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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ALAN STARZINSKI, OLADEJI ODUMOSU,
AURELIO MEDINA, and DARRNELL MCCOY,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

META PLATFORMS, INC.,

Defendants.

CASE NO. 5:24-cv-4501

**DEFENDANT META PLATFORMS,
INC.'S NOTICE OF REMOVAL**

(Santa Clara County Superior Court
Case No. 24CV441982)

Trial Date: None Set
Action Filed: June 27, 2024

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
2 DISTRICT OF CALIFORNIA AND TO PLAINTIFFS AND THEIR COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE THAT defendant Meta Platforms, Inc. (“Meta”), by and through its
4 undersigned counsel and pursuant to 28 U.S.C. § 1441, *et seq.*, and in accordance with 28 U.S.C.
5 §§ 1331, 1332(d), and 1367, respectfully removes the above-captioned matter from the Superior Court
6 of California, County of Santa Clara to this Court. Removal is proper for the reasons set forth below.

7 **TIMELINESS OF REMOVAL**

8 1. Plaintiffs filed a Class Action Complaint on behalf of a putative class against Meta on
9 June 27, 2024, in Santa Clara Superior Court. Pursuant to 28 U.S.C. § 1446(a), true and correct copies
10 of the Complaint, Summons, Civil Case Cover Sheet, Order and Notice of Case Assignment, and
11 Register of Actions are attached as Exhibits A–E to the concurrently filed Declaration of Elizabeth K.
12 McCloskey.

13 2. Plaintiffs served Meta with the Summons and Complaint on June 28, 2024. *See*
14 McCloskey Decl. Exs. A, C. This notice of removal is therefore timely pursuant to 28 U.S.C. § 1446(b)
15 because it is filed within 30 days after service of the initial complaint which provided grounds for
16 removability. *See* 28 U.S.C. § 1446(b); Fed. R. Civ. P. 6(a)(1).

17 **SUMMARY OF ALLEGATIONS AND GROUNDS FOR REMOVAL**

18 3. Plaintiffs’ initial Complaint brings three claims against Meta: (1) one claim for violation
19 of the Federal Wiretap Act; and (2) two claims for violations of the California Invasion of Privacy Act.

20 4. Plaintiffs contend, in sum, that Meta “intentionally intercepted sensitive and
21 confidential communications” in the form of video viewing history between “subscribers” and
22 “Streaming Services” including Paramount+, ESPN+, Hulu, and Starz using the Meta Pixel and “other
23 Business Tools” in violation of the Federal Wiretap Act and California Invasion of Privacy Act.
24 Compl. ¶ 1, 8, 38–40, 44, 131, 154, 168. According to the Complaint, the Streaming Services
25 “coordinate with Facebook” to create targeted advertisements using “Facebook’s Business Tools.” *Id.*
26 ¶ 45, 47. Plaintiffs allege Meta intercepts and collects their video viewing history information “so it
27 can better match visitors to their Facebook profiles, which in turn allows the Streaming Services to
28 better target their advertisements.” *Id.* ¶ 57.

1 alleged transmission, and Meta’s alleged receipt, of confidential personally identifiable information
2 and video viewing history through the installation of the Meta Pixel and related business tools on the
3 Streaming Services websites. *See, e.g.*, Compl. ¶¶ 135, 137, 160–63, 173. In fact, plaintiffs seek to
4 bring all these claims on behalf of the same putative class which itself suggests the same nucleus of
5 operative facts are at play. *See, e.g., id.* ¶ 117–26. This Court therefore may exercise supplemental
6 jurisdiction over the pendent state law claims. *See Swarts*, 689 F. Supp. 3d at 738 (“[t]he Court has
7 federal question jurisdiction over Plaintiff’s Wiretap Act claim pursuant to 28 U.S.C. § 1331 and
8 supplemental jurisdiction over his state law claims pursuant to 28 U.S.C. § 1367(a)”); *Planned*
9 *Parenthood*, 2018 WL 2441518, at *4 (“[t]his court exercises federal question jurisdiction over
10 Plaintiff’s federal RICO and Wiretap Act claims pursuant to 28 U.S.C. § 1331, and supplemental
11 jurisdiction over Plaintiffs’ pendent state law claims”).

12 10. Thus, the Court may exercise jurisdiction over all of plaintiffs’ claims under 28 U.S.C.
13 §§ 1331 and 1367, and removal is appropriate. *See* 28 U.S.C. § 1441(a).

14 **THIS COURT HAS SUBJECT MATTER JURISDICTION UNDER CAFA**

15 11. Removal is proper under CAFA because members of plaintiffs’ proposed class and Meta
16 are citizens of different states, there are at least 100 alleged putative class members, and the combined
17 claims of all alleged putative class members exceeds \$5 million, exclusive of interest and costs. 28
18 U.S.C. § 1332(d).

19 12. To be clear, Meta denies any liability in this case. Meta also denies that plaintiffs or the
20 putative class are entitled to any relief or any alleged damages. Meta intends to oppose class
21 certification and expressly reserves all rights to oppose class certification, to object to the scope of the
22 class, and to contest the merits of the claim asserted in the complaint. Nevertheless, for purposes of
23 the jurisdictional requirements only, the allegations in plaintiffs’ complaint identify a putative class of
24 more than 100 members and put in controversy, in the aggregate, an amount that exceeds \$5 million.
25 *See* 28 U.S.C. § 1332(d)(6).

26 **A. The Proposed Class and Subclasses Consist of More Than 100 Members**

27 13. Based on plaintiffs’ allegations, this action satisfies CAFA’s requirement that the
28 putative class contain at least 100 members. *See* 28 U.S.C. § 1332(d)(5)(B). Plaintiffs note that this

1 case involves “all persons with Facebook accounts who subscribe to Paramount+, ESPN+, Hulu, and
2 Starz.” Compl. ¶ 117. Plaintiffs also purport to bring this suit on behalf of “all persons” with a
3 Paramount+, ESPN+, Hulu, or Starz subscription. *Id.* ¶¶ 2–5. Plaintiffs estimate that members of their
4 putative classes “number in the millions.” Compl. ¶ 124. Accordingly, while Meta denies class
5 treatment is permissible or appropriate, as alleged, the proposed classes consist of more than 100
6 members based on plaintiffs’ proposed class definitions.

7 **B. Meta and Members of Plaintiffs’ Proposed Class Are Not Citizens of the Same State**

8 14. The minimum diversity of citizenship criterion under CAFA is met if a plaintiff or “any
9 member” of the putative class “is a citizen of a State different from any defendant.” *See* 28 U.S.C. §
10 1332(d)(2)(A); *Broadway Grill, Inc. v. Visa Inc.*, 856 F.3d 1274, 1276 (9th Cir. 2017).

11 15. A corporation is a citizen of its state of incorporation and the state of its principal place
12 of business. 28 U.S.C. § 1332(c)(1). Meta is a corporation organized under the laws of Delaware with
13 its principal place of business in California. *See* Corporate Disclosure Statement (Dkt. 2); *see also*
14 Compl. ¶ 31. Thus, Meta is a citizen of Delaware and California. *See* U.S.C. § 1332(c)(1).

15 16. A person is a citizen of the state in which he or she is domiciled. *Kantor v. Wellesley*
16 *Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). For purposes of CAFA, the plaintiff’s citizenship
17 is determined “as of the date of filing of the complaint.” 28 U.S.C. § 1332(d)(7).

