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15 **UNITED STATES DISTRICT COURT**

16 **NORTHERN DISTRICT OF CALIFORNIA**

17 JOSHUA IRON WING and RYAN
18 MCGRATH, individually and on behalf of
all others similarly situated,

19 Plaintiffs,

20 v.

21 FACEBOOK, INC., a Delaware
22 corporation,

23 Defendant.

Case No.

CLASS ACTION COMPLAINT

CLASS ACTION

JURY TRIAL DEMANDED

Case No.

CLASS ACTION COMPLAINT

1 Plaintiffs Joshua Iron Wing and Ryan McGrath (“Plaintiffs”), on behalf of themselves
 2 and all others similarly situated, upon personal knowledge as to facts pertaining to themselves
 3 and on information and belief as to all other matters, by and through undersigned counsel,
 4 bring this class action complaint against defendant Facebook, Inc. (“Facebook”).

5 **NATURE OF THE ACTION**

6 1. This class action stems from Facebook’s breach of its duty to protect its users’
 7 private communications and information. Between April 21, 2010, and April 30, 2015 (the
 8 “Relevant Time Period”), Facebook’s social media platform was specifically designed to
 9 facilitate the development of third-party apps capable of harvesting Facebook user data of not
 10 just the app’s user, but also the Facebook data of each of that app user’s Facebook friends (the
 11 “Friends Data Scrape Feature”). This feature allowed third parties to harvest the private
 12 Facebook data of tens (if not hundreds) of millions of Americans without their knowledge or
 13 consent.

14 2. Cambridge Analytica is one of those third parties. In advance of the 2016
 15 election in the United States, Cambridge Analytica hired Aleksandr Kogan, an academic at
 16 Cambridge University, and Kogan’s company, Global Science Research, to procure the data of
 17 “as close to every US Facebook user . . . as possible.”¹ To accomplish that goal, Kogan built a
 18 Facebook app entitled, “thisisyourdigitallife.”

19 3. Between June 2014 and August 2014, approximately 300,000 Facebook users
 20 were induced to download the “thisisyourdigitallife” app, enabling Kogan and Cambridge
 21 Analytica, through use of the Facebook Friends Scrape Feature, to harvest the Facebook
 22 profile data of approximately 70 million Americans. The app users’ Facebook friends were
 23 never notified that their private Facebook profile information was being harvested by a third
 24 party.

25
 26
 27 ¹ Harry Fox Davies, *The Guardian, Ted Cruz using firm that harvested data on millions*
 28 *of unwitting Facebook users* (Dec. 11, 2015) <https://www.theguardian.com/us-news/2015/dec/11/senator-ted-cruz-president-campaign-facebook-user-data> (last visited Mar. 30, 2018).

1 4. Cambridge Analytica is only the most sensational and widely-publicized
2 example of this practice, but there are many more app developers who were similarly able to
3 obtain massive amounts of information without the consent of the owners of the information
4 and without any meaningful oversight by Facebook. This case is about Facebook's data
5 sharing practices with all third-party app developers until changes were imposed in April
6 2015.

7 5. This "breach of trust" by Facebook, as Founder and CEO Mark Zuckerberg has
8 recently described it, was originally designed, sanctioned, and encouraged by Facebook.
9 Indeed, Facebook had reiterated its opinion as recently as 2017 that "no wrongdoing" occurred
10 in the Cambridge Analytica incident. Privacy is the enemy of the goals of Facebook and its
11 pervasive activity here exemplifies that fact.

12 6. During the Relevant Time Period, a Facebook user's profile may have included
13 the user's first and last name, personal messages to friends, gender, birthdate, relationship
14 status, employment history, educational history, interests, activities, games, religion/politics,
15 hometown, location check-in information, a short "about me" description, photographs and
16 videos uploaded by the user, photographs and videos in which the user was tagged in, a list of
17 the user's Facebook friends, communications by the user (wall posts), likes, and other content.

18 7. It is now too late to wind back the clock and undo what has been done.
19 Facebook cannot retrieve, delete, or destroy the data acquired by these third-party apps.
20 According to one forthcoming app developer who had user data foisted upon him by
21 Facebook, "Facebook rammed their data down our throats. On the whole, none of us asked for
22 your data. But we have it anyway, and forever."² The risk in that possession of information,
23 once private, is evident and exists for purchasers of such companies.

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27 _____
28 ² Ian Bogost, *The Atlantic*, *My Cow Game Extracted Your Facebook Data*, (Mar. 22, 2018), <https://www.theatlantic.com/technology/archive/2018/03/my-cow-game-extracted-your-facebook-data/556214/> (last visited Mar. 30, 2018).

1 8. Plaintiffs bring this lawsuit on behalf of themselves and similarly situated
 2 persons whose nonpublic Facebook data, which comprise personal information, personally
 3 identifiable information regarding prerecorded video content, and the contents of electronic
 4 communications, was communicated to a third party using the Friends Data Scrape feature.

5 9. Plaintiffs and the other Class members seek redress against Facebook for its
 6 violations of the Stored Communications Act (the “SCA”), 18 U.S.C. §§ 2701, *et seq.*, the
 7 Electronic Communications Privacy Act (the “ECPA”), 18 U.S.C. §§ 2510, *et seq.*, the Video
 8 Privacy Protection Act (the “VPPA”), 18 U.S.C. §§ 2710, *et seq.*, invasion of privacy,
 9 negligence, and violation of California’s Invasion of Privacy Act, Cal. Penal Code § 637.7,
 10 and Plaintiffs’ and the other Class members’ constitutional rights of privacy.

11 10. Plaintiffs, on behalf of themselves and the other Class members, seek:
 12 (i) actual, nominal, and statutory damages; (ii) disgorgement of Facebook’s profits,
 13 (iii) exemplary and punitive damages for its willful, intentional, and purposeful conduct, and
 14 its conscious disregard for the wellbeing of its users; and (iv) attorneys’ fees, litigation
 15 expenses, and costs.

