.1 (9th Cir. 2010). Though the Court takes judicial
 notice of these documents, it has not considered the information included in any of these three
 documents for the truth of the statements contained therein.

1 analysis of class certification “may entail some overlap with the merits of the plaintiff’s
 2 underlying claim[s],” *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 133 S. Ct. 1184, 1194
 3 (2013), though the merits can be considered only to the extent they are “relevant to determining
 4 whether the Rule 23 prerequisites to class certification are satisfied.” *Id.* at 1195. Within Rule 23’s
 5 framework, the district court maintains broad discretion over whether to certify a class or subclass.
 6 *See, e.g., Zinser v. Accufix Research Institute, Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001).

7 **III. DISCUSSION**

8 **A. Preliminary Issues**

9 Before reaching the question of whether a class should be certified under Rule 23, the
 10 Court is faced with three preliminary issues: (1) whether sections 6701(c) and 6710 of the
 11 California Family Code may be invoked by minors who reside outside of California; (2) whether
 12 the named Plaintiffs have standing to bring suit for injunctive relief; and (3) the extent to which
 13 Judge Wilken’s orders on Defendant’s two motions to dismiss limit the circumstances in which
 14 Plaintiffs can seek disaffirmance – Defendant contends the orders limit Plaintiffs to seek
 15 disaffirmance only where the minor purchaser used money outside of his or her control, while
 16 Plaintiffs contend that they may assert claims for disaffirmance of any purchase made by a minor
 17 over his or her Facebook account. The Court deals with each of these issues in turn.

18 **1. The Extraterritorial Applicability of Sections 6701 and 6710**

19 At the class certification hearing, the Court raised the issue whether Sections 6701 and
 20 6710 could be invoked by minors, including named Plaintiff I.B., who are not residents of
 21 California, and requested further briefing. *See* ECF 123 at 40.

22 In California, state statutes are presumed not to have extraterritorial effect. *See, e.g., N.*
 23 *Alaska Salmon Co. v. Pillsbury*, 174 Cal. 1, 4-6 (1916). This presumption can be rebutted where
 24 “a contrary intent is clearly expressed or reasonably to be inferred from the language of the act or
 25 from its purpose, subject-matter, or history.” *Cotter v. Lyft*, 2014 WL 3884416, at *2 (N.D. Cal.
 26 Aug. 7, 2014) (citing *Pillsbury*, 174 Cal. 1, 4). A number of courts have confronted this
 27 extraterritoriality question in the context of the California Labor Code and the UCL, and have
 28 determined that laws passed to protect California workers do not apply to conduct that takes place

1 outside of California. *See, e.g., O'Connor v. Uber Techs.*, 2014 WL 4382880, at *11 (N.D. Cal.
2 Jan. 1, 2014) (compiling cases).

3 In order to determine the applicability of Family Code sections 6701(c) and 6710, the
4 Court must determine whether the parties anticipated application of California law, and whether
5 the statutes were intended to protect transactions between out-of-state minors and a California
6 corporation.

7 Clearly, Facebook intended California law to control. Facebook's Statement of Rights and
8 Responsibilities ("SRR"),³ which must be accepted by all individuals prior to joining Facebook or
9 making any purchases through Facebook, contains within it a choice of law clause which states
10 that "[t]he laws of the State of California will govern this Statement, as well as any claim that
11 might arise between you and us, without regard to conflict of law provisions." TAC ¶ 51. The
12 SRR thus contains a clear and unambiguous election of California law to govern the relationship,
13 and disputes, between the parties. The question is thus whether California law contemplates the
14 claimed protections extending to minors who live outside its borders, but who contract with a
15 California company pursuant to an express choice of law provision that elects California law to
16 govern disputes between the parties.

17 The history of the Family Code provisions at issue shows that the statutes have the dual
18 purpose of protecting children and proscribing adult conduct when contracting with children.

19 _____
20 ³ Defendant argues that Plaintiffs cannot rely on the choice of law clause in the SRR.

21 Facebook points to an argument Plaintiffs previously made before Judge Wilken regarding the
22 second motion to dismiss. Plaintiffs wish to be able to pursue their claims for disaffirmance or
23 voiding the contracts, but also want to continue to be able to use Facebook. Therefore, Plaintiffs
24 argued that the SRR and the individual purchase transactions, such as I.B.'s purchase of credits in
Ninja Saga, should be considered two separate transactions. *See* ECF 58 at 11. Defendant argues
that Plaintiffs cannot now rely on the SRR's choice of law provision because they previously
argued the transactions were distinct. *See* Def.'s Supp. Br., ECF 127 at 2-3.

25 This argument is unpersuasive, however. Plaintiffs essentially argue that a minor purchaser makes
26 two agreements with Facebook: (1) signing the SRR, which acts as an umbrella agreement
27 governing his or her relationship with Facebook, and (2) making a purchase over Facebook, where
28 money is exchanged for a good or service. *Cf., e.g.,* Mot. at 4 (citing Parker Decl. Exh. D at 27:3-
32:22). It is therefore not inconsistent to argue that the terms of the SRR *also* govern the
subsequent purchase transactions, since the SRR governs all actions the minor takes while using
Facebook.

1 California has made certain contracts entered into by minors void or voidable since at least 1874,
2 when Sections 33 and 34 of the California Civil Code were amended to state that:

3 A minor cannot give a delegation of power, nor under the age of
4 eighteen, make a contract relating to real property, or any interest
5 therein, or relating to any personal property not in his immediate
6 possession or control.

7 . . .

8 A minor may make any other contract . . . in the same manner as an
9 adult, subject only to his power of disaffirmance.

10 *Hakes Inv. Co. v. Lyons*, 166 Cal. 557, 559 (1913). These two predecessor statutes are nearly
11 identical in language to Sections 6701(c) and 6710 of the Family Code, respectively.

