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15
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17
18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **COUNTY OF LOS ANGELES**

20 ETERNADA FUDGE and REYHANEH
21 MANSOORI, on behalf of themselves and all
others similarly situated,

22 Plaintiffs,

23 v.

24 DELTA AIR LINES, INC.,

25 Defendant.
26
27
28

Case No. **24STCV10440**

CLASS ACTION COMPLAINT FOR:

1. **BREACH OF CONTRACT**
2. **CAL. PENAL CODE § 630, et seq.**

1 Plaintiffs Eternada Fudge and Reyhaneh Mansoori (“Plaintiffs”) bring this class action complaint
2 on behalf of themselves, and all others similarly situated (“Class Members”) against Delta Air Lines,
3 Inc. (“Defendant” or “Delta”). The allegations contained in this class action complaint are based on
4 Plaintiffs’ personal knowledge of facts pertaining to themselves, and upon information and belief,
5 including further investigation conducted by Plaintiffs’ counsel, as to the remainder.

6 **NATURE OF THE ACTION**

7 1. This is a class action lawsuit brought to address Defendant’s improper, unlawful, and
8 contractually prohibited disclosure of consumers’ personal information to Meta Platforms, Inc. d/b/a
9 Meta (“Facebook” or “Meta”) as a result of their use of Defendant’s website, www.delta.com.

10 2. Defendant owns and controls the website. Defendant intentionally installed a tracking
11 pixel (the “Facebook Tracking Pixel” or “Pixel”) on the website to surreptitiously duplicate and send its
12 customers’ personal information to Facebook, the contents of which contain a unique identifier
13 (sufficient to identify the consumer by name) along with departure date, departure airport, arrival date,
14 arrival airport, travel class, number of travelers, loyalty status, language, and currency used.

15 3. Defendant’s sharing of this personal and identifying information with Facebook is in
16 breach of the Conditions of Carriage and incorporated Privacy Policy to which Plaintiffs and Class
17 Members agreed. One of the fundamental promises made by Defendant in the Privacy Policy is “We do
18 *not sell your name or other personal information to third parties*, and do not intend to do so in the
19 future,” followed by an enumerated list of situations in which certain data may be shared, including that
20 “We may share with third parties *anonymous, aggregated* information about all our users.” The effect is
21 a contractual agreement to share Plaintiffs’ and the Class’s personal information only to the extent
22 disclosed in the Privacy Policy, and in an anonymized and disaggregated fashion unless expressly stated.
23 As explained below, Defendant breached this promise.

24 4. Additionally, by installing, programming, and controlling the Pixel as described herein,
25 Defendant aided, agreed, employed, and conspired with Facebook to intercept Plaintiffs’ and Class
26 Members’ personal information without their knowledge or consent (and in excess of any consent given).

1 5. A pixel is a piece of code that “tracks the people and [the] type of actions they take”¹ as
2 they interact with a website, including how long a person spends on a particular web page, which buttons
3 the person clicks, which pages they view, and the text or phrases they type into various portions of the
4 website (such as a general search bar, chat feature, or text box), among other things.

5 6. The Pixel is programmable, meaning that the Defendant is responsible for determining
6 which communications with the website are tracked and transmitted to Facebook.

7 7. Pixels are routinely used to target specific customers by utilizing data to build profiles for
8 the purposes of retargeting and future marketing. Upon information and belief, Defendant utilized the
9 Pixel data for marketing and retargeting purposes in an effort to bolster its profits.

10 8. Correspondingly, Defendant exploits the personal information Plaintiffs and Class
11 Members communicated to Defendant while booking air travel, and Defendant uses this personal
12 information to create detailed profiles that reflect individual consumer preferences, allowing Facebook
13 and Defendant to deliver targeted advertisements.

14 9. Defendant’s website, and more specifically its source code, manipulated Plaintiffs’ and
15 Class Members’ web browsers so that their communications to Defendant were automatically,
16 contemporaneously, jointly, and surreptitiously sent to Facebook—an unintended third-party recipient—
17 in a manner that personally identifies the Class Member.

18 10. This is the functional equivalent of placing a bug or listening device on a phone line
19 because Defendant’s website allows third-parties to “listen in” and receive communications in real time
20 that Plaintiffs intended only for Defendant.

21 11. Importantly, Facebook would not receive these communications but for Defendant’s
22 installation and implementation of the Pixel.

23 12. Additionally, on information and belief, Defendant also shared information with
24 Facebook using the Conversions API tool. Unlike the Facebook Pixel, which co-opts a website user’s
25 browser and forces it to transmit information to Facebook in addition to the website owner, Conversions
26

27
28 ¹ FACEBOOK, RETARGETING, <https://www.facebook.com/business/goals/retargeting> (last
visited Feb. 17, 2023).

1 API does not cause the user’s browser to transmit information directly to Facebook. Instead, Conversions
2 API tracks the user’s website interaction, including personal information, records and stores that
3 information on the website owner’s servers, and then transmits the data to Facebook from the website
4 owner’s servers.^{2,3} Indeed, Facebook markets Conversions API as a “better measure [of] ad performance
5 and attribution across your customer’s full journey, from discovery to conversion. This helps you better
6 understand how digital advertising impacts both online and offline results.”⁴ Because Conversions API
7 is located on the website owner’s servers and is not a bug planted onto the website user’s browser, it
8 allows website owners like Defendant to circumvent any ad blockers or other denials of consent by the
9 website user that would prevent the Pixel from sending website users’ personal information to Facebook
10 directly.

11 **JURISDICTION AND VENUE**

12 13. This is a class action lawsuit brought pursuant to Code of Civil Procedure § 382, and this
13 Court has jurisdiction over Plaintiffs’ claims because the amount in controversy exceeds this Court’s
14 jurisdictional minimum.

15 14. The Court has personal jurisdiction over Defendant because it regularly conducts
16 business and is licensed to do business in California, Plaintiffs reside in California, and a substantial part
17 of the events giving rise to Plaintiffs’ claims occurred in California.

18 15. Venue is proper because Plaintiff Fudge resides in Los Angeles County and purchased
19 the airfare at issue while present in Los Angeles County. Defendant also engaged in substantial conduct
20 relevant to the claims within this District and has caused harm to Class Members residing within this
21 District.

22
23 ² <https://revealbot.com/blog/facebook-conversions-api/> (last visited April 12, 2024).

24 ³ “Server events are linked to a dataset ID and are processed like events sent via the Meta Pixel....
25 This means that server events may be used in measurement, reporting, or optimization in a similar way
26 as other connection channels.”, <https://developers.facebook.com/docs/marketing-api/conversions-api>
(last visited April 12, 2024).

27 ⁴ <https://www.facebook.com/business/help/2041148702652965?id=818859032317965> (last
28 visited April 12, 2024).

1 **THE PARTIES**

2 ***Plaintiff Fudge***

3 16. Plaintiff Fudge is an adult citizen of the state of California and is domiciled in Los
4 Angeles County, California.

5 17. Plaintiff Fudge booked airfare from Defendant on January 30, 2024 (for a February 17,
6 2024 flight), August 21, 2023 (for an August 28, 2023 flight), and May 1, 2023 (for a same day flight).
7 To her recollection, for her August 21, 2023 booking, she accessed the website from her Mac computer
8 and used the website to reserve air travel. For her remaining two bookings, she accessed the website
9 from either her Mac computer or her iPhone Safari web browser. In doing so, Plaintiff provided
10 Defendant with her personal information, including her full name, departure date, departure airport,
11 arrival date, arrival airport, travel class, number of travelers, loyalty status, language, and currency used.