JURISDICTION AND VENUE

16
 17 11. The Court has subject matter jurisdiction over Plaintiffs’ claims under
 18 28 U.S.C. § 1331, because Plaintiffs’ claims arise out of the laws of the United States. The
 19 Court has supplemental jurisdiction over Plaintiffs’ claims arising out of state law pursuant to
 20 28 U.S.C. § 1367.

21 12. The Court may exercise jurisdiction independently over Plaintiffs’ state law
 22 claims pursuant to 28 U.S.C. § 1332(d), because (a) there are 100 or more Class members,
 23 (b) at least one Class member is a citizen of a state that is diverse from Defendant’s
 24 citizenship, and (c) the matter in controversy exceeds \$5,000,000, exclusive of interest and
 25 costs.

26 13. The Court has personal jurisdiction over Facebook because Facebook maintains
 27 its principal place of business within the State of California.
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1 14. Venue is proper in this District under 28 U.S.C. § 1391, because a substantial
2 part of the events and omissions giving rise to Plaintiffs' claims emanated from activities
3 within this District and Facebook conducts substantial business in this District.

4 **PARTIES**

5 15. Plaintiff Joshua Iron Wing is a citizen of the State of Kansas. He has been a
6 Facebook user since before April 2010. He lived in Florida from prior to April 2010 until
7 September 2012, in Nevada from September 2012 to September 2014, and in California from
8 September 2014 to the end of the Relevant Time Period. As a condition of his employment
9 during certain portions of the Relevant Time Period, Iron Wing was required to and did limit
10 who could view certain information in his Facebook profile. On information and belief, it is
11 believed Iron Wing's private profile information was accessed by third parties via Facebook's
12 Friends Data Scrape Feature.

13 16. Plaintiff Ryan McGrath is a citizen of the State of Colorado. He has been a
14 Facebook user since before April 2010. He lived in Illinois from prior to April 2010 until
15 March 2012, and in Colorado from March 2012 to the end of the Relevant Time Period.
16 During the Relevant Time Period, McGrath limited who could view certain information in his
17 Facebook profile. On information and belief, it is believed that McGrath's private profile
18 information was accessed by third parties via Facebook's Friends Data Scrape Feature.

19 17. Facebook, Inc. is a Delaware corporation with its principal place of business in
20 Menlo Park, California.

21 **FACTUAL ALLEGATIONS**

22 18. With over 2 billion users, Facebook's website, www.facebook.com, is the
23 World's most popular social media platform, allowing users to create an account and interact
24 with friends. A Facebook profile is a personal account of an individual Facebook user.

25 19. Facebook represented that users could restrict access to certain information. For
26 example, users could designate a wall post as sent only to his or her Facebook friends.

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1 20. Facebook's Graph API, launched in April 2010, was a developer, or app-level,
2 interface which, through the Friends Data Scrape Feature, allowed third parties to collect
3 enormous amounts of Facebook users' profile data, regardless of whether it was designated
4 private or public.

5 21. Facebook encouraged and facilitated the development of third-party apps for its
6 platform to generate more activity, user data points, and opportunities to deliver
7 advertisements. Facebook would provide the integration and distribution through its social
8 graph, and developers would provide the applications. Facebook maintains a website to
9 provide instructions and support for such app developers at <https://developers.facebook.com/>.

10 22. Facebook endorsed these third-party apps and gave them its imprimatur,
11 imbuing them with a patina of Facebook's immense goodwill. Facebook displayed information
12 about a user's friends playing games, taking quizzes, or using apps through Facebook, in an
13 attempt to persuade the user to play or participate as well.

14 23. The table below³ shows the categories of information that were accessible to
15 third-party app developers through Facebook's Graph API Version 1, which was in use from
16 April 2010 until April 2015:

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28 ³ Iraklis Symeonidis, et al., Collateral damage of Facebook Apps, available at <https://eprint.iacr.org/2015/456.pdf> (last visited Mar. 30, 2018).

Basic Info (default)	Extended Profile Properties (xpP)		Extended Permissions (xp)
	User Data	Friends Data	
uid	user_about_me	friends_about_me	ads_management
name	user_actions.books	friends_actions.books	ads_read
first_name	user_actions.music	friends_actions.music	create_event
last_name	user_actions.news	friends_actions.news	create_note
link	user_actions.video	friends_actions.video	email
username	user_activities	friends_activities	export_stream
gender	user_birthday	friends_birthday	manage_friendlists
locale	user_checkins	friends_checkins	manage_notifications
age_range	user_education_history	friends_education_history	manage_pages
	user_events	friends_events	photo_upload
	user_friends	friends_games_activity	publish_actions
	user_games_activity	friends_groups	publish_checkins
	user_groups	friends_hometown	publish_stream
	user_hometown	friends_interests	read_friendlists
	user_interests	friends_likes	read_insights
	user_likes	friends_location	read_mailbox
	user_location	friends_notes	read_page_mailboxes
	user_notes	friends_online_presence	read_requests
	user_online_presence	friends_photo_video_tags	read_stream
	user_photo_video_tags	friends_photos	rsvp_event
	user_photos	friends_questions	share_item
	user_questions	friends_relationship_details	sms
	user_relationship_details	friends_relationships	status_update
	user_relationships	friends_religion_politics	video_upload
	user_religion_politics	friends_status	xmpp_login
	user_status	friends_subscriptions	
	user_videos	friends_website	
	user_website	friends_work_history	
	user_work_history		

24. As the above table shows, third-party apps were able to harvest significant personal information of an app user's Facebook friends using the Friends Data Scrape Feature, including but not limited to: basic information, books they read, music they listened to, news, videos they watched, their activities, birthdays, photos, online presence, their likes, interests, statuses, and work history.