12 California courts interpreting these statutes have stated, in broad terms, that they reflect
13 both a strong public policy in favor of protecting minors, and, even more so, of discouraging
14 adults from contracting with minors. *See, e.g., Flittner v. Equitable Life Assur. Soc. of the United*
15 *States*, 30 Cal. App. 209, 216 (1916) (“The law in its wisdom shields minors from their lack of
16 judgment and experience This position may seem, under all the circumstances of the case, to
17 be a hardship on the defendant, but ‘the right of an infant to avoid his contracts is one conferred by
18 law for his protection against his own improvidence and the designs of others.’”); *see also*
19 *Burnand v. Irigoyen*, 30 Cal. 2d 861, 866 (1947) (“One deals with infants at his peril. . . . *The*
20 *policy of the law is to discourage adults from contracting with an infant* and they cannot complain
21 if as a consequence of violating the rule they are injured by the exercise of the right of
22 disaffirmance vested in the infant.”) (emphasis added).

23 It was Facebook that selected California law to apply to interactions between itself and its
24 users, and thus it should come as no surprise that Facebook’s own conduct would also be
25 considered through the lens of California law. In this case, a valid choice of law provision exists in
26 the SRR, which means that minors can invoke Sections 6701(c) and 6710 regardless of their own
27 state of residence. Application of Facebook’s SRR in such a manner is consistent with the
28 purpose, dating to the 1870s, of California’s laws regarding the power of minors to contract – laws
that were designed as much to prevent California adults from contracting with minors as they were
to protect minors who entered into contracts.

1 When parties enter into a valid choice of law provision,⁴ California law “reflect[s] a strong
2 policy favoring enforcement of such provisions.” *Nedlloyd Lines B.V. v. Superior Court*, 3 Cal.
3 4th 459, 464-65 (1992). When the contracting parties elect a state’s law to govern the contract, the
4 Court must apply that law unless either:

5 (a) [T]he chosen state has no substantial relationship to the parties or
6 the transaction and there is no other reasonable basis for the parties’
7 choice, or (b) application of the law of the chosen state would be
8 contrary to a fundamental public policy of a state which has a
materially greater interest than the chosen state in the determination
of the particular issue and . . . would be the state of the applicable
law in the absence of an effective choice of law by the parties.

9 *Id.* (citing Restatement (Second) Conflicts of Laws § 187, subd. 2).

10 Here, California clearly has a substantial relationship to the transaction between the parties,
11 as Defendant is located here. Further, though Defendant points in its supplemental briefing to
12 several states that more strictly limit the manner in which minors can disaffirm contracts,
13 including Minnesota and Arizona, it fails to articulate how application of California law would run
14 contrary to those states’ fundamental public policies, how any of those states have a materially
15 greater interest than California in determination of this suit, or how those state laws would govern
16 the dispute absent the parties’ choice of California law. Thus, the Court concludes that Family
17 Code sections 6701(c) and 6710 apply to all minors in the proposed class, not just those minors
18 who reside in California.

19 2. **Standing**

20 Defendant argues that I.B. and J.W. lack standing to pursue claims for injunctive relief
21 because both Plaintiffs have stated in interrogatory responses that they “do[] not intend to make
22 any future purchases on Facebook before turning 18 years of age.” Def.’s Opp. at 23 (citing
23 *Somvichian Decl. Exhs. F, J* (responses to Def.’s Inter. No. 14)).

24 Plaintiffs seeking injunctive relief must show a “real and immediate threat of repeated
25

26 ⁴ Defendant’s reliance on *Mazza v. American Honda Motor Co., Inc.*, 666 F.3d 581 (9th Cir.
27 2012), is inapposite because the choice of law provision in the SRR is valid. *Mazza* states that, in
28 the absence of a valid choice of law provision, California law cannot be used on a classwide basis
if “the interests of other states are not found to outweigh California’s interest in having its law
applied.” *Id.* at 590.

1 injury . . . [and] a sufficient likelihood that [they] will be wronged again in a similar way.” *Ervine*
 2 *v. Desert View Reg’l Med. Cntr. Holdings, LLC*, 753 F.3d 862, 867-68 (9th Cir. 2014). The named
 3 Plaintiffs state in evidence submitted with their Reply that they both would again make purchases
 4 through Facebook *if* Defendant’s alleged unlawful practices are corrected through the relief
 5 sought. *See* Parker Supp. Decl. Exh. ZZ at ¶ 5 (“Once Facebook complies with the law, I intend to
 6 make further purchases through Facebook before I turn 18. . . . I answered [the deposition
 7 questions and interrogatories] based on the assumption that the questions referred to making
 8 further purchases while Facebook is in violation of the law.”); *see also id.* Exh. AAA at ¶ 5.⁵
 9 Though these new statements in Plaintiffs’ Reply evidence could be construed as running counter
 10 to Plaintiffs’ previous interrogatory responses, in which the named Plaintiffs stated that they did
 11 “not intend to make any future purchases on Facebook before” turning 18, *see* Somvichian Decl.
 12 Exhs. F, J, the named Plaintiffs’ explanations are persuasive given the context of the interrogatory
 13 in question. Defendant’s interrogatories to I.B. and J.W. both asked the following:

14 State whether (1) YOU intend to make any future purchases through
 15 the FACEBOOK website or on any FACEBOOK mobile
 16 application, prior to reaching the age of majority (18 years) and (2)
 whether YOU contend that any such future purchases would be void
 or voidable.

17 *See id.* Exh. F at 10; *see also id.* Exh. J at 9 (same question).

18 Because the second portion of this interrogatory asked I.B. and J.W. whether any purchase
 19 they made would be void or voidable, it is reasonable to believe their later testimony, which
 20 explains that they believed Defendant was asking them about purchases made under Facebook’s
 21 *current* policy, which the named Plaintiffs are challenging as failing to recognize that such
 22 contracts are void or voidable.