18 17. The complaint alleges the proposed classes includes “all persons with Facebook
19 accounts who subscribe to Paramount+, ESPN+, Hulu, and Starz” as well as “all persons” with
20 individual subscriptions to Paramount+, ESPN+, Hulu, or Starz. Compl. ¶¶ 1–5, 117. It is indisputable
21 that there are subscribers to Paramount+, ESPN+, Hulu, and Starz who are citizens of states other than
22 California and Delaware, and that, as a result, the putative class includes individuals who are citizens
23 of states different from those in which Meta is a citizen. Even though the named plaintiffs are all
24 citizens of California, *see id.* ¶¶ 27–30, the relevant inquiry is whether any putative class members are
25 from different states from the defendant. *See Broadway Grill*, 856 F.3d at 1276, 1279 (allowing
26 removal under CAFA where a plaintiff who was a citizen of California brought suit on behalf of a
27 proposed class consisting of “all California individuals . . . who accepted Visa-branded cards in
28 California” because such a class necessarily included individuals who were “non-citizens of California”

1 making members of the purported class diverse from the defendant, who was a citizen of Delaware and
2 California); *see also Brinkley v. Monterey Fin. Servs., Inc.*, 873 F.3d 1118, 1121–122 (9th Cir. 2017)
3 (holding removal by California defendant was proper where plaintiffs’ proposed class of people who
4 made certain phone calls in California “[b]y its terms . . . includes individuals who were physically
5 located in, but were not residents of, California”).

6 18. Accordingly, Meta and plaintiffs within the proposed classes are citizens of different
7 states, and CAFA’s minimal diversity requirement is satisfied. 28 U.S.C. § 1332(d)(2)(A).

8 **C. The Amount in Controversy Exceeds \$5 Million**

9 19. CAFA requires that the amount in controversy in a class action exceed \$5 million,
10 exclusive of interest and costs. 28 U.S.C. § 1332(d)(2). In calculating the amount in controversy, a
11 court must aggregate the claims of all individual purported class members. 28 U.S.C. § 1332(d)(6).

12 20. “[A] defendant’s notice of removal need include only a plausible allegation that the
13 amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co. v.*
14 *Owens*, 574 U.S. 81, 89 (2014). In assessing whether the amount in controversy requirement has been
15 satisfied, “a court must assume that the allegations of the complaint are true and assume that a jury will
16 return a verdict for the plaintiff on all claims made in the complaint.” *Campbell v. Vitran Exp., Inc.*,
17 471 F. App’x 646, 648 (9th Cir. 2012) (internal quotation marks and citation omitted). In other words,
18 “[t]he ultimate inquiry is what amount is put ‘in controversy’ by the plaintiff’s complaint, not what a
19 defendant will actually owe.” *Fong v. Regis Corp.*, 2014 WL 26996, at *2 (N.D. Cal. Jan. 2, 2014)
20 (quoting *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008)).

21 21. Again, Meta denies that plaintiffs’ action has any merit. But for the purposes of meeting
22 the jurisdictional requirements for removal *only*, if plaintiffs were to prevail on every claim and
23 allegation in their complaint on behalf of the putative class, the recovery would exceed \$5 million.
24 Here, plaintiffs seek statutory damages (in a number to be assessed by the court) for every Federal
25 Wiretap Act violation and \$5,000 (or three times the actual damages, whichever is greater) for their
26 California Invasion of Privacy Act claims. *See* Compl. ¶¶ 153, 167, 175. These statutory damage
27 amounts, combined with plaintiffs’ allegation that there are “millions” of class members, *id.* ¶ 124,
28 mean the alleged amount in controversy exceeds CAFA’s \$5 million threshold (i.e., at a bare

1 minimum., \$5,000 per violation multiplied by “millions” of alleged violations associated with putative
2 class members).

3 **THIS COURT HAS JURISDICTION AND REMOVAL IS PROPER**

4 22. Based on the foregoing facts and allegations, this Court has original jurisdiction over
5 this action pursuant to 28 U.S.C. § 1331 and supplemental jurisdiction pursuant to 28 U.S.C. § 1367
6 because:

- 7 (a) This is a civil action within the meaning of § 1331;
8 (b) plaintiffs assert a claim under the laws of the United States under § 1331; and
9 (c) the remaining state-law claims are related to the claim over which there is
10 original jurisdiction under § 1367.

11 23. Additionally, this Court has original jurisdiction over this action pursuant to 28 U.S.C.
12 § 1332(d) because:

- 13 (a) This is a civil action which is a putative class action within the meaning
14 of § 1332(d)(1)(b);
15 (b) Plaintiffs allege that the action involves a putative class of at least 100
16 persons as required by § 1332(d)(5)(B);
17 (c) The alleged amount in controversy exceeds \$5 million, exclusive of
18 interest and costs as required by § 1332(d)(2); and
19 (d) A member of the proposed class is a citizen of a state different from any
20 defendant as required by § 1332(d)(2)(A).

21 24. Accordingly, this action is properly removable.

22 25. The United States District Court for the Northern District of California is the federal
23 judicial district embracing the Superior County of California for the County of Santa Clara, where the
24 suit was originally filed, 28 U.S.C. § 84(a). *See* 28 U.S.C. § 1441(a).

25 26. Upon filing the original Notice of Removal, Meta furnished written notice to plaintiffs’
26 counsel and filed and served a copy of the Notice with the Clerk of the Superior Court of California
27 for the County of Santa Clara, pursuant to 28 U.S.C. § 1446(d).

EXHIBIT A

E-FILED
6/27/2024 3:45 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
24CV441982
Reviewed By: R. Walker

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

ALAN STARZINSKI, OLADEJI
ODUMOSU, AURELIO MEDINA, and
DARNELL MCCOY, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

META PLATFORMS, INC., fka
FACEBOOK, INC.,

Defendant.

Case No. **24CV441982**

CLASS ACTION

COMPLAINT

1 Plaintiffs Alan Starzinski, Oladeji Odumosu, Aurelio Medina, and Darnell McCoy
2 (“Plaintiffs”), on behalf of themselves and all other persons similarly situated, by and through their
3 attorneys, make the following allegations pursuant to the investigation of their counsel and based
4 upon information and belief, except as to allegations specifically pertaining to themselves, which
5 are based on personal knowledge.

6 **NATURE OF THE ACTION**

7 1. This is a class action brought on behalf of all persons with Facebook accounts who
8 subscribe to Paramount+, ESPN+, Hulu, and Starz (together, the “Streaming Services”).

9 2. Plaintiff Starzinski also brings this suit on behalf of all persons with a Paramount+
10 subscription (the “Paramount Subclass”).

11 3. Plaintiffs Odumosu and Monserrat also bring this suit on behalf of all persons with
12 an ESPN+ subscription (the “ESPN Subclass”).

13 4. Plaintiffs Odumosu and Medina also bring this suit on behalf of all persons with a
14 Hulu subscription (the “Hulu Subclass”).

15 5. Plaintiff McCoy also brings this suit on behalf of all persons with a Starz
16 subscription (the “Starz Subclass”).

17 6. Meta Platforms, Inc. (“Defendant” or “Facebook”) develops, owns, and operates the
18 largest social networking platform on the planet.

19 7. Facebook intentionally intercepted Plaintiffs’ and Class members’ electronic
20 communications. Facebook failed to receive consent for these interceptions, instead obfuscating the
21 volume, specificity, and type of data it intercepted and collected.

22 8. Facebook also intentionally intercepted sensitive and confidential communications
23 between the Streaming Services and its subscribers. Facebook likewise failed to receive consent for
24 these interceptions, having engaged in conduct that expressly contravened its own terms and
25 representations.

26 9. By failing to first receive consent before intercepting and collecting electronic
27 communications, Facebook violated California law as described herein.

BACKGROUND

I. FACEBOOK: FROM SOCIAL UTILITY TO TRACKING APPARATUS

10. Facebook is the largest social media site on the planet, touting 2.9 billion monthly active users.¹

11. Launched in February 2004, the social media site flourished immediately. Within 10 months of its debut, the site reached 1 million active users,² quickly swelling to 30 million less than three years later.³ As its user base grew, so did interest from investors. By late 2007, interest turned to clamor, and after rejecting a steady flow of proposed investments⁴ and buyouts,⁵ the still nascent company settled on an offer from Microsoft, agreeing to a \$240 million investment for a 1.6 percent stake, which extrapolated to an eye-popping valuation: \$15 billion.⁶

12. Commentators scrutinized the deal, pointing to the gaping disparity between Facebook’s valuation and Facebook’s revenue. “When a startup shows an estimated \$150 million in revenue, isn’t wildly profitable, and doesn’t have a clear revenue model, no company in its right mind would give it a \$15 billion valuation – except, it seems, if we’re talking about Facebook.”⁷ In short order, Facebook set about crafting that revenue model.