25. Facebook employed insufficient and unreasonably lax restrictions and protections to secure user data. Although purporting to require apps to publish a Privacy Policy, Facebook did not implement a robust or reasonable audit, monitoring program, or certification process to ensure third-party apps were acquiring data in legitimate ways and for legitimate reasons. Instead, Facebook invited third-party apps onto its platform and taught them how to build apps with the prospect of obtaining vast amounts of user data.

1 26. Third-party app developers accepted the invitation. Tens or possibly hundreds
2 of thousands of apps were developed. Some app developers created hundreds of apps with the
3 purpose of obtaining the data of as many Facebook users as possible.

4 27. Facebook promised users that apps were only using data they needed to operate.
5 That was false. In reality, the third-party apps were able to and did scoop vast amounts of
6 freely available data the apps did not need for myriad purposes including those which are
7 unsavory, nefarious, and malicious. According to one data expert, Facebook is “abusive by
8 design.”⁴

9 28. In 2009, Zuckerberg promised, “Facebook will never sell your information
10 without consent.” Instead, Facebook designed a platform that enabled anyone to take what data
11 they wanted without consent or transparency regarding the extent of Facebook’s data sharing
12 practices. According to one app developer, “We ingested the entire U.S. social graph We
13 would ask permission to basically scrape your profile, and also scrape your friends, basically
14 anything that was available to scrape. We scraped it all.”⁵

15 ***The Cambridge Analytica Data Breach***

16 29. Cambridge Analytica is the most widely reported example of that. On March
17 16, 2018, in an announcement Facebook made in anticipation of news reports that Facebook
18 user data was being misappropriated and analyzed for political purposes, Facebook admitted
19 that its third-party app data sharing practices were being used in ways that posed grave risks
20 for users.⁶ Facebook announced the suspension of certain third-party app developers and their

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22 ⁴ Carole Cadwalladr, The Guardian, ‘I made Steve Bannon’s psychological warfare
23 tool’: meet the data war whistleblower (Mar. 18, 2018), [https://www.theguardian.com/
news/2018/mar/17/data-war-whistleblower-christopher-wylie-faceook-nix-bannon-trump](https://www.theguardian.com/news/2018/mar/17/data-war-whistleblower-christopher-wylie-faceook-nix-bannon-trump) (last
24 visited Mar. 30, 2018).

25 ⁵ Elizabeth Dvoskin and Tony Romm, The Washington Post, Facebook’s rules for
26 accessing user data lured more than just Cambridge Analytica,
[https://www.washingtonpost.com/business/economy/facebooks-rules-for-accessing-user-data-
lured-more-than-just-cambridge-analytica/2018/03/19/31f6979c-658e-43d6-a71f-
afdd8bf1308b_story.html?utm_term=.97fc50276c8a](https://www.washingtonpost.com/business/economy/facebooks-rules-for-accessing-user-data-lured-more-than-just-cambridge-analytica/2018/03/19/31f6979c-658e-43d6-a71f-afdd8bf1308b_story.html?utm_term=.97fc50276c8a) (last visited Mar. 30, 2018).

27 ⁶ Paul Grewal, Facebook Newsroom, Suspending Cambridge Analytica and SCL Group
28 from Facebook (Mar. 16, 2018), [https://newsroom.fb.com/news/2018/03/suspending-
cambridge-analytica/](https://newsroom.fb.com/news/2018/03/suspending-cambridge-analytica/) (last visited Mar. 30, 2018).

1 conspirators, including Cambridge Analytica, charging that they “lied to us and violated our
2 Platform Policies by passing data from an app.”

3 30. In a March 21, 2018, Facebook post, Mark Zuckerberg stated that in 2015,
4 Facebook learned that Kogan was sharing data with Cambridge Analytica, in a way that
5 Facebook considered a breach of Facebook policies.⁷

6 31. Facebook allegedly “removed his app from Facebook and demanded
7 certifications from Kogan and all parties he had given data to that the information had been
8 destroyed.” But, as one person who was required to provide the certification has said,
9 “Facebook made zero effort to get the data back.” “[L]iterally all I had to do was tick a box
10 and sign it and send it back, and that was it.”⁸

11 32. After designing its application platform interface to allow for the unauthorized
12 collection of Facebook user data on an industrial scale, Facebook discouraged its employees
13 from looking into how third parties were using those tools. Sandy Parakilas, a former
14 employee at Facebook stated that he previously warned Facebook about the problem of data
15 leaking out of the company’s third-party applications. He was told, reportedly: “Do you really
16 want to see what you’ll find? They felt it was better not to know,” he said.⁹

17 33. On March 21, 2018, Mark Zuckerberg confessed to a “breach of trust” with
18 Facebook users, stating, “we have a responsibility to protect your data, and if we can’t then we
19 don’t deserve it.” Zuckerberg acknowledged that “the people who share their data with . . .
20 [Facebook] expect us to protect it.” He admitted, “we also made mistakes.”

21 34. According to Zuckerberg, Facebook will provide notification to persons whose
22 data was obtained by Cambridge Analytica. In addition, Facebook provided assurances that it

23 ⁷ <https://www.facebook.com/zuck/posts/10104712037900071>

24 ⁸ Carole Cadwalladr, The Guardian, ‘I made Steve Bannon’s psychological warfare
25 tool’: meet the data war whistleblower (Mar. 18, 2018), [https://www.theguardian.com/
26 news/2018/mar/17/data-war-whistleblower-christopher-wylie-faceook-nix-bannon-trump](https://www.theguardian.com/news/2018/mar/17/data-war-whistleblower-christopher-wylie-faceook-nix-bannon-trump) (last
visited Mar. 30, 2018).

27 ⁹ Alexis C. Madrigal, The Atlantic, Zuckerberg Offers the Bare Minimum on the
28 Cambridge Analytical Mess (Mar. 21, 2018), [https://www.theatlantic.com/technology/archive/
2018/03/zuckerberg-facebook-cambridge-analytica-statement/556187/](https://www.theatlantic.com/technology/archive/2018/03/zuckerberg-facebook-cambridge-analytica-statement/556187/) (last visited Mar. 30,
2018).