23 Defendant relies in part on *Schulken v. Washington Mutual Bank*, in which the court found
 24

25 ⁵ Defendant moves to strike these declarations, along with exhibits BBB and CCC to the Parker
 Supplemental Declaration, contending they are “new” evidence submitted with the Reply Brief.
 26 *See* ECF 117 (citing Civil L.R. 7-3(c)). Plaintiffs are correct, however, that the Court can consider
 the supplemental declaration provided in the Reply when the Defendant has been given the
 27 opportunity to respond to the new evidence. *See Armstrong v. Brown*, 857 F. Supp. 2d 919, 931
 (N.D. Cal. 2012). Defendant had the opportunity to respond to this evidence at the motion hearing,
 28 *see* Hearing Transcript, ECF 123 at 33, and declined the Court’s offer to further depose the two
 named Plaintiffs. As such, the Court DENIES Defendant’s motion to strike.

1 that the named plaintiffs lacked standing to bring suit regarding unfair lending policies on home
 2 equity lines of credit (or HELOCs) because the plaintiffs no longer had a HELOC with the bank
 3 being sued, Chase. *See* 2012 WL 28099, at *5 (N.D. Cal. Jan. 5, 2012). The court found
 4 unpersuasive the plaintiffs’ argument that they “plan[ned] to return to Chase as HELOC
 5 customers” because “[t]he likelihood that [plaintiffs] will obtain another Chase HELOC is highly
 6 speculative at best.” *See id.* Here, in contrast, the named Plaintiffs point to definitive testimony
 7 that they would attempt to make future purchases over Facebook if Facebook changed its policy.
 8 The named Plaintiffs have therefore shown a real threat of future injury, and therefore have
 9 standing to bring suit for injunctive relief. *See, e.g., Ervine*, 753 F.3d at 867.

10 3. Claims Remaining Following Judge Wilken’s Dismissal Orders

11 The parties dispute what claims have survived Judge Wilken’s prior orders on the motions
 12 to dismiss, and whether the TAC and Plaintiffs’ briefing permits Plaintiffs to assert certain claims.
 13 *See, e.g.,* ECF 123 at 34-36. Defendant contends that the only claims that have survived the
 14 motions to dismiss are circumstances where the minor used another person’s money without the
 15 person’s consent, and now seeks to void or disaffirm that contract. Plaintiffs insisted at oral
 16 argument, however, that they were seeking also to assert claims for disaffirmance when any minor
 17 made a purchase over his or her Facebook profile—even when the purchase was not made using
 18 another person’s money without consent—and that such claims would fall within the Minor
 19 Purchasing Subclass. *See id.* at 35; *see also* Mot. at 17.⁶

20 After reviewing Judge Wilken’s dismissal orders, the Court finds that neither order
 21 expressly limits Plaintiffs’ claims to those circumstances where the minor used parental funds
 22 without the parent’s consent. Rather, the dismissal orders discussed the minors’ legal right to
 23 “disaffirm their purchases of Facebook Credits.” *See* ECF 44 at 23; *see also id.* at 39 (denying the
 24 first motion to dismiss with regard to “declaratory relief claims brought by the minor Plaintiffs to
 25 disaffirm their contracts pursuant to California Family Code section 6701(c) and 6710”). Plaintiffs

26
 27 ⁶ As these purchases by their very nature would not implicate the use of money outside of the
 28 minor’s control, they could only be brought pursuant to Section 6710 and cannot be asserted under
 Section 6701(c).

1 may proceed on both claims.

2 Having made these initial determinations, the Court now turns to whether the named
3 Plaintiffs can certify a nationwide class of minors to bring suit to void or disaffirm contracts
4 pursuant to California Family Code Sections 6701(c) and 6710.

5 **B. Class Certification**

6 Plaintiffs seek certification of the following class and subclass under Family Code Sections
7 6701(c) and 6710,⁷ pursuant to Rule 23(b)(2):

8 All Facebook users who are or were minor children according to
9 Facebook's own records for the four years preceding the date on
10 which the original complaint was filed through the date on which a
11 class is certified ("the Minor Class"). Within the Minor Class is a
subclass of Minors from whose Facebook accounts Facebook
Credits were purchased. ("the Minor Purchasing Subclass").

12 TAC ¶ 36. On behalf of the class, named Plaintiffs assert claims for injunctive and declaratory
13 relief, as well as restitution for class members whose contracts are voided or disaffirmed. *See, e.g.,*
14 Mot. at 17 ("Certification of Plaintiffs' claim for restitution is also appropriate under Rule 23(b)(2)
15 because the amount to be paid for each class member is ascertainable formulaically without fact
16 finding by the Court.").

17 Class certification requires the Court engage in a two-step analysis. Initially, four
18 requirements of Rule 23(a) must be established: "(1) numerosity, (2) common questions of law or
19 fact, (3) typicality, and (4) adequate representation." *DuFour v. BE LLC*, 291 F.R.D. 413, 417
20 (N.D. Cal. 2013); *see also Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 974 (9th Cir. 2011)
21 (stating that a court must engage in a "rigorous analysis" in determining whether Rule 23(a)'s
22 requirements have been met). After plaintiffs satisfy the four elements of Rule 23(a), they must
23 also satisfy at least one of Rule 23(b)'s provisions. *See Stearns v. Ticketmaster Corp.*, 655 F.3d
24 1013, 1019 (9th Cir. 2011); *see also Herskowitz v. Apple, Inc.*, 301 F.R.D 460, 468 (N.D. Cal.

25

26 _____
27 ⁷ Defendant contended at the motion hearing that this Court would be the first to certify a class
28 under either of these Family Code statutes. *See* Hearing Transcript, ECF 123 at 30. This is not,
however, a persuasive reason to deny certifying a class seeking redress under these statutes when
the requirements of Rule 23 have otherwise been met.