12 18. Plaintiff Fudge reasonably expected that her communications with Defendant via its
13 website were confidential, and that such communications would not be transmitted to or intercepted by
14 a third party in a personally identifiable manner without disclosure.

15 19. Plaintiff Fudge has an active Facebook account she regularly accesses using her Mac
16 computer and iPhone mobile device. As described herein, Defendant shared Plaintiff's personal
17 information to Facebook, a third party, when she accessed Defendant's website. Additionally, the
18 information Defendant sent to Facebook included and was linked to Plaintiff Fudge's Facebook ID and
19 uniquely identified her.

20 20. Pursuant to the systematic process described herein, Defendant assisted third parties
21 like Facebook with intercepting Plaintiff's communications, including those that contained personal
22 information. Defendant assisted these interceptions without Plaintiff's knowledge, consent, or express
23 written authorization (and in excess of any consent given).

24 21. By failing to receive the requisite consent, Defendant breached its contract and
25 unlawfully disclosed Plaintiff's personal information.

26 ***Plaintiff Mansoori***

27 22. Plaintiff Mansoori is an adult citizen of the state of California and is domiciled in
28 Irvine, California.

1 23. On or about February 23, 2022, Plaintiff Mansoori accessed the website from her
2 MacBook computer and used the website to reserve air travel. In doing so, Plaintiff provided Defendant
3 with her personal information, including her full name, departure date, departure airport, arrival date,
4 arrival airport, travel class, number of travelers, loyalty status, language, and currency used.

5 24. Plaintiff Mansoori reasonably expected that her communications with Defendant via
6 its website were confidential, and that such communications would not be transmitted to or intercepted
7 by a third party in a personally identifiable manner without disclosure.

8 25. Plaintiff Mansoori has an active Facebook account she regularly accesses using her
9 MacBook computer and mobile device. As described herein, Defendant shared Plaintiff's personal
10 information to Facebook, a third party, when she accessed Defendant's website. Additionally, the
11 information Defendant sent to Facebook included and was linked to Plaintiff Mansoori's Facebook ID
12 and uniquely identified her.

13 26. Pursuant to the systematic process described herein, Defendant assisted third parties
14 like Facebook with intercepting Plaintiff's communications, including those that contained personal
15 information. Defendant assisted these interceptions without Plaintiff's knowledge, consent, or express
16 written authorization (and in excess of any consent given).

17 27. By failing to receive the requisite consent, Defendant breached its contract and
18 unlawfully disclosed Plaintiff's personal information.

19 ***Defendant***

20 28. Delta Air Lines, Inc. is a Delaware corporation with its principal place of business at
21 1030 Delta Boulevard, Atlanta, Georgia 30354.

22 **FACTUAL ALLEGATIONS**

23 **A. Summary of Allegations**

24 29. Defendant's website is accessible on desktop computers mobile devices and gives
25 consumers the ability to view options for air travel with Defendant. On the website, consumers input
26 choices and make reservations for air travel.

27 30. In booking travel on the website, consumers are required to enter personal information
28 into online forms and select details about their travel. This includes name, departure date, departure

1 airport, arrival date, arrival airport, travel class, number of travelers, loyalty status, language, and
2 currency used.

3 31. As part of the booking process, Defendant requires that consumers agree to its Conditions
4 of Carriage⁵ which incorporates Defendant's Privacy Policy.⁶

5 32. The Conditions of Carriage incorporate the Privacy Policy and limit how Defendant will
6 use and share consumer data. Under the heading "Rule 4: Personal Data," the Conditions of Carriage
7 state:

8 The passenger recognizes that *personal data* has been given to Carrier for the *purposes of making*
9 *a reservation for carriage, obtaining ancillary services, facilitating immigration and entry*
10 *requirements, and making available such data to government agencies.* For these purposes,
11 where required by law, the passenger authorizes Carrier to retain such data and to transmit it to
12 its own offices, other Carriers, or the providers of such services, in whatever country they may
13 be located. ***All passenger information shall be handled in accordance with Delta's Privacy***
14 ***Policy*** (https://www.delta.com/content/www/en_US/privacy-and-security.html).

15 33. The Privacy Policy, in turn, states that "*We do not sell your name or other personal*
16 *information to third parties, and do not intend to do so in the future*" followed by an enumerated list of
17 situations in which certain data may be shared, including that "We may share with third parties
18 *anonymous, aggregated* information about all our users." The effect is a contractual agreement to share
19 Plaintiffs' and the Class's personal information only to the extent disclosed, and in an anonymized and
20 disaggregated fashion unless expressly stated.

21 34. Contrary to Defendant's promise not to sell its customers' personal information and share
22 it with third parties in an identifiable and disaggregated manner without consent, it does just that.

23 35. Defendant purposely installed the Pixel on its website and programmed specific
24 webpage(s) to surreptitiously share its users' personal information with Facebook, including Plaintiffs'
25 and Class Members' personal information, in a personally identifiable manner.

26 36. The Pixel tracks users as they navigate through the website and simultaneously transmits
27 to Facebook each users' communications and selections, including which pages are visited, which
28 buttons are clicked, and specific information users enter into text boxes.⁷

29 ⁵ <https://www.delta.com/us/en/legal/contract-of-carriage-dgr>

30 ⁶ <https://www.delta.com/us/en/legal/privacy-and-security>

31 ⁷ <https://developers.facebook.com/docs/meta-pixel/>

1 37. Notably, while consumers are filling out and submitting online forms with the information
2 described above, and purchasing air travel on the website, Defendant, without the consumers' knowledge
3 or consent, supplies the private information to non-party Facebook.

4 38. If the consumer is also a Facebook user, the information Facebook receives is linked to
5 the user's Facebook profile (via their Facebook ID or "c_user id"), which includes other identifying
6 information.

7 39. In other words, this information is collected not just by Defendant but also by Facebook
8 because the embedded Pixel simultaneously transmits all the information Defendant receives, sending it
9 to Facebook. And if the consumer is also a Facebook user, Facebook in turn links the information they
10 receive to the visitor's Facebook profile, which includes other identifying information.

11 40. Plaintiffs and Class Members did not and could not anticipate that Defendant would aid
12 and conspire with Facebook to intercept and transmit their personal information in an identifiable
13 manner.

14 **B. Facebook's Business Tools and the Pixel**

15 41. Facebook operates the world's largest social media company and generated \$117 billion
16 in revenue in 2021, roughly 97% of which was derived from selling advertising space.⁸

17 42. In conjunction with its advertising business, Facebook encourages and promotes entities
18 and website owners, such as Defendant, to utilize its "Business Tools" to gather, identify, target, and
19 market products and services to individuals.

20 43. Facebook's Business Tools, including the Pixel and Conversion API, are bits of code that
21 advertisers can integrate into their webpages, mobile applications, and servers, thereby enabling the
22 interception and collection of website visitors' activity.