1 would investigate all apps that had access to large amounts of information before changes were
 2 implemented, and conduct full audits of any app with suspicious activity. Further, Facebook
 3 promises to ban any developer from the platform that does not agree to a thorough audit. If
 4 developers misused personally identifiable information their apps will be banned.

5 35. In an interview on CNN on March 21, 2018, Mark Zuckerberg explained, “the
 6 good news here is that we already changed the platform policies in 2014, but before that, we
 7 know what the apps were that had access to data. We know how much . . . how many people
 8 were using those services, and we can look at the patterns of their data requests.”¹⁰ In the same
 9 interview, Zuckerberg promised to review thousands apps, admitting that Facebook never
 10 before checked to see what apps were doing with Facebook data, stating:

11 It’s hard to know what we’ll find, but we’re going to review thousands of apps.
 12 So, I think this is going to be an intensive process, but this is important. I mean
 13 this is something that in retrospect, we clearly should have done up front with
 14 Cambridge Analytica. We should not have trusted the certification that they
 15 gave us. And we’re not going to make that mistake again. And this is our
 responsibility to our community just to make sure that we secure the data that
 they share.¹¹

16 36. Zuckerberg also stated that “it’s clear now that we didn’t focus enough on
 17 preventing abuse and thinking about how people could use these tools for harm as well.”

18 37. Zuckerberg’s representations that Facebook platform policies changed in 2014
 19 was not the whole truth. In actuality, legacy apps then in existence were allowed an additional
 20 year to transition to Facebook’s more restrictive API Version 2.0. It was in April 2015 that
 21 Facebook finally discontinued its sharing practices that underlie this lawsuit.

22 38. In a 2014 news release, a Facebook executive wrote, “We’ve heard from people
 23 that they are often surprised when a friend shares their information with an app.” For an entire
 24 year, Facebook knew apps were abusing Facebook’s platform, decided it needed to be
 25 changed, but permitted apps to make a final sweep of Facebook for its user’s data.

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 28 ¹⁰ <https://www.youtube.com/watch?v=G6DOhioBfyY> video at 5:05.

¹¹ *Id.* at 6:00.

1 39. On April 4, 2018, Facebook announced sweeping changes to its data protection
2 policies and procedures. Among these announcements was a revelation that Facebook was
3 ending a vulnerability in its search and account recovery procedures that enabled the scraping
4 of vast amounts of Facebook data. The vulnerability enabled Facebook profiles and
5 information to be easily searched using an email address or telephone number. Zuckerberg
6 commented on the extent and sophistication of such scraping activities, saying, “It is
7 reasonable to expect that if you’ve had that setting on in the last several years that someone
8 has accessed your information.”

9 40. According to U.S. Senate Commerce Committee member Sen. Ed Markey,
10 “The more we learn, the clearer it is that this was an avalanche of privacy violations that strike
11 at the core of one of our most precious American values – the right to privacy.”

12 ***Plaintiffs and the Other Class Members Value Their Personal Information and the Ability***
13 ***to Control It***

14 41. One need only reference Facebook’s market capitalization to accept the
15 proposition that Plaintiffs and the other Class members’ personal information, and the ability
16 to control it, has value. It is a truth on which the company is based and which enabled the
17 company to earn nearly \$40 billion in 2017.

18 42. Personal data also has value to businesses for other purposes, as well. For
19 example, price discrimination can be employed by merchants to enhance profits when the
20 seller knows more about potential buyers. In one famous case, an Amazon user was charged
21 one high price for a product before deleting his cookies, and one lower price for the same
22 product after deleting his cookies.¹² A New York Times article described other plausible
23 scenarios: “You might be refused health insurance based on a Google search you did about a
24 medical condition. You might be shown a credit card with a lower credit limit, not because of
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28 ¹² https://en.wikipedia.org/wiki/Amazon.com_controversies#Differential_pricing (last
visited Mar. 28, 2018).

1 your credit history, but because of your race, sex, or ZIP code or the types of Web sites you
2 visit.”¹³

3 43. At an FTC public workshop in 2001, then-Commissioner Orson Swindle
4 described the value of a consumer’s personal information:

5 The use of third party information from public records, information aggregators
6 and even competitors for marketing has become a major facilitator of our retail
7 economy. Even [Federal Reserve] Chairman [Alan] Greenspan suggested here
8 some time ago that it’s something on the order of the life blood, the free flow of
information.¹⁴

9 44. Commissioner Swindle’s 2001 remarks are even more relevant today, as
10 consumers’ personal data functions as a “new form of currency.”¹⁵

11 45. The FTC has also recognized that consumer data is a new (and valuable) form
12 of currency. In an FTC roundtable presentation, another former Commissioner, Pamela Jones
13 Harbour, underscored this point:

14 Most consumers cannot begin to comprehend the types and amount of
15 information collected by businesses, or why their information may be
16 commercially valuable. Data is currency. The larger the data set, the greater
potential for analysis—and profit.¹⁶

17 46. Recognizing the high value that consumers place on their personal information,
18 many companies now offer consumers an opportunity to sell this information. The idea is to
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20 ¹³ Lori Andrews, *The New York Times*, Facebook is Using You (Feb. 4, 2012),
21 [https://www.nytimes.com/2012/02/05/opinion/sunday/facebook-is-using-you.html?mtrref=](https://www.nytimes.com/2012/02/05/opinion/sunday/facebook-is-using-you.html?mtrref=www.google.com&gwh=236D386A9C442DF4B6EA2D91D72BEC5C&gwt=pay&assetType=opinion)
22 [www.google.com&gwh=236D386A9C442DF4B6EA2D91D72BEC5C&gwt=pay&assetType](https://www.nytimes.com/2012/02/05/opinion/sunday/facebook-is-using-you.html?mtrref=www.google.com&gwh=236D386A9C442DF4B6EA2D91D72BEC5C&gwt=pay&assetType=opinion)
=[opinion](https://www.nytimes.com/2012/02/05/opinion/sunday/facebook-is-using-you.html?mtrref=www.google.com&gwh=236D386A9C442DF4B6EA2D91D72BEC5C&gwt=pay&assetType=opinion) (last visited Mar. 30, 2018).