1 2014) (stating that Rule 23(b)(2) must be “satisfied through evidentiary proof”). Here, Plaintiffs
 2 invoke Rule 23(b)(2), expressly stating in their motion for class certification and at oral argument
 3 that they were not seeking to certify a class pursuant to Rule 23(b)(3).⁸ Thus, all of Plaintiffs
 4 claims, including their restitution claims, are analyzed under Rule 23(b)(2). In reviewing the
 5 motion, the Court is mindful that although claims for monetary damages may be certified under
 6 Rule 23(b)(2), such certification is proper only where the monetary relief is “incidental to the
 7 primary claim for injunctive relief.” *Zinser*, 253 F.3d 1180, 1195; *see also Dukes*, 131 S. Ct. 2541,
 8 2557 (“[We previously] expressed serious doubt about whether claims for monetary relief may be
 9 certified under [Rule 23(b)(2)]. We now hold that they may not, at least where (as here) the
 10 monetary relief is not incidental to the injunctive or declaratory relief.”).

11 Much of Defendant’s opposition to class certification focuses on Plaintiffs’ claims for
 12 restitution and monetary relief. *See* Def.’s Opp. at 8-21. Because the Court finds in Part III.B.2
 13 below that Plaintiffs’ restitution claims, which focus on class members being refunded the amount
 14 of money spent on any transaction voided or disaffirmed, *see, e.g.*, TAC at p. 20, are neither
 15 ascertainable formulaically nor incidental to the declaratory or injunctive relief sought, and thus
 16 cannot be certified under Rule 23(b)(2) after *Dukes*, the Court focuses its Rule 23(a) analysis on
 17 Plaintiffs’ claims for injunctive and declaratory relief.

18
 19
 20
 21 ⁸ At oral argument, Plaintiffs’ counsel seemingly disavowed any claims under Rule 23(b)(3),
 22 which permits certification only if “the court finds that the questions of law or fact common to
 23 class members predominate over any questions affecting only individual members, and that a class
 24 action is superior to other available methods for fairly and efficiently adjudicating the
 controversy,” stating in response to a question posed by the Court that “we are seeking 23(b)(2)
 certification and we are not seeking damages at this point.” ECF 123 at 6:22-24.

25 Defendant contends that Plaintiffs’ claims for classwide restitution must satisfy Rule 23(b)(3)’s
 26 requirements, and argues that Plaintiffs cannot do so because a class action would not serve as a
 “superior method of adjudicating” the claims of the individual members. *See* Def.’s Opp. at 21-22.
 27 Defendant is correct that Plaintiffs have made no effort to satisfy the requirements of Rule
 23(b)(3), including predominance and superiority. *See, e.g., Amchem Prods., Inc. v. Windsor*, 521
 28 U.S. 591, 615 (1997). As discussed below, the Court finds that absent a showing under Rule
 23(b)(3), Plaintiffs’ restitution claims are not amenable to class certification.

1 **1. Rule 23(a)**

2 a. *Ascertainability/Definiteness*

3 Though not one of the explicit requirements of Rule 23(a), courts recognize that “the class
4 sought to be represented must be adequately defined and clearly ascertainable.” *Vietnam Veterans*
5 *of Am. v. C.I.A.*, 288 F.R.D. 192, 211 (N.D. Cal. 2012) (“A class definition is sufficient if the
6 description of the class is definite enough so that it is administratively feasible for the court to
7 ascertain whether an individual is a member.”). The class definition must be “clear in its
8 applicability so that it will be clear later on whose rights are merged into the judgment, that is,
9 who gets the benefit of any relief and who gets the burden of any loss.” *Xavier v. Philip Morris*
10 *USA Inc.*, 787 F. Supp. 2d 1075, 1089 (N.D. Cal. 2011). Defendant contends that the class and
11 subclass are both impermissibly overbroad because they “sweep into the litigation minors with no
12 right of recovery under the Family Code.” Def.’s Opp. at 15.

13 In determining whether a class definition is overbroad, the appropriate inquiry is whether
14 the description of the class (or subclass) is “definite enough so that it is administratively feasible
15 for the court to ascertain whether an individual is a member.” *Vietnam Veterans*, 288 F.R.D. 192,
16 211 (N.D. Cal. 2012) (citing *O’Connor v. Boeing N. Am., Inc.*, 184 F.R.D. 311, 319 (C.D. Cal.
17 1998)). “When rejecting class certification based on overbreadth . . . the problem lies in the court’s
18 ability to ascertain the class, not whether the putative class members have each been aggrieved.”
19 *Kurihara v. Best Buy Co., Inc.*, 2007 WL 2501698, at *5 (N.D. Cal. Aug. 30, 2007).

20 Here, both the class and subclass, as defined, are readily ascertainable by the Court: the
21 first includes all minors who used Facebook during a certain time period, according to Facebook’s
22 own records; the second includes all minors during that same time period who purchased
23 Facebook Credits through their accounts, again utilizing Facebook’s records. Though Facebook
24 claims that it cannot determine whether or not the minor had consent to make a given purchase,
25 *see* Def.’s Opp. at 13, it does not contend that it cannot ascertain, through its records, whether a
26 purchase was made from the minor’s account, or whether an account was registered to a minor at
27 the time the purchase was made. As such, the class is not overbroad such that it is unascertainable.
28

1 *b. Numerosity*

2 Under Rule 23(a)(1), a class must be “so numerous that joinder of all members is
3 impracticable.” Courts have repeatedly held that classes comprised of “more than forty” members
4 presumptively satisfy the numerosity requirement. *See, e.g., DuFour v. BE LLC*, 291 F.R.D. 413,
5 417 (N.D. Cal. 2013).