13. Because Facebook offered access to its platform for free, users were exactly that— users, not customers. Rather than find a way to make them customers, Facebook made them the

¹ Sean Burch, *Facebook Climbs to 2.9 Billion Users, Report 29.1 Billion in Q2 Sales*, YAHOO (July 28, 2021), <https://www.yahoo.com/now/facebook-climbs-2-9-billion-202044267.html>.

² The Associated Press, *Number of active users at Facebook over the years*, YAHOO FINANCE (Oct. 23, 2012), <https://finance.yahoo.com/news/number-active-users-facebook-over-years-214600186--finance.html>;

³ Laura Locke, *The Future of Facebook*, TIME (July 17, 2021), <http://content.time.com/time/business/article/0,8599,1644040,00.html>.

⁴ Nicholas Carlson, *11 companies that tried to buy Facebook back when it was a startup*, BUS. INSIDER (May 15, 2010), <https://www.businessinsider.com/all-the-companies-that-ever-tried-to-buy-facebook-2010-5>.

⁵ Kate Duffy, *When Yahoo offered \$1 billion to buy Facebook, Mark Zuckerberg said he wouldn’t know what to do with the money and would probably just build another Facebook, a new book says*, BUS. INSIDER (Jul. 14, 2021), <https://www.businessinsider.com/an-ugly-truth-mark-zuckerberg-facebook-yahoo-offer-money-book-2021-7>.

⁶ Brad Stone, *Microsoft Buys Stake in Facebook*, N.Y. TIMES (Oct. 25, 2007), <https://www.nytimes.com/2007/10/25/technology/25facebook.html>.

⁷ Julie Sloane, *Facebook Got Its \$15 Billion Valuation – Now What?*, WIRED (Oct. 26, 2007), <https://www.wired.com/2007/10/facebook-future/>.

1 products. Facebook planned to mine its platform and third-party websites for insights it could use
2 to target and customize advertisements for businesses.⁸ User activity served as the raw materials,
3 materials that Facebook analyzed and dissected for inferences answering its ultimate question: what
4 advertisement, from which company, for which user, will have maximal impact. The better
5 Facebook could answer that question, the better it could “improve the effectiveness of the ads and
6 recruit new advertisers who want to pitch their messages to refined slices of the online audiences.”⁹
7 Facebook announced this new business model on November 6, 2007.

8 14. As that date approached, details leaked about its soon-to-be launched advertising
9 system, with one clear takeaway: “Facebook is going to be gunning hard to get lots and lots of third
10 party data about its users into its database.”¹⁰ Facebook quickly dispelled any doubts about that
11 takeaway’s veracity. On November 6th, Facebook unveiled its new ad system, “Facebook Ads,”
12 pitching it as a way “for businesses to connect with users and target advertising to the exact
13 audiences they want.”¹¹ The new system had three component parts: Social Ads, which let
14 businesses build Facebook pages and create advertisements featuring a user’s interaction with those
15 pages; Insights, which let businesses track how those social ads spread among users; and the
16 Beacon program.¹²

17 II. THE BEACON PROGRAM

18 15. Facebook extolled the Beacon program as “an advertising breakthrough.”¹³ The
19 program constituted Facebook’s first foray into tracking user activity off its site, piloting the
20 program with 44 business partners who agreed to integrate Facebook’s code into their website. The

21 ⁸ Brad Stone, *MySpace to Discuss Effort to Customize Ads*, N.Y. TIMES (Sept. 18, 2007),
22 <https://www.nytimes.com/2007/09/18/technology/18myspace.html>.

23 ⁹ Brad Stone, *MySpace mines data to tailor advertising*, N.Y. TIMES (Sept. 18, 2007),
24 <https://www.nytimes.com/2007/09/18/technology/18iht-social.1.7545453.html>.

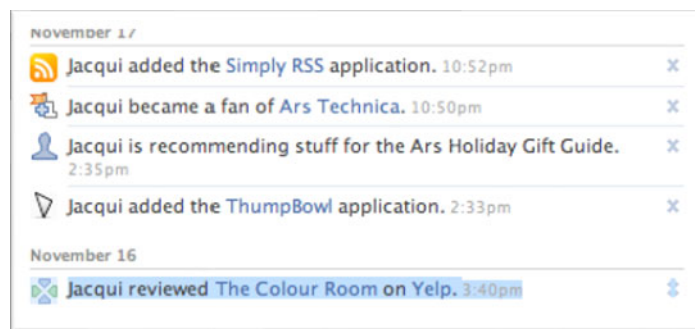
25 ¹⁰ Michael Arrington, *Ok Here’s at Least Part of What Facebook Is Announcing On Tuesday: Project Beacon*, TECHCRUNCH (Nov. 2, 2007), <https://techcrunch.com/2007/11/02/ok-heres-at-least-part-of-what-facebook-is-announcing-on-tuesday/>.

26 ¹¹ FACEBOOK, FACEBOOK UNVEILS FACEBOOK ADS, <https://about.fb.com/news/2007/11/facebook-unveils-facebook-ads/>.

27 ¹² Aline van Duyn and Kevin Allison, *‘Facebook ads’ to change way of marketing*, FIN. TIMES (Nov. 6, 2007), <https://www.ft.com/content/01341240-8cbd-11dc-b887-0000779fd2ac>.

28 ¹³ The Associated Press, *About-Face For Facebook*, CBS NEWS (Dec. 5, 2007), <https://www.cbsnews.com/news/about-face-for-facebook/>.

1 code ran on specific pages, like order confirmation, recording activity and transmitting it to
 2 Facebook, which then “report[ed] those activities back to the users’ Facebook friends, unless
 3 specifically told not to do so.”¹⁴ So, for example, if a Facebook user navigated to fandango.com, a
 4 partner website, and purchased a movie ticket, Facebook tracked that activity and sent “a notice
 5 about what movie they are seeing in the News Feed on all of their friends’ pages.”¹⁵ The same
 6 process applied to all partners, like Yelp:



15 16. Partners and Facebook both benefitted from this arrangement. For Facebook’s part,
 16 it received “incredibly valuable data from the user” that it could repurpose “to serve targeted
 17 (highly, highly targeted) ads back to them in various other places on Facebook and elsewhere.”¹⁶
 18 Businesses supplied this data without compensation, but in return they received a “trusted referral”
 19 for their product, considered “the Holy Grail of advertising.”¹⁷ “Nothing influences people more
 20 than a recommendation from a trusted friend,” Facebook’s CEO, Mark Zuckerberg, noted.¹⁸
 21 Partners considered this a major selling point, as Blockbuster flaunted in a presentation to investors:

22 _____
 23 ¹⁴ Jaikumar Vijayan and Heather Havenstein, *Facebook’s Beacon just the tip of the privacy iceberg*,
 24 *COMPUTERWORLD* (Dec. 3, 2007), [https://www.computerworld.com/article/2538002/facebook-s-](https://www.computerworld.com/article/2538002/facebook-s-beacon-just-the-tip-of-the-privacy-iceberg.html)
 25 [beacon-just-the-tip-of-the-privacy-iceberg.html](https://www.computerworld.com/article/2538002/facebook-s-beacon-just-the-tip-of-the-privacy-iceberg.html).