23 ¹⁴ Federal Trade Commission Public Workshop, *The Information Marketplace: Merging*
24 *and Exchanging Consumer Data*, available at [https://www.ftc.gov/sites/default/](https://www.ftc.gov/sites/default/files/documents/public_events/information-marketplace-merging-and-exchanging-consumer-data/transcript.pdf)
25 [files/documents/public_events/information-marketplace-merging-and-exchanging-consumer-](https://www.ftc.gov/sites/default/files/documents/public_events/information-marketplace-merging-and-exchanging-consumer-data/transcript.pdf)
data/transcript.pdf (last visited Mar.29, 2018).

26 ¹⁵ See Julia Angwin & Emily Steel, *Web’s Hot New Commodity: Privacy*, *The Wall Street*
27 *Journal*, <http://online.wsj.com/article/SB10001424052748703529004576160764037920274.html> (last
28 visited Mar. 29, 2018).

¹⁶ *Statement of FTC Commissioner Pamela Jones Harbour—Remarks Before FTC*
Exploring Privacy Roundtable, (Dec. 7, 2009), [http://www.ftc.gov/speeches/harbour/091207/](http://www.ftc.gov/speeches/harbour/091207/privacyroundtable.pdf)
privacyroundtable.pdf (last visited Mar. 29, 2018).

1 give consumers more power and control over the type of information that they share and who
2 ultimately receives that information. And, by making the transaction transparent, consumers
3 will receive fair market value for their information.¹⁷ This business has created a new market
4 for the sale and purchase of this valuable data.¹⁸

5 47. As a result of Facebook's unlawful conduct, Plaintiffs and other Class members
6 have suffered injury and damages, including, but not limited to: (i) an increased risk of identity
7 theft and identity fraud; (ii) improper disclosure of their personal and private information,
8 which is now in the hands of unknown and inadequately vetted app developers and their
9 transferees; and (iii) the deprivation of the value of their personal information, for which there
10 is a fair market value.

11 48. Plaintiffs and the other Class members had Facebook data disclosed without
12 their consent to unknown third parties by Facebook. Potentially thousands of third-party apps
13 were able to procure massive amounts of their data without their knowledge or consent.
14 Plaintiffs and the other Class members were the owners of their data. As a result of Facebook's
15 unlawful conduct, Plaintiffs and the other Class members lost the ability to control their
16 private and personal information, and they lost the value of the information to advertisers and
17 businesses, a value that was obtained by someone else. The information Plaintiffs and the
18 other Class members thought they were sharing with a limited audience was in actuality being
19 surreptitiously disclosed to unknown third parties in a manner designed and directed by
20 Facebook for commercial purposes.

21 49. Plaintiffs and the other Class members were deprived of the ability to control
22 with whom their communications and information were shared on Facebook and how widely
23 those communications and data would be disseminated. They are now unable to retrieve the
24 information already disclosed and must face the consequences of such disclosure, including but
25 not limited to: increased risk of identity theft and identity fraud, being targeted by

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27 ¹⁷ Steve Lohr, *You Want My Personal Data? Reward Me for It*, The New York Times,
<http://www.nytimes.com/2010/07/18/business/18unboxed.html> (last visited Mar. 29, 2018).

28 ¹⁸ See *Web's Hot New Commodity: Privacy*, <http://online.wsj.com/article/SB10001424052748703529004576160764037920274.html> (last visited May 3, 2017).

1 advertisements and messages based on prior conduct, being profiled by merchants and other
 2 companies based on unknown and unknowable data and analyses, and living with the
 3 uncertainty about who possesses their data.

4 50. Acknowledging the injuries sustained by Plaintiffs and the other Class members
 5 and the consequences thereof, Facebook has promised to secure data, and to provide
 6 transparency and full control for users going forward.

7 **CLASS ACTION ALLEGATIONS**

8 51. Plaintiffs bring this case on behalf of themselves and as a class action, pursuant
 9 to the provisions of Rule 23 of the Federal Rules of Civil Procedure, on behalf of a class
 10 (“Nationwide Class”) defined as:

11 All persons whose non-public Facebook data was communicated by Facebook
 12 to a third party using Facebook’s Friends Data Scrape Feature.

13 Excluded from the Class are Defendant and its affiliates, parents, subsidiaries, employees,
 14 officers, agents, and directors. Also excluded is any judicial officer presiding over this matter
 15 and the members of their immediate families and judicial staff.

16 52. In addition Plaintiff Joshua Iron Wing seeks certification of the following class
 17 of California residents (“California Class”):

18 All persons whose non-public Facebook data was communicated by Facebook
 19 to a third party using Facebook’s Friends Data Scrape Feature while said
 20 persons were California residents.

21 Excluded from the Class are Defendant and its affiliates, parents, subsidiaries, employees,
 22 officers, agents, and directors. Also excluded is any judicial officer presiding over this matter
 23 and the members of their immediate families and judicial staff.

24 53. Certification of Plaintiffs’ claims for class-wide treatment is appropriate
 25 because Plaintiffs can prove the elements of their claims on a class-wide basis using the same
 26 evidence as would be used to prove those elements in individual actions alleging the same
 27 claims.
 28

1 54. **Numerosity—Federal Rule of Civil Procedure 23(a)(1).** The members of the
 2 Classes are so numerous that joinder of all Class members would be impracticable. On
 3 information and belief, Class members number in the tens of millions.