23 44. The Business Tools are automatically configured to capture "Standard Events" such as
24 when a user visits a particular webpage, that webpage's Universal Resource Locator ("URL") and
25

27 ⁸ FACEBOOK, META REPORTS FOURTH QUARTER AND FULL YEAR 2021 RESULTS,
28 <https://investor.fb.com/investor-news/press-release-details/2022/Meta-Reports-Fourth-Quarter-and-Full-Year-2021-Results/default.aspx>

1 metadata, button clicks, etc.⁹ Advertisers, such as Defendant, can track other user actions and can create
2 their own tracking parameters by building a “custom event.”¹⁰

3 45. One such Business Tool is the Pixel which “tracks the people and type of actions they
4 take.”¹¹ When a user accesses webpage(s) hosting the Pixel, their communications with the host webpage
5 are instantaneously and surreptitiously duplicated and sent to Facebook’s servers. Notably, this
6 transmission does not occur unless the webpage contains the Pixel. Stated differently, each Plaintiff’s
7 and Class Member’s personal information would not have been disclosed to Facebook but for the
8 Defendant’s decisions to install the Pixel on its webpage(s).

9 46. As explained in more detail below, this second simultaneous secret transmission is
10 initiated by Defendant’s source code concurrently with Plaintiffs’ and Class Members’ communications
11 to their intended recipient, Defendant.

12 47. An example illustrates the point: An individual navigates to Defendant’s website, enters
13 their flight reservation information, and clicks through the pages to complete the booking. When the
14 buttons are clicked, the individual’s browser sends a GET request to Defendant’s server requesting that
15 server to load the particular webpage. Because Defendant utilizes the Facebook Pixel, Facebook’s
16 embedded code, written in JavaScript, sends secret instructions back to the individual’s browser, without
17 alerting the individual that this is happening. Facebook causes the browser to secretly duplicate the
18 communication with Defendant, transmitting it to Facebook’s servers, alongside additional information
19 that transcribes the communication’s content and the individual’s identity.

21 ⁹ FACEBOOK, SPECIFICATIONS FOR FACEBOOK PIXEL STANDARD EVENTS,
22 <https://www.facebook.com/business/help/402791146561655?id=1205376682832142>. (last visited Nov.
23 14, 2022); *see* FACEBOOK, FACEBOOK PIXEL, ACCURATE EVENT TRACKING, ADVANCED,
24 <https://developers.facebook.com/docs/facebook-pixel/advanced/>; *see also* FACEBOOK, BEST PRACTICES
25 FOR FACEBOOK PIXEL SETUP,
<https://www.facebook.com/business/help/218844828315224?id=1205376682832142>; FACEBOOK, APP
26 EVENTS API, <https://developers.facebook.com/docs/marketing-api/app-event-api/> (last visited Nov. 14,
27 2022).

28 ¹⁰ FACEBOOK, ABOUT STANDARD AND CUSTOM WEBPAGE(S) EVENTS,
<https://www.facebook.com/business/help/964258670337005?id=1205376682832142>; *see also*
FACEBOOK, APP EVENTS API, <https://developers.facebook.com/docs/marketing-api/app-event-api/>. (last
visited Nov. 14, 2022)

¹¹ FACEBOOK, RETARGETING, <https://www.facebook.com/business/goals/retargeting>.

1 **C. Defendant’s Pixel, Source Code, and Interception of HTTP Requests**

2 48. Web browsers are software applications that allow consumers to navigate the web and
3 exchange electronic communications over the internet, and every “client device” (computer, tablet, or
4 smart phone) has a web browser (e.g., Google’s Chrome browser, Mozilla’s Firefox browser, Apple’s
5 Safari browser, and Microsoft’s Edge browser).

6 49. Correspondingly, every website is hosted by a computer “server” which allows the
7 website’s owner (Defendant) to exchange communications with the website’s visitors (Plaintiffs and
8 Class Members) via the visitors’ web browser.

9 50. When a consumer uses Defendant’s website and undertakes various actions, the consumer
10 and Defendant are engaged in an ongoing back-and-forth exchange of electronic communications taking
11 place via the consumer’s web browser and Defendant’s computer server.

12 51. These communications are invisible to ordinary consumers because they consist of HTTP
13 Requests and HTTP Responses, and one browsing session may consist of thousands of individual HTTP
14 Requests and HTTP Responses.

- 15 • **HTTP Request:** an electronic communication sent from the website visitor’s browser to the
16 website’s corresponding server. In addition to specifying a particular URL (i.e., web address),
17 “GET” HTTP Requests can also send data to the host server, including cookies. A cookie is a
18 small text file that can be used to store information on the client device which can later be
19 communicated to a server or servers. Some cookies are “third-party cookies” which means they
20 can store and communicate data when visiting one website to an entirely different website.
- 21 • **HTTP Response:** an electronic communication that is sent as a reply to the client device’s web
22 browser from the host server in response to an HTTP Request. HTTP Responses may consist of
23 a web page, another kind of file, text information, or error codes, among other data.

24 52. A consumer’s HTTP Request essentially asks the Defendant’s website to retrieve certain
25 information, and the HTTP Response renders or loads the requested information in the form of “Markup”
26 (the pages, images, words, buttons, and other features that appear on the user’s screen as they navigate
27 Defendant’s webpage(s)).

1 53. Every webpage is comprised of Markup and “Source Code.” Source Code is simply a set
2 of instructions that commands the website visitor’s browser to take certain actions when the web page
3 first loads or when a specified event triggers the code.

4 54. When a user visits the website, and then enters information and makes selections, the
5 user’s web browser automatically sends an HTTP Request to Defendant’s web server. The Defendant’s
6 web server automatically returns an HTTP Response, which loads the Markup for that particular
7 webpage.

8 55. The user does not see the Defendant’s Source Code or any HTTP Requests sent in the
9 “background” while the webpage is operating. In fact, this unseen Source Code manipulated users’
10 browsers by secretly including Pixel code in the webpage’s Source Code, which was programmed to
11 silently monitor and report the user’s activity. When the webpage loads into the user’s browser, the Pixel
12 code is triggered which sends an HTTP Request to Facebook including the user’s c_user id, informing
13 Facebook that the user is seeking air travel on Defendant’s website.

14 56. Thereafter, when an event triggers the Pixel code, the code instructs the web browser to
15 duplicate user communications (HTTP Requests) intended for Defendant and to send those
16 communications to Facebook at the same time they are sent to Defendant. This occurs because the Pixel
17 that was embedded in Defendant’s Source Code is programmed to automatically track and transmit a
18 user’s communications, and this occurs contemporaneously, invisibly, and without the user’s knowledge.

19 57. Once consumers enter and submit their information to complete the booking, the
20 information is automatically sent to Facebook.

21 58. As shown in the below images, consumers’ personal information entered into the web
22 forms on Defendant’s website would be contemporaneously shared with Facebook as that information
23 was being sent to Defendant’s servers. The information shared includes the consumers unique Facebook
24 ID (the C_User ID field), departure date, departure airport, arrival date, arrival airport, travel class,
25 number of travelers, loyalty status, language, and currency used.