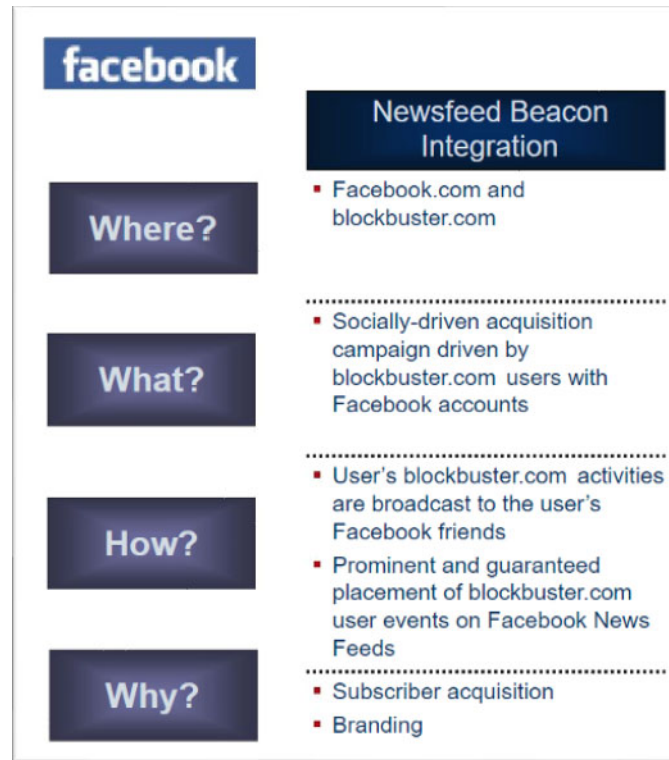
26 ¹⁵ Louise Story and Brad Stone, *Facebook Retreats on Online Tracking*, *N.Y. TIMES* (Nov. 30,
 27 2007), <https://www.nytimes.com/2007/11/30/technology/30face.html>.

28 ¹⁶ Michael Arrington, *Ok Here’s At Least Part Of What Facebook Is Announcing on Tuesday: Project Beacon*, *TECHCRUNCH* (Nov. 2, 2007), <https://techcrunch.com/2007/11/02/ok-heres-at-least-part-of-what-facebook-is-announcing-on-tuesday/>.

¹⁷ Aline van Duyn and Kevin Allison, *‘Facebook ads’ to change way of marketing*, *FIN. TECH* (Nov. 6, 2007), <https://www.ft.com/content/01341240-8cbd-11dc-b887-0000779fd2ac>.

¹⁸ *Id.*

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17. The Beacon program was “an important test of online tracking,”¹⁹ but not for its novelty. Companies already tracked users pervasively across the internet, but they did it “behind the scenes, where consumers do not notice it.”²⁰ With the Beacon program, Facebook showcased its tracking program, providing a window into what and how much data it collected on other websites. This fact, Facebook thought, would prove insignificant. “With time, Facebook says, users will accept Beacon, which Facebook views as an extension of the type of book and movie recommendations that members routinely volunteer on their profile pages.”²¹

18. Public outrage was swift and overwhelming. Less than a month after the Beacon’s introduction, 50,000 users signed an online petition in protest.²² “Facebook, they say, should not be

¹⁹ Louise Story and Brad Stone, *Facebook Retreats on Online Tracking*, N.Y. TIMES (Nov. 30, 2007), <https://www.nytimes.com/2007/11/30/technology/30face.html>.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

1 following them around the Web, especially without their permission.”²³ As the outrage continued
2 to crescendo, Facebook sought to allay concerns by “reassur[ing] users that it only tracks and
3 publishes data about their purchases if they are both logged in to Facebook and have opted-in to
4 having this information listed on their profile.”²⁴

5 19. That turned out to be false. “[I]n ‘extremely disconcerting’ findings that directly
6 contradict these assurances, researchers at CA’s Security Advisory service ... found that data about
7 these transactions are sent to Facebook regardless of a user’s actions.”²⁵ And researchers soon
8 discovered “something even more distressing”: contrary to its representations, “Facebook was
9 tracking its users after they’d logged out of the site.”²⁶

10 20. In December 2007, less than a month after the Beacon’s introduction, Mark
11 Zuckerberg issued an apology, acknowledging the company “missed the right balance.”²⁷ Moving
12 forward, Zuckerberg said, “[i]f you select that you don’t want to share some Beacon actions or if
13 you turn off Beacon, then Facebook won’t store those actions even when partners send them to
14 Facebook.”²⁸

15 III. LANE V. FACEBOOK

16 21. In October 2008, nineteen Facebook users filed suit against Facebook and
17 “Facebook Beacon Activated Affiliates,” including Blockbuster, Fandango, and Gamefly.
18 Facebook, they alleged, unlawfully intercepted their electronic communications, including
19 communications that disclosed their sensitive information, like their video-viewing history, while
20 the Facebook Beacon Activated Affiliates unlawfully permitted these disclosures.²⁹ This conduct,
21

22 ²³ *Id.*

23 ²⁴ Brett Winterford, *Logged in or out, Facebook is watching you*, ZDNET (Dec. 3, 2007),
24 <https://www.zdnet.com/article/logged-in-or-out-facebook-is-watching-you/>.

25 ²⁵ *Id.*

26 ²⁶ Craig Ruttle, *Facebook CEO Apologizes, Lets Users Turn Off Beacon*, WIRED (Dec. 5, 2007),
27 <https://www.wired.com/2007/12/facebook-ceo-apologizes-lets-users-turn-off-beacon/>.

28 ²⁷ FACEBOOK, ANNOUNCEMENT: FACEBOOK USERS CAN NOW OPT-OUT OF BEACON FEATURE,
29 <https://about.fb.com/news/2007/12/announcement-facebook-users-can-now-opt-out-of-beacon-feature/>.

30 ²⁸ *Id.*

31 ²⁹ *Lane v. Facebook*, 5:08-cv-03845-RS, Dkt. 1 (N.D. Cal. Aug. 12, 2008).

1 plaintiffs alleged, violated several privacy protections guaranteed by law, both state and federal.³⁰
2 Specifically, by intercepting their electronic communications, Facebook violated the Electronic
3 Communications Privacy Act, and by disclosing their video-viewing history to Facebook, the
4 Affiliates violated the Video Privacy Protection Act (“VPPA”).³¹

5 22. The parties ultimately agreed to settle for a \$9.5 million *cy pres* fund, a settlement
6 that the district court approved and the Ninth Circuit later upheld.³²

7 23. Nonetheless, after the Beacon debacle, Facebook continued to disregard user
8 privacy, resulting in a November 2012 consent decree between the Federal Trade Commission and
9 Facebook,³³ which the social media site violated just seven years later, entering another agreement
10 with additional terms and a \$5 billion penalty.³⁴ Notwithstanding the hefty fine, Facebook
11 continues to violate that renewed consent decree, as later discussed.

12 24. Twelve years after the *Lane* settlement, not much has changed. Facebook’s
13 advertisers still violate the VPPA, and Facebook still facilitates those violations by intentionally
14 wiretapping electronic communications from users and non-users alike. Then and today, Facebook
15 never receives consent for these interceptions, instead promising users it safeguards their privacy
16 and requires advertisers to disclose data in compliance with federal and state law.

17 25. Facebook has, however, made one change, a change that represents the only lesson it
18 learned from *Lane*. Facebook originally conceived the Beacon program as “a far more transparent
19 and personal approach”³⁵ to off-site tracking, contrasting it with the industry standard, where
20 companies track users “behind the scenes, where consumers do not notice it.”³⁶ But Facebook
21 failed to appreciate that “[p]eople tend to strongly oppose such tracking when they know it is

22 ³⁰ *Id.*

23 ³¹ *Id.*

24 ³² *Id.* at Dkt. 38.; *Lane v. Facebook*, 696 F.3d 811 (9th Cir. 2012).

25 ³³ FEDERAL TRADE COMMISSION, FTC APPROVES FINAL SETTLEMENT WITH FACEBOOK,
<https://www.ftc.gov/news-events/press-releases/2012/08/ftc-approves-final-settlement-facebook>.

26 ³⁴ FEDERAL TRADE COMMISSION, FTC IMPOSES \$5 BILLION PENALTY AND SWEEPING NEW PRIVACY
RESTRICTIONS ON FACEBOOK, [https://www.ftc.gov/news-events/press-releases/2019/07/ftc-imposes-
5-billion-penalty-sweeping-new-privacy-restrictions](https://www.ftc.gov/news-events/press-releases/2019/07/ftc-imposes-5-billion-penalty-sweeping-new-privacy-restrictions).