4 55. **Commonality and Predominance—Federal Rule of Civil Procedure**
 5 **23(a)(2) and 23(b)(3).** Common questions of law and fact exist as to all Class members and
 6 predominate over questions affecting only individual Class members. Such common questions
 7 of law or fact include, *inter alia*:

- 8 a. Whether Facebook violated the SCA by knowingly divulging Plaintiffs’
 9 and the other Class members Facebook communications to third parties;
- 10 b. Whether Facebook violated the ECPA by intercepting the contents of
 11 Plaintiffs’ and the other Class members’ communications and disclosing
 12 such communications without their authorization;
- 13 c. Whether Facebook violated the VPPA by disclosing Plaintiffs’ and the
 14 other Class members’ personal information on videos watched to third
 15 parties;
- 16 d. Whether Facebook’s disclosure of Plaintiffs’ and the other Class
 17 members’ Facebook data constituted a violation of their right to privacy;
- 18 e. Whether Facebook failed to use reasonable care and commercially
 19 reasonable methods to secure and safeguard Plaintiffs’ and Class
 20 members’ Facebook data;
- 21 f. Whether Facebook properly implemented its purported security
 22 measures to protect Plaintiffs’ and Class members’ Facebook data from
 23 unauthorized capture, dissemination, and misuse;
- 24 g. Whether Facebook violated Plaintiffs’ and the other Class members’
 25 right to privacy under the California Constitution;
- 26 h. Whether Facebook violated the Invasion of Privacy Act by intercepting,
 27 accessing, and acquiring Plaintiffs’ and the Class members’ location and
 28 movement information without authorization; and
- i. Whether Plaintiffs and the other Class members are entitled to damages,
 injunctive relief, or other equitable relief, and the measure of such
 damages and relief.

56. Facebook engaged in a common course of conduct giving rise to the legal rights
 sought to be enforced by Plaintiffs, on behalf of themselves and other Class members. Similar
 or identical statutory and common law violations, business practices, and injuries are involved.
 Individual questions, if any, pale by comparison to the numerous common questions that
 predominate in this action.

1 **57. Typicality—Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs' claims are
 2 typical of the claims of the other Class members because, among other things, all Class
 3 members were comparably injured through Facebook's uniform misconduct described above.
 4 Further, there are no defenses available to Facebook that are unique to Plaintiffs.

5 **58. Adequacy of Representation—Federal Rule of Civil Procedure 23(a)(4).**
 6 Plaintiffs are adequate Class representatives because their interests do not conflict with the
 7 interests of the other Class members they seek to represent, they have retained counsel
 8 competent and experienced in complex class action litigation, and Plaintiffs will prosecute this
 9 action vigorously. The Classes' interests will be fairly and adequately protected by Plaintiffs
 10 and their counsel.

11 **59. Superiority—Federal Rule of Civil Procedure 23(b)(3).** A class action is
 12 superior to any other available means for the fair and efficient adjudication of this controversy,
 13 and no unusual difficulties are likely to be encountered in the management of this class action.
 14 The damages or other financial detriment suffered by Plaintiffs and the other Class members
 15 are relatively small compared to the burden and expense that would be required to individually
 16 litigate claims against Facebook, so it would be impracticable for Class members to
 17 individually seek redress for Facebook's wrongful conduct. Even if Class members could
 18 afford individual litigation, the court system could not. Individualized litigation creates a
 19 potential for inconsistent or contradictory judgments, and increases the delay and expense to
 20 all parties and the court system. By contrast, the class action device presents far fewer
 21 management difficulties and provides the benefits of single adjudication, economy of scale,
 22 and comprehensive supervision by a single court.

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COUNTS

COUNT I

**Violations of the Stored Communications Act, 18 U.S.C. §§ 2701, et seq.
On Behalf of the Nationwide Class**

60. Plaintiffs reassert and reallege paragraphs 1–59 as if fully set forth herein.

61. Facebook is both an electronic communication service and a remote computing service. An electronic communication service is defined as any service which provides to users thereof the ability to send or receive wire or electronic communications, or any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce. 18 U.S.C. § 2510 (12), (15). A remote computing service means the provision to the public of computer storage or processing services by means of an electronic communications system. 18 U.S.C. § 2711(a). Facebook sends, receives, stores, and processes the wall posts, likes, comments, and all other Facebook activities and content of its users.

62. Facebook offers its electronic communication and remote computing services to the public. In this capacity, Facebook offered services to Plaintiffs and the other Class members.

63. Facebook knowingly divulged the contents of communications of Plaintiffs and the other Class members while in electronic storage to third parties in violation of 18 U.S.C. § 2702(a) and § 2702(b). Facebook designed and constructed its platform and invited and facilitated the use and acquisition of Facebook data by third-party app developers.

64. Facebook knowingly divulged the contents of communications of Plaintiffs and the other Class members without their lawful consent or the lawful consent of intended recipients. Facebook had knowledge that it was disclosing information, and that such information was being disclosed from the electronic storage of an electronic communication service and remote computing service, and knew that its conduct would result in the disclosure of the information and contents of communications of its users.

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1 65. Plaintiffs and the other Class members are “person[s] aggrieved” by
 2 Facebook’s violations of the SCA “in which the conduct constituting the violation is engaged
 3 in with a knowing or intentional state of mind.” 18 U.S.C. § 2707(a).

4 66. Each instance of Facebook’s prohibited divulgence constitutes a separate and
 5 distinct violation of the SCA, subject to the remedies provided under the SCA, 18 U.S.C.
 6 § 2707.

7 67. Plaintiffs and the other Class members are entitled to appropriate relief
 8 provided in § 2707(b), including preliminary and other equitable or declaratory relief as may
 9 be appropriate; damages assessed as the sum of the actual damages suffered plus any profits
 10 made by Facebook as a result of the violation, but in no case less than the sum of \$1,000; and
 11 reasonable attorneys’ fees and other litigation costs reasonably incurred.