6 Here there can be no real dispute over Plaintiffs’ satisfaction of the numerosity
7 requirement, and Defendant does not challenge the purported class on numerosity grounds.
8 Plaintiffs’ class would include all Facebook users who are minors, according to Facebook’s own
9 records, which likely number in the millions. Further, Plaintiffs point to Defendant’s discovery
10 responses, which show that during one three-month period, from October 12, 2010 through
11 January 12, 2011, over 87,400 minor users made purchases through the use of Facebook Credits,
12 *see Parker Decl. Exh. G at 2*, making the proposed subclass similarly sufficiently numerous.

13 *c. Commonality*

14 Rule 23(a)(2) demands that “there are questions of law or fact common to the class.” The
15 Supreme Court has stated that the mere raising of common questions by plaintiffs is insufficient
16 for purposes of class certification, and instead that the “common contention [] must be of such a
17 nature that it is capable of classwide resolution.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541,
18 2551 (2011) (citing Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84
19 N.Y.U. L. Rev. 97, 131-32 (2009) (“What matters to class certification . . . is not the raising of
20 common ‘questions’ – even in droves – but, rather, the capacity of a classwide proceeding to
21 generate common *answers* apt to drive the resolution of the litigation.”) (emphasis in original)).

22 Defendant argues that Plaintiffs’ proposed injunctive relief fails to address a common
23 injury suffered by the class as a whole, *see id.* at 23,⁹ contending that the proposed injunctive relief

24 _____
25 ⁹ Defendant also argues that Plaintiffs cannot show commonality because Plaintiffs’ restitution
26 claims would require the Court to make “individualized assessments of the equitable
27 circumstances relevant to each transaction” in order to determine both whether an individual is
28 entitled to monetary relief and the amount of monetary relief to which he or she is entitled. Def.’s
Opp. at 15-16. Because the Court finds below that Plaintiffs’ restitution claims cannot be certified
as a class pursuant to Rule 23(b)(2), this argument is not relevant to the question of commonality
regarding whether injunctive or declaratory relief is appropriate to the class as a whole. The Court
must determine whether certain contracts between minors and Facebook are void or voidable

1 is “aimed exclusively at users who are currently minors” and would be “pointless” for those class
2 members who are now adults. *See* Def.’s Opp. at 24. It further claims the injunctive relief “does
3 not even provide a broadly applicable benefit for class members who are still minors” because it
4 would force Facebook to obtain informed consent from the parents of Facebook users who are
5 minors. *See id.* These arguments are unpersuasive, for several reasons.

6 First, Plaintiffs’ proposed injunctive relief would not necessarily benefit only minors. If
7 certain contracts are found void under 6701(c), the contracts would be rendered a nullity
8 regardless of whether the minor has since reached the age of majority. *See, e.g., Burnand v.*
9 *Irigoyen*, 30 Cal. 2d 861, 865 (1947) (“A contract relating to . . . personal property not in his
10 immediate possession or control, entered into by a minor under 18 years is void and requires no
11 act of disaffirmance.”). Further, section 6710 permits disaffirmance by “the minor before majority
12 *or within a reasonable time afterwards.*” Cal. Fam. Code § 6710 (emphasis added). This
13 necessarily contemplates the ability to disaffirm contracts by individuals who have reached the age
14 of majority, and Defendant makes no argument that certain members of the class will be *per se*
15 precluded from seeking to disaffirm because too much time has elapsed since reaching majority
16 that they failed to disaffirm within a reasonable time.

17 Additionally, Defendant misstates Plaintiffs’ argument regarding obtaining informed
18 consent by the purchaser. In their brief in support of class certification, Plaintiffs outline possible
19 orders the Court could render that would provide relief to the class, *see* Mot. at 17-18, including
20 “to allow a sale to a minor user only upon the manifestation of express and informed consent by
21 the payment-vehicle owner.” *Id.* at 17. Defendant claims that this would serve no purpose for
22 those minors who “already comply with Facebook’s terms by getting permission to use their
23 parents’ funds . . . [or] who make purchases using their own funds.” Def.’s Opp. at 24.

24 But a case relied on by Defendant, *Cholakyan v. Mercedes-Benz, USA*, is instructive. In
25 *Cholakyan*, plaintiffs sought to certify a class under Rule 23(b)(2) for violations of California’s
26 consumer protection statutes regarding purchases of defendant’s vehicles. *See* 281 F.R.D. 534,

27
28 under the relevant Family Code sections. This does not require the Court to make equitable
determinations about individual transactions.

1 558-60 (C.D. Cal. 2012). The proposed class, however, included former owners and lessees of
2 vehicles who could not benefit from the relief sought. The court therefore denied certification
3 under Rule 23(b)(2), finding that “none of the remedies Cholakyan seeks will result in classwide
4 relief. Plaintiff cannot seek certification under Rule 23(b)(2) by combining an array of remedies,
5 some of which will benefit only certain subsets of the class . . . Rule 23(b)(2) demands that
6 plaintiff seek ‘an indivisible injunction benefiting all its members at once.’” *Id.* at 559.

7 Defendant extrapolates the court’s holding in *Cholakyan* to the present case, where the
8 class undoubtedly now includes some Facebook users who have reached the age of majority. But
9 the injunctive and declaratory relief sought by Plaintiffs in this case – to conform Facebook’s
10 practices of transacting with minors to the relevant California laws – could still provide benefits to
11 all class members, because the proposed class includes individuals who made purchases over
12 Facebook while a minor, not just those who made purchases over Facebook and are still minors.
13 See TAC ¶ 36. This is because such conformance would permit disaffirmance, or void the
14 contracts, by individuals who are now minors *and* by individuals who were minors and now have
15 reached majority. This is therefore not a case where the class definition expressly includes
16 individuals who could undoubtedly receive no benefit from the relief sought.