27 ³⁵ Louise Story and Brad Stone, *Facebook Retreats on Online Tracking*, N.Y. TIMES (Nov. 30,
2007), <https://www.nytimes.com/2007/11/30/technology/30face.html>.

28 ³⁶ *Id.*

1 happening or discover the extent to which it is happening.”³⁷ That sentiment was especially true for
2 Facebook, where users chronicle their personal lives and interact with friends and family. Indeed,
3 in a survey commissioned the same year as the Beacon program’s introduction, “85% of the
4 respondents said they rejected outright the idea that a site they value and trust should be allowed to
5 serve up clickstream advertisements based on data from their visits to other sites.”³⁸ Rather than
6 address public discomfort by curbing its tracking, Facebook discarded its “transparent and personal
7 approach,” moving its tracking “behind the scenes, where consumers do not notice it.” Today, as
8 the following allegations show, Facebook continues to ubiquitously track communications,
9 including sensitive and confidential communication, off its site. The only difference is Facebook’s
10 transparency in doing so.

11 26. Plaintiffs bring this complaint to pick up where *Lane* left off.

12 PARTIES

13 27. Plaintiff Starzinski is domiciled in Los Angeles, California. Plaintiff Starzinski
14 subscribes to and frequents Paramount+ through the website paramountplus.com, which integrates
15 the Facebook Tracking Pixel. During those visits, the Facebook Tracking Pixel tracked what he
16 clicked on, searched for, and the videos he viewed. At all relevant times, Plaintiff Starzinski has
17 maintained a Facebook account. When accessing and viewing content on paramountplus.com,
18 Plaintiff Starzinski sent and received communications with Paramount. Facebook intercepted these
19 communications, and the Facebook Tracking Pixel captured and transmitted, at a minimum, the
20 buttons Plaintiff Starzinski clicked and the Universal Resource Locator (“URL”) for the pages he
21 viewed. While visiting paramountplus.com, Plaintiff Starzinski was unaware that Facebook was
22 intercepting these communications in real-time, and Plaintiff Starzinski did not consent to these
23 interceptions.

24 28. Plaintiff Odumosu is domiciled in Santa Clarita, California. Plaintiff Odumosu
25 subscribes to and frequents ESPN+ and Hulu through the websites espn.com and hulu.com, which

26 ³⁷ Jaikumar Vijayan and Heather Havenstein, *Facebook’s Beacon just the tip of the privacy iceberg*,
27 COMPUTERWORLD (Dec. 3, 2007), <https://www.computerworld.com/article/2538002/facebook-s-beacon-just-the-tip-of-the-privacy-iceberg.html>

28 ³⁸ *Id.*

1 integrate the Facebook Tracking Pixel, and has done so many times. During those visits, the
2 Facebook Tracking Pixel tracked what he clicked on, searched for, and the videos he viewed. At all
3 relevant times, Plaintiff Odumusu has maintained a Facebook account. When accessing and
4 viewing content on espn.com and hulu.com, Plaintiff Odumusu sent and received communications
5 with ESPN and Hulu. Facebook intercepted these communications, and the Facebook Tracking
6 Pixel captured and transmitted, at a minimum, the buttons Plaintiff Odumusu clicked and the
7 Universal Resource Locator (“URL”) for the pages he viewed. While visiting espn.com and
8 hulu.com, Plaintiff Odumusu was unaware that Facebook was intercepting these communications in
9 real-time, and Plaintiff Odumusu did not consent to these interceptions.

10 29. Plaintiff Medina is domiciled in Los Angeles, California. Plaintiff Medina
11 subscribes to and frequents Hulu through the website hulu.com, which integrates the Facebook
12 Tracking Pixel. During those visits, the Facebook Tracking Pixel tracked what he clicked on,
13 searched for, and the videos he viewed. At all relevant times, Plaintiff Medina has maintained a
14 Facebook account. When accessing and viewing content on hulu.com, Plaintiff Medina sent and
15 received communications with Hulu. Facebook intercepted these communications, and the
16 Facebook Tracking Pixel captured and transmitted, at a minimum, the buttons Plaintiff Medina
17 clicked and the Universal Resource Locator (“URL”) for the pages he viewed. While visiting
18 hulu.com, Plaintiff Medina was unaware that Facebook was intercepting these communications in
19 real-time, and Plaintiff Medina did not consent to these interceptions.

20 30. Plaintiff McCoy is domiciled in Manteca, California. Plaintiff McCoy subscribes to
21 and frequents Starz through the website starz.com, which integrates the Facebook Tracking Pixel.
22 During those visits, the Facebook Tracking Pixel tracked what he clicked on, searched for, and the
23 videos he viewed. At all relevant times, Plaintiff McCoy has maintained a Facebook account.
24 When accessing and viewing content on starz.com, Plaintiff McCoy sent and received
25 communications with Starz. Facebook intercepted these communications, and the Facebook
26 Tracking Pixel captured and transmitted, at a minimum, the buttons Plaintiff McCoy clicked and the
27 Universal Resource Locator (“URL”) for the pages he viewed. While visiting starz.com, Plaintiff
28

1 McCoy was unaware that Facebook was intercepting these communications in real-time, and
2 Plaintiff McCoy did not consent to these interceptions.

3 31. Defendant Meta Platforms, Inc. is a social media site that requires users to submit
4 their “real identity” when creating an account, meaning a first name, last name, birthday and gender.
5 Defendant is a Delaware corporation with its principal place of business in Menlo Park, California.
6 Defendant develops, owns, and operates facebook.com, which is used throughout California and the
7 United States.

8 JURISDICTION AND VENUE

9 32. This Court has subject matter jurisdiction over this class action. This Court has
10 personal jurisdiction over the parties because Plaintiffs reside in California and submit to the
11 jurisdiction of the Court, and because Defendant, at all times relevant hereto, has systematically and
12 continually conducted, and continues to conduct, business in this State.

13 33. Venue is proper in this Court pursuant to Civil Code §§ 395 and 395.5. Defendant
14 conducts business in this County and throughout the State of California and its principal place of
15 business is in this County.

16 STATEMENT OF FACTS

17 **I. FACEBOOK’S PLATFORM AND ITS BUSINESS TOOLS**

18 34. Facebook describes itself as a “real identity platform,”³⁹ meaning users are allowed
19 only one account and must share “the name they go by in everyday life.”⁴⁰ To that end, when
20 creating an account, users must provide their first and last name, along with their birthday and
21 gender.⁴¹

22 35. In 2021, Facebook generated \$117 billion in revenue.⁴² Roughly 97% of that came
23

24 ³⁹ Sam Schechner and Jeff Horwitz, *How Many Users Does Facebook Have? The Company*
25 *Struggles to Figure It Out*, WALL. ST. J. (Oct. 21, 2021).

26 ⁴⁰ FACEBOOK, COMMUNITY STANDARDS, PART IV INTEGRITY AND AUTHENTICITY,
https://www.facebook.com/communitystandards/integrity_authenticity.

27 ⁴¹ FACEBOOK, SIGN UP, <https://www.facebook.com/>

28 ⁴² FACEBOOK, META REPORTS FOURTH QUARTER AND FULL YEAR 2021 RESULTS,
<https://investor.fb.com/investor-news/press-release-details/2022/Meta-Reports-Fourth-Quarter-and-Full-Year-2021-Results/default.aspx>

1 from selling advertising space.⁴³

2 36. Facebook sells advertising space by highlighting its ability to target users.⁴⁴
3 Facebook can target users so effectively because it surveils user activity both on and off its site.⁴⁵
4 This allows Facebook to make inferences about users beyond what they explicitly disclose, like
5 their “interests,” “behavior,” and “connections.”⁴⁶ Facebook compiles this information into a
6 generalized dataset called “Core Audiences,” which advertisers use to apply highly specific filters
7 and parameters for their targeted advertisements.⁴⁷

8 37. Advertisers can also build “Custom Audiences.”⁴⁸ Custom Audiences enables
9 advertisers to reach “people who have already shown interest in [their] business, whether they’re
10 loyal customers or people who have used [their] app or visited [their] website.”⁴⁹ With Custom
11 Audiences, advertisers can target existing customers directly, and they can also build a “Lookalike
12 Audiences,” which “leverages information such as demographics, interests, and behavior from your
13 source audience to find new people who share similar qualities.”⁵⁰ Unlike Core Audiences,
14 advertisers can build Custom Audiences and Lookalike Audiences only if they first supply
15 Facebook with the underlying data. They can do so through two mechanisms: by manually
16 uploading contact information for customers, or by utilizing Facebook’s “Business Tools.”⁵¹

17 _____
18 ⁴³ *Id.*

19 ⁴⁴ FACEBOOK, WHY ADVERTISE ON FACEBOOK,
<https://www.facebook.com/business/help/205029060038706>.