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- cd[content_type]: ["flight", "product"]
- cd[content_ids]: BUR:DAB
- cd[origin]: BUR
- cd[destination]: DAB
- cd[departing_departure_date]: 20240401
- cd[returning_departure_date]: 20240401
- cd[origin_airport]: BUR
- cd[destination_airport]: DAB
- cd[origin_city]:
- cd[destination_city]:
- cd[num_adults]: 1
- cd[travel_class]: Y
- cd[loyalty_status]: false
- cd[loyalty_tier]:
- cd[language_id]: en-us
- cd[value]:
- cd[currency]: USD

• queryString:

- id: 410621589144261
- ev: AddToCart
- dl: https://www.delta.com/complete-purchase/rip-summary?cacheKeySuffix=7b05488a-fa71-428e-86e0-3a71f219870e&cartId=37657966-c494-4d16-a12a-9783f6101053&app=sho&path=
- rl: https://www.delta.com/flightsearch/search-results?cacheKeySuffix=7b05488a-fa71-428e-86e0-3a71f219870e
- lf: false
- ts: 1711901551101
- cd[content_type]: product
- cd[content_ids]: BUR:DAB
- cd[origin]: BUR
- cd[destination]: DAB
- cd[departing_departure_date]: 20240401
- cd[returning_departure_date]: 20240401
- cd[origin_airport]: BUR
- cd[destination_airport]: DAB
- cd[origin_city]:
- cd[destination_city]:
- cd[num_adults]: 1
- cd[travel_class]: Y
- cd[loyalty_status]: false
- cd[loyalty_tier]:
- cd[language_id]: en-us
- cd[value]:
- cd[currency]: USD
- cd[pixel_type]: updated
- sw: 1728
- sh: 1117
- v: 2.9.151
- r: stable
- a: tmensighten
- ec: 3
- e: 4125
- fbp: fb.1.1711900816136.1597613711
- ker: empty
- cdL: API_unavailable
- it: 1711901548344
- coo: false
- dpo: LDU
- dpoco: 0
- dpost: 0
- tm: 1
- rqm: GET

• cookies:

- sb: UE_kZMLqD0mSU-BxdZQSNY6B
- dstr: SqNWZX-UBi6f4svG60xmK9n
- ps_n: 0
- c_user: [REDACTED]
- xs: 33:cClyyY55NAbkSg:2:1711048593-1:12847::AcVDml8gmeIXwIC3ZVk-d0b9bKM9SLjEomC5t0f0l
- fr: 1uwant6SI3PhfzZiAWW_hPp7CFcVMfmb5-DK104FA_BmCD44_AAA.0.0.BmCD44.AWV8DRLfY74
- usida: eyJ2ZXkiOiJlbnk1bWVudC50aW11jostNzExODE3ODErZlQ=
- presence: EDvF3EtimeF1711817825EuserFA21B24572269050A2EstateFduF0CEchf_7bCC
- dpr: 2.5

1 59. On information and belief, at the same time, Conversions API causes the user’s
2 communications to be sent to and stored on Defendant’s servers, to be later communicated to Facebook
3 from Defendant itself rather than from a website user’s web browser.¹²

4 **D. Plaintiffs’ and Class Members’ Personal Information was Linked to their**
5 **Individual Facebook Profiles and Unique Identifiers.**

6 60. The information that Defendant’s Pixel sent to Facebook was transmitted alongside other
7 information that reveals a particular user’s identity.

8 61. Every Facebook user has a unique and persistent Facebook ID (“FID”) that is associated
9 with their Facebook profile and individual account, and Facebook places a cookie containing the user’s
10 FID (“c_user” cookie) on their device when they log into Facebook. With it, anyone can look up the
11 user’s Facebook profile and name. Notably, while Facebook can easily identify any individual on its
12 Facebook platform with only their unique FID, so too can any ordinary person who comes into
13 possession of an FID. Facebook admits as much on its website. Indeed, ordinary persons who come into
14 possession of the FID can connect it to the corresponding Facebook profile.

15 62. Facebook provides the Pixel code to companies to embed on their own websites, and upon
16 doing so, the Pixel causes the website to operate much like a traditional wiretap that begins “listening
17 in” as soon as the website loads.

18 63. Thus, the Pixel was triggered each time Plaintiffs and Class Members communicated with
19 Defendant via www.delta.com (in the form of HTTP Requests to Defendant’s web server). Upon
20 triggering of the Pixel, the user’s communications were intercepted, duplicated, and secretly transmitted
21 to Facebook at the same time the message is dispatched to Defendant. Thus, two communications
22 originate from a user’s browser once the user initiates an action on the webpage: one, as intended, to
23 Defendant, and a second, undetectable to the user, is simultaneously sent to Facebook. Accordingly, at
24 the same time the user’s browser dispatches a GET Request to Defendant, it sends a duplicate to
25 Facebook.

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28 ¹² Facebook has tools to de-duplicate communications sent by the Pixel and Conversions API so that only one copy of any particular communication is sent to it.

1 64. Defendant does not merely share anonymized data with third parties, but instead shares
2 personal information tied to unique identifiers which, in turn, are tied to the specific user.

3 65. Defendant benefits from the unauthorized sharing with third parties of Plaintiffs' and
4 Class Members' personal information. By using the software development kits ("SDK") from Facebook
5 and providing Plaintiffs' and Class Members' personal information to Facebook, Defendant improves its
6 advertising abilities, and benefits financially from advertising its services through third parties.

7 **E. Users Do Not Provide Informed Consent Before Their Information is Intercepted**
8 **and Shared for Advertising Purposes.**

9 66. Defendant did not ask users, including Plaintiffs, whether they consent to have their
10 personal information shared with Facebook in a de-anonymized and disaggregated manner. Users are
11 never told that their personal information and electronic communications are being shared and
12 wiretapped via the Pixel in a manner that allows Facebook to *personally identify them*.

13 67. While Defendant's Privacy Policy includes an advertising disclosure, it is insufficient. It
14 does not disclose that the customer's detailed travel information will be disclosed to Facebook in a
15 manner that personally identifies the user. The advertising disclosure at Section 6.2 states:

16 Advertising cookies enable us to understand your interests so that we can show you
17 relevant offers and direct personalized advertising to you.

18 We may use other cookies, such as those used by advertising platforms we may use, such
19 as Facebook or Twitter, to target and re-target visitors to our Website and App with digital
20 advertising that is most relevant to the user. These cookies are also used to limit the number
21 of times you see an advertisement or particular content, as well as help measure the
22 effectiveness of an advertising or marketing campaign. Using existing cookies from many
23 sites already on your computer, we partner with third party companies to deliver
24 advertising to specific computers.

25 68. The "How Delta Uses Cookies, Tags, and Similar Technologies" disclosure at Section 6.1
26 is deficient for the same reason. It states in part:

27 Delta has engaged third party tracking and advertising providers to act on Delta's behalf to
28 track and analyze your usage of our Website through the use of cookies, pixel tags / web
beacons, and similar technologies. At our request, these third parties collect, and share with
us, usage information about visits to our Website, measure and research the effectiveness
of our advertisements, track page usage and paths followed during visits through our
Website, help us target our Internet banner advertisements on our Website and on other
sites, and track use of our Internet banner advertisements and other links from our

1 marketing partners' sites to our Website. To learn about the available mechanisms for
2 opting out of cookies and technologies related to interest-based advertising, see the
descriptions and links in the table below.

3 69. Of note, the Privacy Policy falsely states at Section 7.1 that “We may share with third
4 parties *anonymous, aggregated* information about all our users.” (emphasis added). But as explained
5 above, the information sent is actually (1) individualized (rather than aggregated), and (2) sent to
6 Facebook along with a *unique ID*—the FID—linked to the user’s Facebook account (rather than
7 anonymous). Thus, the shared and intercepted information is neither aggregated nor anonymous.