17 Plaintiffs raise common questions which lend themselves to resolution through common
18 answers, and the injunctive and declaratory relief sought by Plaintiffs could benefit the class as a
19 whole, including those who have reached the age of majority but transacted with Facebook whilst
20 minors. Plaintiffs have thus met the commonality requirement of Rule 23(a).

21 *d. Typicality*

22 A class representative must have claims that are “typical of the claims” of the other
23 members of the class, in order to ensure that “the named plaintiffs’ claim and the class claims are
24 so interrelated that the interests of the class members will be fairly and adequately protected in
25 their absence.” *Gen. Tel. Co. Sw. v. Falcon*, 457 U.S. 147, 158 n.13 (1982) (citing Rule 23(a)(3)).
26 Typicality is “directed to ensuring that plaintiffs are proper parties to proceed with the suit.” *Reis*
27 *v. Arizona Beverages USA*, 287 F.R.D. 523, 539 (N.D. Cal. 2012). The standard for determining
28 typicality, however, is a permissive one, *see id.*, and asks only whether the claims of the class

1 representatives are “reasonably co-extensive with those of absent class members; they need not be
2 substantially identical.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998).

3 Defendant contends that the named Plaintiffs’ demands conflict with the interests of the
4 class because “they seek injunctive relief that many class members would undoubtedly find
5 objectionable.” Def.’s Opp. at 29. Defendant argues that I.B. and J.W. seek relief that would
6 “demand that Facebook cease selling Facebook Credits or similar virtual currency to accounts that
7 belong to minors.” *Id.* (citing TAC at p. 20). Defendant points to an expert report by Adrian
8 Crook, a “game design consultant” who has “produced and designed over three dozen products
9 across a variety of platforms,” Somvichian Decl. Exh. P at ¶ 4, which states that “millions of
10 users, including minors, make in-app purchases to enhance their game play,” *id.* at ¶ 42, and thus
11 that “many minors in the proposed class would likely object to the demand” that Facebook stop
12 selling in-app purchases to accounts held by minors. *Id.* at ¶ 43.

13 Plaintiffs argue in response that the goal of their proposed injunctive relief is for Defendant
14 to amend its practices to conform to California law, and that Defendant wholly ignores the second
15 part of the injunctive relief sought: “An injunction that either requires Facebook to either (sic)
16 cease selling Facebook Credits or similar virtual currency to minors *or substantially change its*
17 *practices regarding Facebook Credit Transactions with minors, and to otherwise conform its*
18 *practices with California . . . law.*” See Reply at 11 (citing TAC at p. 20) (emphasis in original).
19 Plaintiffs contend that the crux of their suit is “focused on requiring a change in Facebook’s
20 practices” to conform their refund policy to California law, not ending sales to minors. *Id.* at 12.

21 The Court finds Plaintiffs’ argument persuasive. I.B. and J.W. have stated that they intend
22 to make future purchases if Facebook conforms its policy to the law – indicating that their desired
23 outcome would be for Facebook to change its practices rather than cease engaging in transactions
24 with minors. See Parker Supp. Decl. Exhs. ZZ at ¶ 5, AAA at ¶ 5. The named Plaintiffs contend
25 that they are harmed by Defendant’s refusal through its refund policy to recognize that contracts
26 with minors are void or voidable under certain circumstances, harms that are typical to the class as
27 a whole. In *Mayfield v. Dalton* and *Valley Drug Co. v. General Pharmaceuticals*, both cited by
28 Defendant, courts denied class certification on grounds of typicality because Plaintiffs sought to

1 represent a class that included many members who approved of the conduct at issue and
 2 undoubtedly wished it to continue. *See Mayfield*, 109 F.3d 1423, 1426-27 (9th Cir. 1997); *Valley*
 3 *Drug*, 350 F.3d 1181, 1189-90 (11th Cir. 2003). Here, in contrast, injunctive or declaratory relief
 4 that demands Facebook comply with the Family Code to permit minors to disaffirm their contracts
 5 would not adversely impact those minors who do not wish to disaffirm their contracts and are
 6 happy to continue engaging in monetary transactions through Facebook. Though this relief, as
 7 Plaintiffs argue, could render contracts void when a minor used money outside of his or her
 8 control, and though some minors undoubtedly may wish to continue making purchases through
 9 credit or debit cards they do not have permission to use, such a desire cannot prevent the named
 10 Plaintiffs from bringing suit to demand that Facebook’s policies comply with the law.

11 The Court finds that I.B. and J.W.’s claims are reasonably co-extensive with the claims of
 12 the non-named class members, and that they have satisfied Rule 23(a)’s typicality requirement.

13 *e. Adequacy*

14 The final requirement of Rule 23(a) is that the named Plaintiffs “fairly and adequately
 15 protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). The adequacy inquiry requires the
 16 Court to make two determinations: (1) whether the named plaintiffs and class counsel have any
 17 conflicts of interest with other class members;¹⁰ and (2) whether counsel and the class
 18 representatives will “vigorously prosecute the action on behalf of the class.” *Reis*, 287 F.R.D. 523,
 19 540 (citing *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011)). The Court has an
 20 obligation to “ensure that the litigation is brought by a named Plaintiff who understands and
 21 controls the major decisions of the case.” *Sanchez v. Wal-Mart Stores, Inc.*, 2009 WL 1514435, at
 22 *3 (E.D. Cal. May 28, 2009).

23
 24 _____
 25 ¹⁰ Defendant’s argument regarding the conflict between the named Plaintiffs’ proposed injunctive
 26 relief and the desires of the non-named class members was framed as one of both typicality and
 27 adequacy. *See* Def.’s Opp. at 29 (“Plaintiffs are inadequate and atypical because they seek
 28 injunctive relief that many class members would undoubtedly find objectionable.”). The Court
 finds, for the same reasons articulated above, that the relief sought by the named Plaintiffs does
 not conflict with the interests of other class members, because, for example, an injunction that
 demands Facebook’s compliance with the Family Code would *permit* minors to disaffirm certain
 contracts with Facebook, but would not demand they do so. *See* Cal. Fam. Code § 6710.