20 ⁴⁵ FACEBOOK, ABOUT FACEBOOK PIXEL,
<https://www.facebook.com/business/help/742478679120153?id=1205376682832142>.

21 ⁴⁶ FACEBOOK, AD TARGETING: HELP YOUR ADS FIND THE PEOPLE WHO WILL LOVE YOUR BUSINESS,
<https://www.facebook.com/business/ads/ad-targeting>.

22 ⁴⁷ FACEBOOK, EASIER, MORE EFFECTIVE WAYS TO REACH THE RIGHT PEOPLE ON FACEBOOK,
<https://www.facebook.com/business/news/Core-Audiences>.

23 ⁴⁸ FACEBOOK, ABOUT CUSTOM AUDIENCES,
<https://www.facebook.com/business/help/744354708981227?id=2469097953376494>.

24 ⁴⁹ FACEBOOK, AD TARGETING, HELP YOUR ADS FIND THE PEOPLE WHO WILL LOVE YOUR BUSINESS,
<https://www.facebook.com/business/ads/ad-targeting>.

25 ⁵⁰ Facebook, About Lookalike Audiences,
<https://www.facebook.com/business/help/164749007013531?id=401668390442328>.

26 ⁵¹ FACEBOOK, CREATE A CUSTOMER LIST CUSTOM AUDIENCE,
27 <https://www.facebook.com/business/help/170456843145568?id=2469097953376494>; Facebook,
28 Create a Website Custom Audience,
<https://www.facebook.com/business/help/1474662202748341?id=2469097953376494>.

1 **II. FACEBOOK UTILIZES ITS BUSINESS TOOLS TO INTENTIONALLY**
 2 **INTERCEPT ELECTRONIC COMMUNICATIONS**

3 38. As Facebook puts it, the Business Tools “help website owners and publishers, app
 4 developers and business partners, including advertisers and others, integrate with Facebook,
 5 understand and measure their products and services, and better reach and serve people who might
 6 be interested in their products and services.”⁵² Put more succinctly, Facebook’s Business Tools are
 7 bits of code that advertisers can integrate into their website, mobile applications, and servers,
 8 thereby enabling Facebook to intercept and collect user activity on those platforms.

9 39. The Business Tools are automatically configured to capture certain data, like when a
 10 user visits a webpage, that webpage’s Universal Resource Locator (“URL”) and metadata, or when
 11 a user downloads a mobile application or makes a purchase.⁵³ Facebook’s Business Tools can also
 12 track other events. Facebook offers a menu of “standard events” from which advertisers can
 13 choose, including what content a visitor views or purchases.⁵⁴ Advertisers can even create their
 14 own tracking parameters by building a “custom event.”⁵⁵

15 40. One such Business Tool is the Facebook Tracking Pixel. Facebook offers this piece
 16 of code to advertisers, including each of the Streaming Services, to integrate into their respective
 17 websites. As the name implies, the Facebook Tracking Pixel “tracks the people and type of actions
 18 they take.”⁵⁶ When a user accesses a website hosting the Facebook Tracking Pixel, Facebook’s
 19 software script surreptitiously directs the user’s browser to send a separate message to Facebook’s
 20 servers. This second, secret transmission contains the original GET request sent to the host website,
 21 along with additional data that the Pixel is configured to collect. This transmission is initiated by

22 ⁵² FACEBOOK, THE FACEBOOK BUSINESS TOOLS, <https://www.facebook.com/help/331509497253087>.

23 ⁵³ See FACEBOOK, FACEBOOK PIXEL, ACCURATE EVENT TRACKING, ADVANCED,
 24 <https://developers.facebook.com/docs/facebook-pixel/advanced/>; see also FACEBOOK, BEST
 25 PRACTICES FOR FACEBOOK PIXEL SETUP,

26 <https://www.facebook.com/business/help/218844828315224?id=1205376682832142>; FACEBOOK,
 27 APP EVENTS API, <https://developers.facebook.com/docs/marketing-api/app-event-api/>.

28 ⁵⁴ FACEBOOK, SPECIFICATIONS FOR FACEBOOK PIXEL STANDARD EVENTS,
<https://www.facebook.com/business/help/402791146561655?id=1205376682832142>.

⁵⁵ FACEBOOK, ABOUT STANDARD AND CUSTOM WEBSITE 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/>.

⁵⁶ FACEBOOK, RETARGETING, <https://www.facebook.com/business/goals/retargeting>.

1 Facebook’s code and concurrent with the communications with the host website. Two sets of code
2 are thus automatically run as part of the browser’s attempt to load and a website—the website’s
3 own code, and Facebook’s embedded code.

4 41. After collecting and intercepting this information, Facebook processes it, analyzes it,
5 and assimilates it into datasets like Core Audiences and Custom Audiences.

6 42. Facebook’s other Business Tools function the same. For mobile applications,
7 advertisers can utilize the Facebook SDK, which contains “component SDKs,” like the App Events
8 API, allowing advertisers to track events on their mobile apps so they can “measure ad performance
9 and build audiences for ad targeting.”⁵⁷

10 43. Advertisers can also utilize the “Conversions API.” The Conversions API lets
11 advertisers circumvent a user’s choice to exercise privacy controls.⁵⁸ More technically, the
12 Conversions API is Facebook code that advertisers can implement server-side.⁵⁹ Because it
13 operates server-side, the Conversions API ignores users’ decision to opt out of tracking, collecting
14 the same data it would otherwise through “a connection between an advertiser’s server and
15 Facebook.”⁶⁰ When the Conversions API collects “[s]erver events,” those data points are “linked to
16 a Meta Pixel ID and are processed like web events sent via Pixel.”⁶¹ As with the Facebook
17 Tracking Pixel, the Conversions API intercepts these communications contemporaneously and
18 surreptitiously.⁶² Facebook “recommend[s] that advertisers implement the Conversions API
19 alongside their Meta Pixel and follow other best practices.”⁶³

20 44. Facebook intercepted Plaintiffs’ electronic communications each time they accessed
21

22 ⁵⁷ FACEBOOK, APP EVENTS API, <https://developers.facebook.com/docs/marketing-api/app-event-api/>

23 ⁵⁸ FACEBOOK, CONVERSIONS API, <https://developers.facebook.com/docs/marketing-api/conversions-api>. This refers to device specific privacy controls.

24 ⁵⁹ *Id.*

25 ⁶⁰ *Id.*

26 ⁶¹ *Id.*

27 ⁶² FACEBOOK, HANDLING DUPLICATE PIXEL AND CONVERSIONS API EVENTS,
28 <https://developers.facebook.com/docs/marketing-api/conversions-api/deduplicate-pixel-and-server-events/> (“Once your event fulfills both conditions, we keep the first one and remove the following one. If a server and browser event arrive at approximately the same time (within 15 seconds of each other), we favor the browser event.”).

⁶³ *Id.*

1 a website containing the Facebook Tracking Pixel, like the Streaming Services’ websites. Facebook
2 intercepted these communications even when they were confidential and sensitive, like when a
3 subscriber ordered video material from the Streaming Services.