8 **F. Facebook Exploited and Used Plaintiffs’ and Class Members’ Personal**
9 **Information**

10 70. Unsurprisingly, Facebook does not offer its Pixel to companies like Defendant solely for
11 Defendant’s benefit. “Data is the new oil of the digital economy,”¹³ and Facebook has built its more-than
12 \$300 billion market capitalization on mining and using that “digital” oil. Thus, the large volumes of user
13 data Defendant provides to Facebook are actively examined, curated, and put to use by the company.
14 Facebook acquires the raw data to transform it into a monetizable commodity, just as an oil company
15 acquires crude oil to transform it into gasoline. Indeed, Facebook offers the Pixel free of charge¹⁴ and
16 the price that Defendant pays for the pixel is the data that it allows Facebook to collect.

17 71. Facebook describes itself as a “real identity platform,”¹⁵ meaning users are allowed only
18 one account and must share “the name they go by in everyday life.”¹⁶ To that end, when creating an
19 account, users must provide their first and last name, date of birth, and gender.¹⁷

20 72. Facebook sells advertising space by emphasizing its ability to target users.¹⁸ Facebook is
21 especially effective at targeting users because it surveils user activity both on and off its site (with the
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23 ¹³ <https://www.wired.com/insights/2014/07/data-new-oil-digital-economy/> (last visited Jan. 18,
24 2023).

¹⁴ <https://seodigitalgroup.com/facebook-pixel/>

25 ¹⁵ Sam Schechner and Jeff Horwitz, *How Many Users Does Facebook Have? The Company*
Struggles to Figure It Out, WALL. ST. J. (Oct. 21, 2021).

26 ¹⁶ FACEBOOK, COMMUNITY STANDARDS, PART IV INTEGRITY AND AUTHENTICITY,
https://www.facebook.com/communitystandards/integrity_authenticity.

27 ¹⁷ FACEBOOK, SIGN UP, <https://www.facebook.com/>

28 ¹⁸ FACEBOOK, WHY ADVERTISE ON FACEBOOK,
<https://www.facebook.com/business/help/205029060038706>.

1 help of companies like Defendant).¹⁹ This allows Facebook to make inferences about users beyond what
2 they explicitly disclose, including their “interests,” “behavior,” and “connections.”²⁰ Facebook compiles
3 this information into a generalized dataset called “Core Audiences,” which advertisers use to apply
4 highly specific filters and parameters for their targeted advertisements.²¹

5 73. Advertisers can also build “Custom Audiences,”²² which helps them reach “people who
6 have already shown interest in [their] business, whether they’re loyal customers or people who have used
7 [their] app or visited [their] website.”²³ With Custom Audiences, advertisers can target existing
8 customers directly, and they can also build “Lookalike Audiences,” which “leverages information such
9 as demographics, interests, and behavior from your source audience to find new people who share similar
10 qualities.”²⁴ Unlike Core Audiences, Custom Audiences and Lookalike Audiences are only available if
11 the advertiser has sent its underlying data to Facebook. This data can be supplied to Facebook by
12 manually uploading contact information for customers or by utilizing Facebook’s “Business Tools.”²⁵

13 74. The Facebook Pixel, and the personal data mined and curated with it, is key to this
14 business. As Facebook puts it, the Business Tools “help website owners and publishers, app developers
15 and business partners, including advertisers and others, integrate with Facebook, understand and measure
16 their products and services, and better reach and serve people who might be interested in their products
17 and services.”²⁶

18
19 ¹⁹ FACEBOOK, ABOUT FACEBOOK PIXEL,
<https://www.facebook.com/business/help/742478679120153?id=1205376682832142>.

20 ²⁰ FACEBOOK, AD TARGETING: HELP YOUR ADS FIND THE PEOPLE WHO WILL LOVE YOUR
BUSINESS, <https://www.facebook.com/business/ads/ad-targeting>.

21 ²¹ FACEBOOK, EASIER, MORE EFFECTIVE WAYS TO REACH THE RIGHT PEOPLE ON FACEBOOK,
<https://www.facebook.com/business/news/Core-Audiences>.

22 ²² FACEBOOK, ABOUT CUSTOM AUDIENCES,
<https://www.facebook.com/business/help/744354708981227?id=2469097953376494>.

23 ²³ FACEBOOK, AD TARGETING, HELP YOUR ADS FIND THE PEOPLE WHO WILL LOVE YOUR
24 BUSINESS, <https://www.facebook.com/business/ads/ad-targeting>.

25 ²⁴ Facebook, About Lookalike Audiences,
<https://www.facebook.com/business/help/164749007013531?id=401668390442328>.

26 ²⁵ FACEBOOK, CREATE A CUSTOMER LIST CUSTOM AUDIENCE,
<https://www.facebook.com/business/help/170456843145568?id=2469097953376494>; Facebook,
27 Create a Website Custom Audience,
<https://www.facebook.com/business/help/1474662202748341?id=2469097953376494>.

28 ²⁶ FACEBOOK, THE FACEBOOK BUSINESS TOOLS,
<https://www.facebook.com/help/331509497253087>.

1 75. Facebook does not merely collect information gathered by the Pixel and store it for
2 safekeeping on its servers without ever accessing the information. Instead, in accordance with the
3 purpose of the Pixel to allow Facebook to create Core, Custom, and Lookalike Audiences for advertising
4 and marketing purposes, Facebook viewed, processed, and analyzed Plaintiffs' and Class Members'
5 personal information. Upon information and belief, such viewing, processing, and analyzing was
6 performed by computers and/or algorithms programmed and designed by Facebook employees at the
7 direction and behest of Facebook.

8 76. Facebook receives over 4 petabytes of information every day and must rely on analytical
9 tools designed to view, categorize, and extrapolate the data to augment human effort.²⁷ This process is
10 known as data ingestion and allows "businesses to manage and make sense of large amounts of data."²⁸

11 77. By using these tools, Facebook is able to rapidly translate the information it receives from
12 the Pixel in order to display relevant ads to consumers. For example, if a consumer visits a retailer's
13 webpage and places an item in their shopping cart without purchasing it, the next time the shopper visits
14 Facebook, an ad for that item will appear on the shopper's Facebook page.²⁹ This evidences that
15 Facebook views and categorizes data as they are received from the Pixel.

16 78. Moreover, even if Facebook eventually deletes or anonymizes sensitive information that
17 it receives, it must first view that information in order to identify it as containing sensitive information
18 suitable for removal. Accordingly, there is a breach of confidentiality once the information is disclosed
19 or received without authorization.

20 **G. Defendant Benefitted from the Use of The Pixel and Unauthorized Disclosures**

21 79. In exchange for disclosing the personal information of its users, Defendant is
22 compensated by Facebook in the form of enhanced advertising services and more cost-efficient
23 marketing on its platform.
24
25

26 ²⁷ [https://medium.com/@srank2000/how-facebook-handles-the-4-petabyte-of-data-generated-](https://medium.com/@srank2000/how-facebook-handles-the-4-petabyte-of-data-generated-per-day-ab86877956f4)
27 [per-day-ab86877956f4](https://medium.com/@srank2000/how-facebook-handles-the-4-petabyte-of-data-generated-per-day-ab86877956f4)

28 ²⁸ <https://scaleyourapp.com/what-database-does-facebook-use-a-1000-feet-deep-dive/>

²⁹ <https://www.oberlo.com/blog/facebook-pixel>

1 80. Retargeting is a form of online marketing that targets users with ads based on their
2 previous internet communications and interactions. Upon information and belief, as part of its marketing
3 campaign, Defendant re-targeted customers and potential customers.