1 Defendant calls into question the adequacy of both named Plaintiffs and their guardians ad
2 litem, contending that they lack a basic understanding of the litigation that would permit them to
3 exercise oversight over class counsel. *See* Def.’s Opp. at 27 (“Plaintiffs are ill-equipped to meet
4 these fundamental obligations of class representatives, given their near total ignorance of the most
5 basic aspects of the case. . . . Worse, Plaintiffs’ parents—who bear legal responsibility as
6 guardians ad litem to help Plaintiffs supervise this litigation—appear to know little more about
7 this case than their children.”).

8 “A party who is not familiar with the basic elements of its claim is not considered to be an
9 adequate representative for the class because there is no sense that there is an actual party behind
10 counsel’s prosecution of the action.” *Burkhalter Travel Agency v. MacFarms Int’l, Inc.*, 141
11 F.R.D. 144, 153 (N.D. Cal. 1991). However, courts in this district have held that “[t]he threshold
12 of knowledge required to qualify a class representative is low,” *Moeller v. Taco Bell Corp.*, 220
13 F.R.D. 604, 611 (N.D. Cal. 2004), and that “it is enough that the representative understand the
14 gravamen of the claim.” *Id.* (citing *In re Worlds of Wonder Securities Litig.*, 1990 WL 61951 at *3
15 (N.D. Cal. Mar. 23, 1990)). Here, the depositions of both I.B. and J.W. show that they are minors
16 who have been kept abreast of the litigation by their parents and guardians ad litem, *see, e.g.*,
17 Parker Supp. Decl. Exh. UU at 16:8-17:3, and that they understand that the gravamen of the class
18 action is to seek redress for minors who have made purchases over Facebook, *see, e.g.*, Parker
19 Supp. Decl. Exh. VV at 72:17-73:23. This, coupled with the demonstrated knowledge of Glynnis
20 Bohannon, I.B.’s guardian ad litem, and Steven Wright, J.W.’s guardian ad litem, of the nature of
21 the litigation, is more than sufficient to show that the named Plaintiffs will be adequate
22 representatives. *See* Parker Supp. Decl. Exh. WW at 99:4-109:25 (Steven Wright’s deposition
23 testimony, stating that he knows this is a class action, has discussed the claims of the class action
24 with his son, and acknowledging that the role of the class representative is to “speak[] on behalf of
25 others that are in a situation like ours”); *see also* Parker Supp. Decl. Exh. YY at 43:4-50:25
26 (Glynnis Bohannon’s deposition testimony, stating that she discussed the action with her son,
27 sought to bring an action on behalf of others who had similar experiences with Facebook, and
28 knows that her son, as class representative, “would have to participate [in the litigation], see it

1 through to the end, and look out for the group as a whole, not just individually”).

2 The named Plaintiffs and their guardians ad litem therefore have the requisite knowledge
3 of the case necessary to adequately serve as class representatives pursuant to Rule 23(a)(4), and
4 have therefore made the necessary showing for all four elements of Rule 23(a).

5 **2. Rule 23(b)(2)**

6 Rule 23(b)(2) demands a court find that “the party opposing the class has acted or refused
7 to act on grounds that apply generally to the class, so that final injunctive relief or corresponding
8 declaratory relief is appropriate respective the class as a whole.” Fed. R. Civ. P. 23(b)(2).

9 Certification under Rule 23(b)(2) is appropriate where the “primary relief sought is declaratory or
10 injunctive.” *Ellis*, 657 F.3d 970, 986 (citing *Zinser v. Accufix Res. Inst., Inc.*, 253 F.3d 1180, 1195
11 (9th Cir. 2001)). Certification under Rule 23(b)(2) “does not require [the Court] to examine the
12 viability or bases of class members’ claims for declaratory and injunctive relief, but only to look at
13 whether class members seek uniform relief from a practice applicable to all of them.” *Rodriguez v.*
14 *Hayes*, 591 F.3d 1105, 1125 (9th Cir. 2009) (“It is sufficient . . . that class members complain of a
15 pattern or practice that is generally applicable to the class as a whole.”).

16 *a. Injunctive and Declaratory Relief Claims*

17 Plaintiffs’ injunctive and declaratory relief claims readily meet the requirements of Rule
18 23(b)(2). Plaintiffs contend that Facebook has acted on grounds that apply generally to the class –
19 refusing to refund purchases that are void or voidable under California law. They point to
20 Facebook’s Customer Assistance Policy (“CAP”), which includes no language setting forth a
21 policy for refunding void or voidable purchases made by minors. *See, e.g.*, Parker Decl. Exh. E.
22 Specifically, the CAP outlines a number of criteria for determining whether a refund would be
23 issued, none of which includes the age of the purchaser, and which explicitly states that “refunds
24 shall be issued on a case-by-case basis.” *See id.* at FB-IB-99. Further, Defendant has testified that
25 minors aged 13 to 17 were treated the same as adults for purposes of Facebook’s refund policy in
26 2012. *See* Parker Decl. Exh. D at 32:4-33:14; *see also* Hearing Transcript, ECF 123 at 18.

27 Defendant claims that Plaintiffs cannot point to any minor who was misled or confused by
28 the statement that “all sales are final,” *see* Def.’s Opp. at 25, but this obscures the relevant inquiry:

1 the minors’ contention that they are prevented from exercising their rights under California law to
2 void or disaffirm certain contracts, and that Facebook’s refusal to act in conformance with this
3 policy causes harm. That minors may not have been confused by the statement that “all sales are
4 final” is irrelevant to the question of whether Facebook *acted* on grounds that apply to the class as
5 a whole through a policy that issues refunds on a case-by-case basis and has not permitted minors
6 to void or disaffirm certain contracts pursuant to the laws of California.