4 **III. FACEBOOK UTILIZES ITS BUSINESS TOOLS TO INTENTIONALLY**
5 **INTERCEPT SENSITIVE AND CONFIDENTIAL COMMUNICATIONS**

6 45. The Streaming Services coordinate with Facebook to target their advertisements and
7 set up their Business Tools. Facebook’s “Solutions Engineers team,” a team with more than 100
8 employees, “works with advertisers to build the technology and infrastructure needed to run more
9 effective campaigns on Facebook, often on top of Facebook’s APIs.”⁶⁴ This team and others work
10 with the Streaming Services closely.

11 46. For its top spenders, Facebook also embeds employees to provide strategic advice.
12 This is confirmed through Facebook’s own acknowledgements and congressional testimony.
13 During the 2016 presidential race, Facebook helped campaigns with their digital outreach,
14 providing a “political ad strategy [that] was initially modeled on its playbook for top corporate
15 clients: Facebook employees offered on-site support to the U.S. presidential candidates who were
16 considered the presumptive nominees for their parties.”⁶⁵ When called before Congress to explain
17 the practice, Facebook supplied written answers reiterating its approach was “consistent with
18 support provided to commercial clients in the normal course of business.”⁶⁶ As top corporate
19 clients, Facebook provides the Streaming Services with this same level of support, helping the
20 Streaming Services to, among other things, set up and maximize Facebook’s Business Tools.

21 **A. The Streaming Services and Facebook’s Business Tools**

22 47. To target its ads, the Streaming Services use Facebook’s Business Tools. These

23 ⁶⁴ Anthony Ha, *Facebook has a 100-person engineering team that helps advertisers build tools and*
24 *infrastructure*, TECHCRUNCH (Dec. 29, 2017), [https://techcrunch.com/2017/12/29/facebook-](https://techcrunch.com/2017/12/29/facebook-solutions-engineering/)
[solutions-engineering/](https://techcrunch.com/2017/12/29/facebook-solutions-engineering/).

25 ⁶⁵ Deepa Seetharaman, *How a Facebook Employee Helped Trump Win—But Switched Sides for*
26 *2020*, WALL ST. J. (Nov. 24, 2019), [https://www.wsj.com/articles/how-facebooks-embed-in-the-](https://www.wsj.com/articles/how-facebooks-embed-in-the-trump-campaign-helped-the-president-win-11574521712)
[trump-campaign-helped-the-president-win-11574521712](https://www.wsj.com/articles/how-facebooks-embed-in-the-trump-campaign-helped-the-president-win-11574521712).

27 ⁶⁶ ENERGY AND COMMERCE COMMITTEE, APRIL 11, 2018 HEARING TITLED FACEBOOK:
28 TRANSPARENCY AND USE OF CONSUMER DATA,
<https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Ho>
[use%20QFRs.compressed.pdf](https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Ho).

1 include, at a minimum, the Facebook Tracking Pixel and Facebook’s SDK.

2 48. For example, the Streaming Services’ websites each host the Facebook Tracking
 3 Pixel and transmit PageView data to Facebook, which includes the Uniform Resource Locators
 4 (“URL”) dedicated solely to the specific video watched.

5 49. This event data permits an ordinary person to identify what video(s) an individual
 6 has watched, and transmits this information in real time.

7 50. For example, Espn.com contains the code for at least ten different Facebook cookies:

Name	Value	Domain
fr	1Q1mbbo0rSihNtl0...	.facebook.com
xs	35%3ADindSa0sHK...	.facebook.com
locale	en_US	.facebook.com
ps_l	1	.facebook.com
datr	YmzSZBe2c5VKjUNs...	.facebook.com
c_user	[REDACTED]	.facebook.com
presence	C%7B%22t3%22%3...	.facebook.com
wd	1753x832	.facebook.com
ps_n	1	.facebook.com
sb	f2jBZbzuD_4mOgP3...	.facebook.com

15 51. Hulu.com contains the code for at least 10 different Facebook cookies:

Name	Value	Domain
c_user	[REDACTED]	.facebook.com
datr	YmzSZBe2c5VKjUNs...	.facebook.com
fr	1U9Vq1LmJpivOrcG...	.facebook.com
locale	en_US	.facebook.com
presence	C%7B%22t3%22%3...	.facebook.com
ps_l	1	.facebook.com
ps_n	1	.facebook.com
sb	f2jBZbzuD_4mOgP3...	.facebook.com
wd	1854x855	.facebook.com
xs	35%3ADindSa0sHK...	.facebook.com

25 52. Paramountplus.com contains the code for at least seven different Facebook cookies:

Name	Value	Domain ▲
sb	jVa6YaHou2Nev98LS...	.facebook.com
fr	1ey4SzLZuxHSXJ3y8...	.facebook.com
xs	165%3AjYP2J9Bb8vt...	.facebook.com
ps_l	1	.facebook.com
c_user	██████████	.facebook.com
ps_n	1	.facebook.com
datr	D8aAZZE7dAvjNYke...	.facebook.com

53. Starz.com contains the code for at least ten different Facebook cookies:

Name ▲	Value	Domain
c_user	██████████	.facebook.com
datr	YmzSZBe2c5VKjUNs...	.facebook.com
fr	1U9Vq1LmJpivOrcG...	.facebook.com
locale	en_US	.facebook.com
presence	C%7B%22t3%22%3...	.facebook.com
ps_l	1	.facebook.com
ps_n	1	.facebook.com
sb	f2j8ZbzuD_4mOgP3...	.facebook.com
wd	1854x855	.facebook.com
xs	35%3ADindSa0sHK...	.facebook.com

B. The Facebook Tracking Pixel Matches the Content to a Subscriber’s Identity

54. The Facebook Tracking Pixel matches Streaming Services subscribers to their corresponding Facebook profiles.

55. The Streaming Services’ Facebook Tracking Pixels utilize “Automatic Advanced Matching.” Automatic Advanced Matching enables a Facebook Tracking Pixel to “look for recognizable form field and other sources on your website that contain information such as first name, last name and email.”⁶⁷ The Facebook Tracking Pixel’s code then intercepts and transmits that information, “along with the event, or action, that took place.”⁶⁸ This information is

⁶⁷ FACEBOOK, ABOUT ADVANCED MATCHING FOR WEB, <https://www.facebook.com/business/help/611774685654668?id=1205376682832142>

⁶⁸ *Id.*

1 “hashed,”⁶⁹ meaning it is “[a] computed summary of digital data that is a one-way process.”⁷⁰

2
3
4 You can use Advanced Matching to help:

- 5 • Increase the number of attributed conversions. We can match more of the conversions that
- 6 happen on your website to people on Meta. This helps you understand the impact of your
- 7 ads on website conversions.
- 8 • Increase your Custom Audience size. We're able to better match your website visitors to
- 9 people on Meta and increase the size of your Custom Audience.
- 10 • Decrease the cost per conversion. Conversion-optimized campaigns become more efficient
- 11 because we can better identify and deliver ads to the types of people likely to take the
- 12 actions you care about.

13
14 56. In other words, it “cannot be reversed back into the original data.”⁷¹

15 57. Facebook intercepts and collects this information so it can better match visitors to

16 their Facebook profiles, which in turn allows the Streaming Services to better target their

17 advertisements.⁷²

18 58. Facebook intercepts and collects this information notwithstanding whether a user is

19 logged into Facebook or has ever registered for an account.

20 59. Facebook also uses various cookies to supplement the Facebook Tracking Pixel’s

21 tracking practices. Specifically, the Facebook Tracking Pixel contains a script that causes the user’s

22 browser to transmit, to Facebook, information from each of the Facebook cookies already existing

23 on the browser’s cache.

24 60. A subscriber who watches a show on the Streaming Services while logged into

25

26 ⁶⁹ PCMAG ENCYCLOPEDIA, HASH, <https://www.pcmag.com/encyclopedia/term/hash>.