4 81. Upon information and belief, Defendant was advertising its services on Facebook, and
5 the Pixel was used to help Defendant understand the success of its advertisement efforts on Facebook.
6 Defendant, in coordination with Facebook, associated Plaintiffs' and Class Members' personal
7 information with preexisting Facebook user profiles.

8 82. By utilizing the Pixel, the cost of advertising and retargeting was reduced, thereby
9 benefitting Defendant.

10 **H. Class Member Data and Personal Information Had Financial Value, and Class**
11 **Members were Harmed**

12 83. Defendant's disclosure of personal information also damaged Plaintiffs and the Class.
13 Conservative estimates suggest that in 2018, internet companies earned \$202 per American user from
14 mining and selling data. That figure is only due to keep increasing; estimates for 2022 are as high as
15 \$434 per user, for a total of more than \$200 billion industry wide.

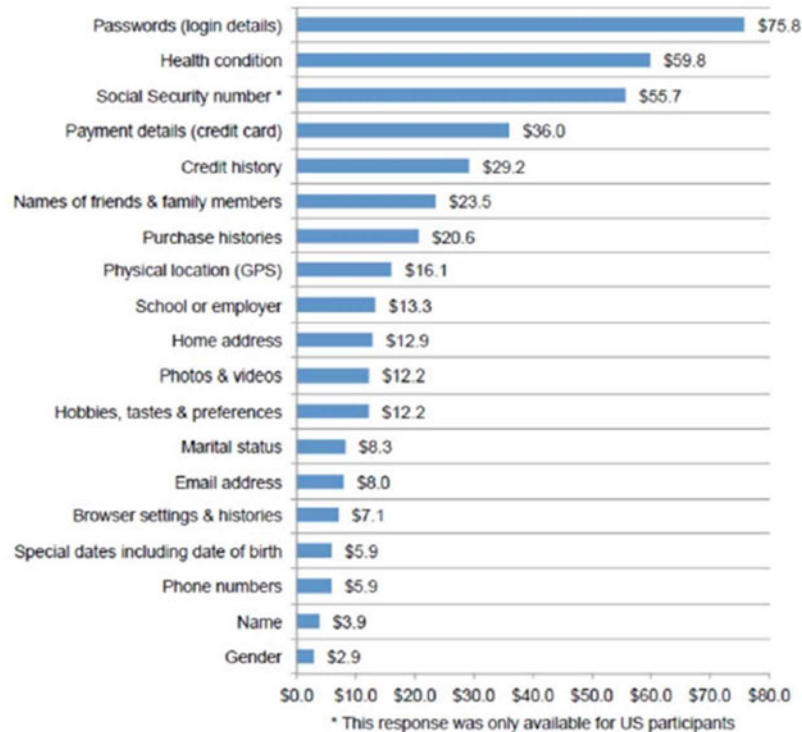
16 84. According to Professor Paul M. Schwartz in *Property, Privacy, and Personal Data*³⁰:
17 The monetary value of personal data is large and still growing, and corporate America is moving
18 quickly to profit from this trend. Companies view this information as a corporate asset and have
invested heavily in software that facilitates the collection of consumer information.

19 85. At least one company has offered consumers \$8.00 per month in exchange for their
20 personal information.³¹

26 ³⁰ Paul M. Schwartz, *Property, Privacy, & Personal Data*, 117 HARV. L. REV. 2056, 2057
27 (2004) (citation omitted).

28 ³¹ T. Simonite, *Sell Your Personal Data for \$8 a Month*, MIT TECH. REV. (Feb. 12, 2014),
<https://www.technologyreview.com/2014/02/12/174259/sell-your-personal-data-for-8-a-month/>

1 86. In an independent study, the following monetary values were placed on myriad types of
2 personal information³²:



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16 87. Indeed, numerous marketing services and consultants offering advice to companies on
17 how to build their email and mobile phone lists—including those seeking to take advantage of targeted
18 marketing—direct putative advertisers to offer consumers something of value in exchange for their
19 personal information. For example, “No one is giving away their email address for free. Be prepared to
20 offer a book, guide, webinar, course or something else valuable.”³³

21 88. There is a market for data in which consumers can participate. Personal information has
22 been recognized by courts as extremely valuable. *See In re Marriott Int’l, Inc., Customer Data Sec.*
23 *Breach Litig.*, 440 F. Supp. 3d 447, 462 (D. Md. 2020) (“Neither should the Court ignore what common
24 sense compels it to acknowledge—the value that personal identifying information has in our increasingly
25

26 ³² Privacy and Security in a Connected Life: A Study of US, European and Japanese
27 Consumers, Ponemon Institute LLC (Mar. 2015), available at [https://docplayer.net/836701-Privacy-
and-security-in-a-connected-life-a-study-of-us-european-and-japanese-consumers.html](https://docplayer.net/836701-Privacy-and-security-in-a-connected-life-a-study-of-us-european-and-japanese-consumers.html)

28 ³³ Vero, How to Collect Emails Addresses on Twitter (June 2014), available at
<https://www.getvero.com/resources/twitter-lead-generation-cards/>.

1 digital economy. Many companies, like Marriott, collect personal information. Consumers too recognize
2 the value of their personal information and offer it in exchange for goods and services.”).

3 89. Several companies have products through which they pay consumers for a license to track
4 their data. Google, Nielsen, UpVoice, HoneyGain, and SavvyConnect are all companies that pay for
5 browsing history information.

6 90. Meta itself has paid users for their digital information, including browsing history. Until
7 2019, Meta ran a “Facebook Research” app through which it paid \$20 a month for a license to collect
8 browsing history information and other communications from consumers between the ages 13 and 35.

9 91. Defendant’s sharing and disclosure of Plaintiffs’ and Class Members’ personal
10 information was unrelated to any service or price of Defendant. Nor was it part of any bargained-for
11 exchange between Defendant and Plaintiffs and the Class.

12 92. Plaintiffs and Class Members did not authorize Defendant to share their personal
13 information with Facebook and linked to their Facebook accounts, including in an identifiable and
14 disaggregated fashion.

15 **I. The U.S. Department of Transportation Position on Air Consumer Privacy**

16 93. The U.S. Department of Transportation (DOT) recognizes that commercial airlines
17 collect personal, non-public information from users and that such information must be collected and
18 maintained responsibly. The DOT also recognizes the sensitivity of such information.

19 94. Specifically, “Airlines and ticket agents regularly collect personal information from
20 passengers in the course of business that may not be otherwise publicly available such as name, date of
21 birth, and frequent flyer number. It is important for this information to be collected and maintained
22 responsibly. Mishandling the private information of consumers may be considered an unfair or deceptive
23 practice.”³⁴

24 95. “It is an unfair or deceptive practice for an airline or ticket agent to violate the privacy of
25 airline passengers by . . . violating the terms of its privacy policy.”³⁵

27 ³⁴ <https://www.transportation.gov/individuals/aviation-consumer-protection/privacy> (updated
28 March 25, 2024).

³⁵ *Id.*

1 96. To that end, on March 21, 2024, the DOT announced that it will “undertake a privacy
2 review of the nation’s ten largest airlines regarding their collection, handling, maintenance, and use of
3 passengers’ personal information.”³⁶ “Airline passengers should have confidence that their personal
4 information is not being shared improperly with third parties or mishandled by employees” and
5 “consumers will often never know that their personal data was misused or sold to shady data brokers.”³⁷

6 **TOLLING OF THE STATUTE OF LIMITATIONS AND DELAYED DISCOVERY**

7 97. All applicable statute(s) of limitations have been tolled by the delayed discovery doctrine.
8 Plaintiffs and Class Members could not have reasonably discovered that Defendant shared with
9 Facebook and intercepted personal information linked to their identities through Defendant’s website
10 until this action commenced.