7 Finally, Defendant argues that Plaintiffs’ injunctive and declaratory relief claims are
8 actually disguised claims for monetary relief, and thus inappropriate for certification under Rule
9 23(b)(2). *See, e.g.*, Def.’s Opp. at 26. Facebook argues that it currently has policies and procedures
10 for refunding “unauthorized purchases by minors,” and that “[i]f Plaintiffs are demanding that
11 Facebook apply a new policy that permits minors to receive a refund for all transactions in all
12 circumstances—simply because they are minors—that purported ‘injunctive’ demand is simply a
13 repackaging of Plaintiffs’ monetary claims and cannot be certified under (b)(2).” *Id.* Defendant is
14 incorrect. First, Plaintiffs have not requested that minors receive refunds for all transactions in all
15 circumstances. *See generally* TAC. Second, Defendant’s policy regarding “unauthorized”
16 transactions does not solve the entirety of the purported problem outlined by Plaintiffs, as a policy
17 that permits refunds of unauthorized purchases by minors does not address their disaffirmance
18 claims for purchases made under Section 6710. Third, the fact that the injunctive or declaratory
19 relief sought could result in Facebook crafting a new policy that permits minors to void or
20 disaffirm certain contracts, a remedy that would likely result in refunds from Facebook to those
21 minors, does not defeat certification of the injunctive or declaratory relief remedy. *Cf., e.g., In re*
22 *Flash Memory Antitrust Litig.*, 2011 WL 1301527, at *7 (N.D. Cal. Mar. 31, 2011) (denying
23 certification under Rule 23(b)(2) because “[t]his is not a straightforward case in which a *single*
24 *entity* overcharged for a particular product purchase *by a homogenous group of consumers*”)
25 (emphasis added).

26 *b. Restitution Claims*

27 In addition to declaratory and injunctive relief, Plaintiffs seek certification of claims for
28 restitution, *see* TAC at p. 20, which would involve refunding the money spent by any class

1 member who made a transaction over Facebook if that transaction was ultimately found to be void
2 or voidable. Defendant contends throughout its briefing that Plaintiffs' restitution claims cannot be
3 certified pursuant to Rule 23(b)(2) after the Supreme Court's decision in *Dukes*, which held that
4 claims for monetary relief cannot be certified under Rule 23(b)(2) when "the monetary relief is not
5 incidental to the injunctive or declaratory relief." *Dukes* at 2557. In their Reply brief, Plaintiffs ask
6 the Court to "certify the class for determination of liability . . . and defer for later consideration
7 whether restitution can be determined on a class-wide basis," contending that individualized
8 determinations may not be necessary for the restitution claims, and further arguing that a claims
9 process or special master could be utilized to assess individual claims. *See* Reply at 15.

10 The Court, however, agrees with Defendant that Plaintiffs' restitution claims cannot be
11 certified pursuant to Rule 23(b)(2). First, Plaintiffs have not shown how the monetary relief sought
12 would be incidental to the injunctive or declaratory relief. Myriad claims for restitution, even if the
13 monetary amounts sought were relatively small, would overwhelm the claims for injunctive or
14 declaratory relief. *See Reis*, 287 F.R.D. at 541 ("[A]though the monetary amount sought may be
15 small per class member, in the aggregate they can hardly be said to be incidental to the injunctive
16 relief sought."). Second, the amount of monetary damages due each class member, if any, would
17 be dependent on the individual circumstances of each class member, and thus cannot be
18 determined formulaically. *Dukes* therefore precludes these restitution claims from being certified
19 under (b)(2). *See Dukes* at 2557; *see also Reis* at 541-42.

20 In *Reis*, the court contemplated a similar situation as the undersigned faces here: plaintiffs
21 sought to certify a class for injunctive and declaratory relief, as well as restitution and monetary
22 damages, in a consumer class action challenging the labeling of certain Arizona Beverages
23 products as "All Natural." The court there held that though the monetary relief sought could not be
24 certified under Rule 23(b)(2), the case "exemplifie[d] the kind of action the may be appropriate for
25 certification under Rule 23(b)(2), at least insofar as plaintiffs request [] declaratory relief that the
26 alleged practices are unlawful, and [] injunctive relief prohibiting defendants from continuing
27 them." *Reis* at 541. The named Plaintiffs here seek similar remedies as did the plaintiffs in *Reis*:
28 declaratory relief that Facebook's practices are unlawful, an injunction requiring Facebook to

1 change its practices regarding transactions with minors, and restitution. *See* TAC at p. 20. Like in
2 *Reis*, this Court denies certification of Plaintiffs’ restitution claims, but that denial does not
3 preclude it from granting certification of Plaintiffs’ injunctive and declaratory relief claims.

4 **IV. ORDER**


5 For the foregoing reasons, the Court GRANTS Plaintiffs motion to certify the following
6 class and subclass for claims for declaratory and injunctive relief under Rule 23(b)(2):

7 All Facebook users who are or were minor children according to
8 Facebook’s own records for the four years preceding the date on
9 which the original complaint was filed through the date on which a
10 class is certified (“the Minor Class”). Within the Minor Class is a
subclass of Minors from whose Facebook accounts Facebook
Credits were purchased. (“the Minor Purchasing Subclass”).

11 Plaintiffs’ motion to certify this same class and subclass for restitution or other monetary
12 relief under Rule 23(b)(2) is DENIED, without prejudice. Inasmuch as Plaintiffs seek to certify
13 this class and subclass under Rule 23(b)(3), that motion is also DENIED, without prejudice.

14 **IT IS SO ORDERED.**

15 Dated: March 10, 2015

16 
17 BETH LABSON FREEMAN
18 United States District Judge

United States District Court
Northern District of California

19
20
21
22
23
24
25
26
27
28