12 68. Plaintiffs’ and the other Class members’ actual damages include, but are not
 13 limited to: (i) an increased risk of identity theft and identity fraud; (ii) improper disclosure of
 14 their private information, which is now in the hands of unknown app developers and their
 15 transferees; and (iii) the deprivation of the value of their personal information, for which there
 16 is a fair market value.

17 69. Facebook’s conduct was willful, intentional, widely impactful, and egregious,
 18 such that an award of punitive damages is appropriate.

19 COUNT II

20 **Violation of the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510, *et seq.*** 21 **On Behalf of the Nationwide Class**

22 70. Plaintiffs reassert and reallege paragraphs 1–60 as if fully set forth herein.

23 71. Facebook is an electronic communication service. An electronic
 24 communication service is defined as any service which provides to users thereof the ability to
 25 send or receive wire or electronic communications, or any transfer of signs, signals, writing,
 26 images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire,
 27 radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign
 28 commerce. 18 U.S.C. § 2510 (12), (15). Over the Internet, Facebook sends, receives, stores,

1 and processes the users' posts, likes, status updates, private messages, comments, photos,
2 videos, and all other Facebook activities and content of its users.

3 72. Facebook violated the ECPA by:

- 4 a. Intentionally intercepting, endeavoring to intercept, or procuring other
5 persons to intercept or endeavor to intercept wires and electronic
6 communications;
- 7 b. Intentionally disclosing, or endeavoring to disclose to other persons the
8 contents of wires or electronic communications, knowing or having
9 reason to know that the information was obtained through the
10 interception of a wire or electronic communication in violation of the
11 ECPA;
- 12 c. Intentionally using, or endeavoring to use, the contents of any wire or
13 electronic communication, knowing or having reason to know that the
14 information was obtained through the interception of a wire or
15 electronic communication; and
- 16 d. Intentionally divulging the contents of communications while in
17 transmission on Facebook's service to persons other than addressees and
18 intended recipients of such communications.

19 73. Facebook enabled third-party apps to subscribe to changes in data relating to
20 users in real time. By subscribing to these real time updates, the apps were able to and did,
21 cache data and receive updates from Facebook on data relating to users as they were made.

22 74. Plaintiffs and the other Class members are "person[s] aggrieved" by
23 Facebook's violations of the ECPA because their wires and electronic communications were
24 intercepted by Facebook as a result of Facebook's conduct and Facebook and third parties
25 directed their interceptions against Plaintiffs and the other Class members.

26 75. Each instance of Facebook's prohibited conduct constitutes a separate and
27 distinct violation of the ECPA, subject to the remedies provided under 18 U.S.C. § 2520,
28 including preliminary, equitable, and declaratory relief, damages assessed as the sum of the

1 actual damages suffered by Plaintiffs and the Class members plus any profits made by
2 Facebook, or statutory damages of the greater of \$100 a day for each day of violation or
3 \$10,000.

4 76. Plaintiffs' and the other Class members' actual damages include, but are not
5 limited to: (i) an increased risk of identity theft and identity fraud; (ii) improper disclosure of
6 their private information, which is now in the hands of unknown app developers; and (iii) the
7 deprivation of the value of their personal information, for which there is a fair market value.

8 77. Facebook's conduct was willful, intentional, widely impactful, and egregious,
9 such that an award of punitive damages is appropriate.

10 **COUNT III**

11 **Violation of the Video Privacy Protection Act, 18 U.S.C. §§ 2710, *et seq.*** 12 **On Behalf of the Nationwide Class**

13 78. Plaintiffs reassert and reallege paragraphs 1–57 as if fully set forth herein.

14 79. Facebook is a video tape service provider because it is a person engaged in the
15 business, in or affecting interstate and foreign commerce, of rental, sale, or delivery of
16 prerecorded video cassette tapes or similar audio visual materials. 18 U.S.C. § 2710(a)(4).
17 Facebook regularly displays a variety of video content to its users.

18 80. Plaintiffs and the other Class members are consumers of Facebook because they
19 are renters, purchasers, or subscribers of goods or services from Facebook. 18 U.S.C.
20 § 2710(a)(1).

21 81. The Facebook data of Plaintiffs and the other Class members contained
22 personally identifiable information, including information that identifies Plaintiffs and the
23 other Class members as having requested or obtained specific videos.

24 82. Facebook knowingly disclosed Plaintiffs' and the other Class members'
25 personally identifiable information to third-party app developers in violation of the VPPA.

26 83. Plaintiffs and the other Class members are "aggrieved person[s]" under the
27 VPPA by Facebook's disclosure of their personally identifiable information, as alleged herein.
28

1 Therefore, Plaintiffs and the other Class members may bring an action under § 2710(c) against
2 Facebook.

3 84. Plaintiffs and the other Class members may be awarded actual damages, but not
4 less than liquidated damages in an amount of \$2,500, punitive damages, reasonable attorneys'
5 fees and other litigation costs reasonably incurred; and such other preliminary and equitable
6 relief as the court determines to be appropriate.

7 **COUNT IV**

8 **Invasions of Privacy**
9 **On Behalf of the Nationwide Class**

10 85. Plaintiffs reassert and allege paragraphs 1–60 as if fully set forth herein.

11 86. Plaintiffs' and the other Class members' non-public Facebook data and the
12 contents of their communications constituted private facts.

13 87. Facebook knowingly disclosed those private facts to third-party apps
14 developers, which potentially number in the thousands, such that the information can be
15 regarded as public knowledge.

16 88. The sheer amount of information disclosed and the indiscriminate nature of the
17 disclosure was highly offensive to a reasonable person. A reasonable person would be
18 embarrassed and offended by the extent of the disclosure of such information to unknown third
19 parties.

20 89. Facebook's conduct constituted an intrusion upon Plaintiffs' and the other Class
21 members' seclusion.

22 90. Facebook's disclosure constitutes the public disclosure of private facts.