11 98. Plaintiffs did not learn of Defendant’s sharing with Facebook and intercepting their
12 personal information linked to their identities on Defendant’s website until being informed by the
13 undersigned counsel of record shortly before this complaint was filed.

14 99. Plaintiffs had no reason to believe their personal information was being shared with
15 Facebook or intercepted through Defendant’s website in the manner described above. Again, Defendant’s
16 Privacy Policy does not disclose this practice, and in fact leads reasonable users to believe otherwise.
17 Furthermore, the technologies Defendant embedded on its website are not visible to the reasonable
18 user—they are invisible and work in the background.

19 100. Defendant also actively concealed the sharing of personal information in an identifiable
20 manner with Facebook through its Privacy Policy. As explained above, the Privacy Policy is reasonably
21 understood as limiting any sharing of personal information to anonymized and aggregated data unless
22 expressly disclosed, and the conduct described herein went undisclosed.

23 101. As a result, any and all applicable statutes of limitations otherwise applicable to the
24 allegations herein have been tolled.

27 ³⁶ <https://www.transportation.gov/briefing-room/secretary-buttigieg-announces-first-industry-wide-privacy-review-us-airlines> (updated March 21, 2024).

28 ³⁷ *Id.*

1 **CLASS ACTION ALLEGATIONS**

2 102. **Class Definition:** Pursuant to Section 382 of the Code of Civil Procedure, Plaintiffs bring
3 this action on behalf of themselves and other similarly situated individuals defined as:

- 4 a. All persons in the United States who, during the Class Period, provided their personal
5 information to Delta using www.delta.com in connection with their purchase of airfare,
6 were registered Facebook users, and had their personal information shared with Facebook
7 (the “Nationwide Class”)
- 8 b. All persons in California who, during the Class Period, provided their personal
9 information to Delta using www.delta.com in connection with their purchase of airfare,
10 were registered Facebook users, and had their personal information shared with Facebook
11 (the “California Subclass”) (together with the Nationwide Class, the “Class”).

12 103. Plaintiffs reserve the right to modify the class definitions or add sub-classes as necessary
13 prior to filing a motion for class certification, at class certification, or at any later time as the Court
14 permits.

15 104. The “Class Period” is the time period beginning on the date established by the Court’s
16 determination of any applicable statute of limitations, after consideration of any tolling, concealment,
17 and accrual issues, and ending on the date of entry of judgement.

18 105. Excluded from the Class is Defendant; any affiliate, parent, or subsidiary of Defendant;
19 any entity in which Defendant has a controlling interest; any officer director, or employee of Defendant;
20 any successor or assign of Defendant; anyone employed by counsel in this action; any judge to whom
21 this case is assigned, his or her spouse and immediate family members; and members of the judge’s staff.

22 106. Numerosity/Ascertainability. Members of the Class are so numerous that joinder of all
23 members would be unfeasible and not practicable. The exact number of Class members is unknown to
24 Plaintiffs at this time. However, it is estimated that there are thousands of individuals in the Class. The
25 identity of such membership is readily ascertainable from Defendant’s records and non-parties’ records.

26 107. Typicality. Plaintiffs’ claims are typical of the claims of the Class because Plaintiffs used
27 the website and had their personal information disclosed to third parties without their express written
28

1 authorization or knowledge. Plaintiffs' claims are based on the same legal theories as the claims of other
2 Class members.

3 108. Adequacy. Plaintiffs are fully prepared to take all necessary steps to represent fairly and
4 adequately the interests of the Class members. Plaintiffs' interests are coincident with, and not
5 antagonistic to, those of the Class members. Plaintiffs are represented by attorneys with experience in
6 the prosecution of class action litigation generally and in the emerging field of digital privacy litigation
7 specifically. Plaintiffs' attorneys are committed to vigorously prosecuting this action on behalf of the
8 Class members.

9 109. Common Questions of Law and Fact Predominate/Well Defined Community of Interest.
10 Questions of law and fact common to the Class members predominate over questions that may affect
11 only individual Class members because Defendant has acted on grounds generally applicable to the
12 Class. Such generally applicable conduct is inherent in Defendant's wrongful conduct. The following
13 questions of law and fact are common to the Class:

- 14 a. Whether Defendant breached its Conditions of Carriage and Privacy Policy;
- 15 b. Whether Defendant's website surreptitiously records personally identifiable information
16 and subsequently, or simultaneously, discloses that information to third parties;
- 17 c. Whether Defendant disseminated Class Members' confidential communications to third
18 parties;
- 19 d. Whether Plaintiffs and Class Members are entitled to damages, restitution, and/or
20 injunctive relief;

21 110. Superiority. Class action treatment is a superior method for the fair and efficient
22 adjudication of the controversy. Such treatment will permit a large number of similarly situated persons
23 to prosecute their common claims in a single forum simultaneously, efficiently, and without the
24 unnecessary duplication of evidence, effort, or expense that numerous individual actions would
25 engender. The benefits of proceeding through the class mechanism, including providing injured persons
26 a method for obtaining redress on claims that could not practicably be pursued individually, substantially
27 outweighs potential difficulties in management of this class action. Plaintiffs are unaware of any special
28 difficulty to be encountered in litigating this action that would preclude its maintenance as a class action.

1 **CLAIMS FOR RELIEF**

2 **FIRST CAUSE OF ACTION**
3 **BREACH OF CONTRACT**

4 **(On Behalf of the Nationwide Class or, alternatively, the California Subclass)**

5 111. Plaintiffs repeat the allegations contained in the foregoing paragraphs as if fully set forth
6 herein and bring this claim individually and on behalf of the proposed Class.

7 112. The Conditions of Carriage contain a Georgia choice of law provision. As such, this
8 claim is brought under Georgia law or, alternatively, California law.

9 113. Delta’s Conditions of Carriage and incorporated Privacy Policy form a binding contract
10 between Delta and each customer at the time they use www.delta.com.

11 114. The Conditions of Carriage and Privacy Policy impose limitations on Delta’s sharing of
12 personal information with third parties like Facebook.

13 115. Under the heading “Rule 4: Personal Data,” the Conditions of Carriage state:
14 The passenger recognizes that *personal data* has been given to Carrier for the *purposes of making*
15 *a reservation for carriage, obtaining ancillary services, facilitating immigration and entry*
16 *requirements, and making available such data to government agencies.* For these purposes,
17 where required by law, the passenger authorizes Carrier to retain such data and to transmit it to
18 its own offices, other Carriers, or the providers of such services, in whatever country they may
19 be located. *All passenger information shall be handled in accordance with Delta’s Privacy Policy*
20 *(https://www.delta.com/content/www/en_US/privacy-and-security.html).*

21 116. The Privacy Policy, in turn, states that “*We do not sell your name or other personal*
22 *information to third parties, and do not intend to do so in the future*” followed by an enumerated list of
23 situations in which certain data “may” be shared. This includes: “We may share with third parties
24 *anonymous, aggregated* information about all our users.” The effect is a contractual agreement to share
25 Plaintiffs’ and the Class’s personal information only to the extent disclosed—and in an anonymous and
26 aggregated fashion unless otherwise disclosed.