23 91. Plaintiffs and the other Class members were harmed by Facebook's conduct
24 and the public disclosure of their private facts, as alleged herein. Plaintiffs' and the other Class
25 members' actual damages include, but are not limited to: (i) an increased risk of identity theft
26 and identity fraud; (ii) improper disclosure of their private information, which is now in the
27 hands of unknown app developers; and (iii) the deprivation of the value of their personal
28 information, for which there is a fair market value.

COUNT V**Negligence****On Behalf of the Nationwide Class**

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4 92. Plaintiffs reassert and reallege paragraphs 1–60 as if fully set forth herein.

5 93. Facebook owed a duty to Plaintiffs and the other Class members to maintain
6 reasonable safeguards and procedures to protect their data and to monitor the status and
7 disposition of Plaintiffs’ and the other Class members’ data. Facebook has acknowledged these
8 duties as described herein. Facebook has stated that it has a responsibility to protect and secure
9 user data, and that users reasonably expect them to adequately safeguard their data.

10 94. Facebook violated these duties and failed to reasonably safeguard Plaintiffs’
11 and the other Class members’ data. Facebook knowingly disclosed their information and
12 communications to third-party apps in massive quantities without their consent.

13 95. Facebook’s violation of its duty caused Plaintiffs and the other Class members
14 actual harm and damages. Plaintiffs’ and the other Class members’ actual damages include,
15 but are not limited to: (i) an increased risk of identity theft and identity fraud; (ii) improper
16 disclosure of their private information, which is now in the hands of unknown app developers;
17 and (iii) the deprivation of the value of their personal information, for which there is a fair
18 market value.

19 96. Facebook’s conduct was willful, intentional, widely impactful, and egregious,
20 such that an award of punitive damages is appropriate.

COUNT VI**Violations of the California Constitution, Article I, Section I****On Behalf of the California Class**

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22
23
24 97. Plaintiff Iron Wing reasserts and realleges paragraphs 1–60 as if fully set forth
25 herein.

26 98. Plaintiff Iron Wing and the other Class members have a specific, legally protected
27 interest in the privacy of their Facebook user and other online data.
28

1 99. Plaintiff Iron Wing and the other Class members have reasonable expectations of
2 privacy in their Facebook user and other online data.

3 100. Facebook intentionally intruded upon Plaintiff Iron Wing's and the other Class
4 members' seclusion and publicly disclosed private facts to unknown third parties without
5 authorization or consent, as alleged herein.

6 101. Facebook's invasion of privacy was highly offensive to a reasonable person.
7 The sheer amount of information disclosed and the indiscriminate nature of the disclosure, as
8 alleged herein, was highly offensive to a reasonable person. A reasonable person would be
9 embarrassed and offended by the extent of the disclosure of such information to unknown third
10 parties.

11 102. Plaintiff Iron Wing and the other Class members were harmed by Facebook's
12 invasions of privacy. As a result of Facebook's unlawful conduct, Plaintiff Iron Wing and the
13 other Class members suffered actual damages including, but not limited to: (i) an increased
14 risk of identity theft and identity fraud; (ii) improper disclosure of their private information,
15 which is now in the hands of unknown app developers; and (iii) the deprivation of the value of
16 their personal information, for which there is a fair market value.

17 103. Plaintiff Iron Wing and the other Class members are entitled to actual damages,
18 nominal damages, and punitive damages in an amount to be determined at trial.

COUNT VII

Violations of the California Invasion of Privacy Act, Cal. Penal Code §§ 637.7, *et seq.* On Behalf of the California Class

22 104. Plaintiff Joshua Iron Wing reasserts and realleges paragraphs 1–60 as if fully set
23 forth herein.

24 105. Defendants used in California an electronic tracking device to determine the
25 location or movement of Plaintiff Iron Wing and the other Class members by intercepting,
26 accessing, and acquiring location data on Plaintiff Iron Wing's and the other Class members'
27 Facebook profiles without authorization or consent.

28

1 106. Plaintiff Iron Wing's and the other Class members' Facebook profiles contained
2 certain location data, including check-ins and friends' location data.

3 107. Plaintiff Iron Wing's and the other Class members' smartphones and other
4 computers contain electronic tracking devices. Location and movement information of Plaintiff
5 Iron Wing and the other Class members was contained on their Facebook profiles and which was
6 divulged by Facebook in violation of Cal. Penal Code § 637.7.

7 108. Pursuant to Cal. Penal Code § 637.2, Plaintiff Iron Wing and the other Class
8 members are persons injured by Defendants' violation of § 637.7. Plaintiff Iron Wing and the
9 other Class members are entitled to monetary damages in the amount of either \$5,000 or three
10 times the amount of actual damages, if any; and an injunction on Defendants' violations of
11 § 637.7.

12 **REQUEST FOR RELIEF**

13 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated,
14 respectfully request that the Court enter judgment in their favor and against Facebook as follows:

- 15 i. Declaring that this action is a proper class action, certifying the Classes as
16 requested herein, designating Plaintiffs as Class Representatives, and
17 appointing Plaintiffs' counsel as Class Counsel;
- 18 ii. Ordering Facebook to pay actual damages to Plaintiffs and the Class
19 members;
- 20 iii. Ordering Facebook to pay statutory damages and nominal damages, as
21 allowable by law to Plaintiffs and the other members of the Classes;
- 22 iv. Ordering Facebook to pay punitive damages, as allowable by law, to
23 Plaintiffs and the other members of the Classes;
- 24 v. Ordering Facebook to pay attorneys' fees and litigation costs to Plaintiffs;
- 25 vi. Ordering Facebook to pay both pre- and post-judgment interest on any
26 amounts awarded; and
- 27 vii. Ordering such other and further relief as may be just and proper.
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JURY DEMAND

Plaintiffs, individually and on behalf of the other Class members, respectfully demand a trial by jury on all claims so triable.

Respectfully submitted,

Dated: April 6, 2018

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By: *s/ Timothy G. Blood*

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