27 117. Delta breached the contract by sharing its customers’ personal information with
28 Facebook, a third party, in a manner that is not anonymized and/or aggregated.

118. The data Delta shared with Facebook was specific to an individual and uniquely identified
that individual by his or her Facebook ID (FID).

1 increasing use of such devices and techniques has created a serious threat to the free
2 exercise of personal liberties and cannot be tolerated in a free and civilized society.

3 Cal. Penal Code § 630.

4 127. California Penal Code § 631(a) provides, in pertinent part:

5 Any person who, by means of any machine, instrument, or contrivance, or in any other
6 manner ... [ii] willfully and without the consent of all parties to the communication, or
7 in any unauthorized manner, reads, or attempts to read, or to learn the contents or meaning
8 of any message, report, or communication while the same is in transit or passing over any
9 wire, line, or cable, or is being sent from, or received at any place within this state; [iii]
10 or who uses, or attempts to use, in any manner, or for any purpose, or to communicate in
11 any way, any information so obtained, or [iv] **who aids, agrees with, employs, or
12 conspires** with any person or persons to unlawfully do, or permit, or cause to be done
13 any of the acts or things mentioned above in this section, is punishable by a fine not
14 exceeding two thousand five hundred dollars (\$2,500).

15 128. A defendant must show it had the consent of all parties to a communication.

16 129. Plaintiffs' and Class Members' specific user input events and choices and information
17 typed on Defendant's website are tracked by Defendant using the SDK provided by third party Facebook.
18 The user's affirmative actions, such as inputting information, selecting options, or relaying a response,
19 constitute communications within the scope of CIPA.

20 130. At all relevant times, Defendant aided, agreed with, and conspired with third party
21 Facebook to track and intercept Plaintiffs' and Class Members' internet communications while accessing
22 www.Delta.com. These communications were intercepted in an individualized and personally
23 identifiable manner without the authorization and consent of Plaintiffs and Class Members.

24 131. Defendant intentionally inserted an electronic device into its website that, without the
25 knowledge and consent of Plaintiff and Class Members, tracked and transmitted the substance of their
26 confidential communications with Defendant to a third party in an individualized and personally
27 identifiable manner.

28 132. Defendant willingly facilitated Facebook's interception and collection of Plaintiffs' and
Class members' Private Information by embedding the Facebook Pixel on its website.

1 133. Defendant intended to share Plaintiffs’ and Class Members’ private and personal
2 information and communications to help the third parties learn some meaning of the content of the
3 communications.

4 134. Plaintiffs and Class Members are residents of California, and used their devices within
5 California. As such, Defendant records and disseminates Plaintiffs’ and Class Members’ data,
6 communications, and personal information in California.

7 135. Plaintiffs and Class Members did not consent to Defendant’s actions in implementing the
8 tracking software as described above. Plaintiffs and Class Members did not consent to Defendant’s
9 intentional collection and sharing of Plaintiffs’ and Class Members’ electronic communications and
10 personally identifiable information in the disaggregated and deanonymized manner described above.

11 136. At all relevant times to this Complaint, Plaintiffs and the other Class Members did not
12 know Defendant was engaging in recording and sharing of information as implemented, and therefore
13 could not provide consent to have any part of their private and confidential communications and
14 personally identifiable information intercepted and recorded by Defendant and thereafter transmitted to
15 Facebook or others in a personally identifiable and individualized manner.

16 137. The following items constitute “machine[s], instrument[s], or contrivance[s]” under
17 CIPA, and even if they do not, the software and SDK in the source code of Defendant’s website, such as
18 the Facebook Tracking Pixel, falls under the broad catch-all category of “any other manner”:

- 19 a. The computer codes and programs third parties, such as Facebook, used to track Plaintiffs’
20 and Class Members’ communications while they were navigating www.Delta.com;
- 21 b. Plaintiffs’ and Class members’ browsers;
- 22 c. Plaintiffs’ and Class Members’ computing devices;
- 23 d. Facebook’s web and ad servers;
- 24 e. The web and ad-servers from which third parties, including Facebook, tracked and
25 intercepted Plaintiffs’ and Class Members’ communications while they were using a web
26 browser to access or navigate www.Delta.com; and

1 f. The computer codes and programs used by third parties, including Facebook, to effectuate
2 its tracking and interception of Plaintiffs' and Class Members' communications while
3 they were using a browser to visit Defendant's website.

4 138. Defendant fails to disclose that it is using software from third parties, namely the
5 Facebook Pixel, to track and automatically and simultaneously transmit communications and personally
6 identifiable information in a de-anonymized and disaggregated fashion to third parties for advertising
7 purposes.

8 139. The private information that Defendant transmits while using the Facebook Pixel includes
9 the user's unique Facebook ID (the C_User ID field), departure date, departure airport, arrival date,
10 arrival airport, travel class, number of travelers, loyalty status, language, and currency used.

11 140. The Pixel is designed such that it transmits each of the users' actions taken on the webpage
12 to a third party alongside and contemporaneously with the user initiating the communication. Thus, the
13 communication is intercepted in transit to the intended recipient, Defendant, and before it reaches
14 Defendant's server.

15 141. As demonstrated hereinabove, Defendant violates CIPA by aiding and permitting third
16 parties to receive its users' online communications through its website without their informed consent.

17 142. As a direct and proximate result of Defendant's violation of the CIPA, Plaintiff and Class
18 Members were injured and suffered damages, a loss of privacy, and loss of the value of their personal
19 information in an amount to be determined at trial.

20 143. By disclosing Plaintiffs' and Class Members' private information, Defendant violated
21 Plaintiffs' and Class Members' statutorily protected right to privacy.

22 144. As a result of the above violations and pursuant to CIPA Section 637.2, Defendant is
23 liable to each Plaintiff and Class Members for the greater of treble actual damages related to their loss
24 of privacy in an amount to be determined at trial or for statutory damages in the amount of \$5,000 per
25 violation. Section 637.2 specifically states that "[it] is not a necessary prerequisite to an action pursuant
26 to this section that the plaintiffs has suffered, or be threatened with, actual damages."

27 145. Under the statute, Defendant is also liable for reasonable attorney's fees, litigation costs,
28 and injunctive and declaratory relief.

1 **RELIEF REQUESTED**

2 146. Plaintiffs, on behalf of themselves and the proposed Class, respectfully request that the
3 Court grant the following relief:

- 4 a. Determine that the claims alleged herein may be maintained as a class action and issue
5 an order certifying the Class defined above;
- 6 b. Appoint Plaintiffs as the representatives of the Class and their counsel as Class counsel;
- 7 c. An order enjoining Defendant from engaging in the unlawful practices and illegal acts
8 described herein;
- 9 d. An order awarding Plaintiff and the Class: (1) actual, statutory, or nominal damages;
10 (2) punitive damages in an amount to be determined at trial; (3) prejudgment interest on
11 all amounts awarded; (4) equitable disgorgement and injunctive relief as pleaded or as
12 the Court may deem proper; and (5) reasonable attorneys' fees, expenses, and costs of
13 suit; and
- 14 e. Other such and further relief as the Court may deem appropriate.

15 **DEMAND FOR JURY TRIAL**

16 147. Plaintiffs, on behalf of themselves and the proposed Class, demand a trial by jury for all
17 claims asserted in this Complaint so triable.

18
19 Dated: April 25, 2024

Respectfully submitted,

20 By: /s/ Alexander E. Wolf

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