27 ⁷⁰ *Id.*

28 ⁷¹ *Id.*

⁷² FACEBOOK, ABOUT ADVANCED MATCHING FOR WEB, <https://www.facebook.com/business/help/611774685654668?id=1205376682832142>

1 Facebook transmits the c_user cookie to Facebook, which contains that subscriber's unencrypted
2 Facebook ID.

3 61. When a visitor's browser has recently logged out of an account, Facebook compels
4 the visitor's browser to send a smaller set of cookies.

5 62. The fr cookie contains, at least, an encrypted Facebook ID and browser identifier.⁷³
6 The _fbp cookie contains, at least, an unencrypted value that uniquely identifies a browser.⁷⁴ The
7 datr cookies also identifies a browser. Facebook, at a minimum, uses the fr and _fbp cookies to
8 identify users.⁷⁵

9 63. Without a corresponding Facebook ID, the fr cookie contains, at least, an abbreviated
10 and encrypted value that identifies the browser. The _fbp cookie contains, at least, an unencrypted
11 value that uniquely identifies a browser. Facebook uses both for targeted advertising.

12 64. The fr cookie expires after 90 days unless the visitor's browser logs back into
13 Facebook.⁷⁶ If that happens, the time resets, and another 90 days begins to accrue.⁷⁷

14 65. The _fbp cookie expires after 90 days unless the visitor's browser accesses the same
15 website.⁷⁸ If that happens, the time resets, and another 90 days begins to accrue.⁷⁹

16 66. The Facebook Tracking Pixel uses both first- and third-party cookies. A first-party
17 cookie is "created by the website the user is visiting"—*i.e.*, the Streaming Services.⁸⁰ A third-party
18 cookie is "created by a website with a domain name other than the one the user is currently
19

20 ⁷³ DATA PROTECTION COMMISSIONER, FACEBOOK IRELAND LTD, REPORT OF RE-AUDIT (Sept. 21,
21 2012), http://www.europe-v-facebook.org/ODPC_Review.pdf.

22 ⁷⁴ FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES,
<https://www.facebook.com/policy/cookies/>.

23 ⁷⁵ FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES,
<https://www.facebook.com/policy/cookies/>.

24 ⁷⁶ See FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES,
<https://www.facebook.com/policy/cookies/>.

25 ⁷⁷ Confirmable through developer tools.

26 ⁷⁸ See FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES,
<https://www.facebook.com/policy/cookies/>.

27 ⁷⁹ Also confirmable through developer tools.

28 ⁸⁰ PC MAG, FIRST-PARTY COOKIES, <https://www.pcmag.com/encyclopedia/term/first-party-cookie>.
This is confirmable by using developer tools to inspect a website's cookies and track network
activity.

1 visiting”—*i.e.*, Facebook.⁸¹ The `_fbp` cookie is always transmitted as a first-party cookie. A
2 duplicate `_fbp` cookie is sometimes sent as a third-party cookie, depending on whether the browser
3 has recently logged into Facebook.

4 67. Facebook, at a minimum, uses the `fr`, `_fbp`, and `c_user` cookies to link to Facebook
5 IDs and corresponding Facebook profiles.

6 68. A Facebook ID is personally identifiable information. Anyone can identify a
7 Facebook profile—and all personal information publicly listed on that profile—by appending the
8 Facebook ID to the end of Facebook.com.

9 69. Facebook links these identifiers with the event data, allowing Facebook to know,
10 among other things, which videos a subscriber has watched through the Streaming Services.⁸²

11 70. By compelling a visitor’s browser to transmit the Advanced Matching parameters
12 alongside event data for videos, Facebook intentionally intercepted electronic communications that
13 Plaintiffs and Class members sent and received while viewing videos on the Streaming Services’
14 platforms. Because the communications contained personally identifiable information—
15 information that numerous federal and state laws recognize as protected and sensitive—Facebook
16 intercepted confidential communications.

17 71. By compelling a visitor’s browser to transmit the `c_user` cookie alongside event data
18 for videos, Facebook intentionally intercepted electronic communications that Plaintiffs and Class
19 members sent and received while viewing videos on the Streaming Services’ platforms. Because
20 the communications contained personally identifiable information—information that numerous
21 federal and state laws recognize as protected and sensitive—Facebook intercepted confidential
22 communications.

23 72. By compelling a visitor’s browser to transmit the `fr` and `_fbp` cookie alongside event
24 data for videos, Facebook intentionally intercepted electronic communications that Plaintiffs and
25 Class members sent and received while viewing videos on the Streaming Services’ platforms.

27 ⁸¹ PC MAG, THIRD-PARTY COOKIES, <https://www.pcmag.com/encyclopedia/term/third-party-cookie>.
This is also confirmable by tracking network activity.

28 ⁸² FACEBOOK, GET STARTED, <https://developers.facebook.com/docs/meta-pixel/get-started>.

1 Because the communications contained personally identifiable information—information that
2 numerous federal and state laws recognize as protected and sensitive—Facebook intercepted
3 confidential communications.

4 73. By compelling a visitor’s browser to disclose the fr cookie and other browser
5 identifiers alongside event data for videos, Facebook intentionally intercepted electronic
6 communications that Plaintiffs and Class members sent and received while viewing videos on the
7 Streaming Services’ platforms. Because the communications contained personally identifiable
8 information—information that numerous federal and state laws recognize as protected and
9 sensitive—Facebook intercepted confidential communications.

10 74. By utilizing its other Business Tools to compel disclosure of identifiers alongside
11 event data for videos, Facebook intentionally intercepted electronic communications that Plaintiffs
12 and Class members sent and received while viewing videos on the Streaming Services’ platforms.
13 Because the communications contained personally identifiable information—information that
14 numerous federal and state laws recognize as protected and sensitive—Facebook intercepted
15 confidential communications.

16 **C. The Facebook Tracking Pixel Matches the Content to a Subscriber’s**
17 **Identity**

18 75. The origins of the VPPA begin with President Ronald Reagan’s nomination of
19 Judge Robert Bork to the United States Supreme Court. During the confirmation process, a movie
20 rental store disclosed the nominee’s rental history to the Washington City Paper, who then
21 published that history. Congress responded by passing the VPPA, with an eye toward the digital
22 future. As Senator Patrick Leahy, who introduced the Act, explained:

23 It is nobody’s business what Oliver North or Robert Bork or Griffin Bell or Pat
24 Leahy watch on television or read or think about when they are home. In an area of
25 interactive television cables, the growth of computer checking and check-out
26 counters, of security systems and telephones, all lodged together in computers, it
would be relatively easy at some point to give a profile of a person and tell what they
buy in a store, what kind of food they like, what sort of television programs they
watch, who are some of the people they telephone. I think that is wrong.

27 S. Rep. 100-599, at 5-6 (internal ellipses and brackets omitted).
28

1 76. The VPPA prohibits “[a] video tape service provider who knowingly discloses, to
2 any person, personally identifiable information concerning any consumer of such provider.” 18
3 U.S.C. § 2710(b)(1). The VPPA defines personally identifiable information as “information which
4 identifies a person as having requested or obtained specific video materials or services from a video
5 service provider.” 18 U.S.C. § 2710(a)(3). A video tape service provider is “any person, engaged
6 in the business, in or affecting interstate or foreign commerce, of rental, sale, or delivery of
7 prerecorded video cassette tapes or similar audio visual materials.” 18 U.S.C. § 2710(a)(4).

8 77. The Streaming Services, along with Facebook, knowingly violate the Video Privacy
9 Protection Act. The Streaming Services have a singular purpose: the “delivery of prerecorded video
10 cassette tapes or similar audio visual material.” 18 U.S.C. § 2710(b)(4). To access the Streaming
11 Services’ content, viewers must pay money on a recurring basis, making them subscribers and
12 therefore consumers. 18 U.S.C. § 2710(a)(1). The Streaming Services utilize the Business Tools to
13 provide Facebook with “information which identifies a person as having requested or obtained
14 specific materials or services,” from the Streaming Services themselves. 18 U.S.C. § 2710(a)(3).
15 Because these tools only serve to sell advertising space and target advertisements, Facebook never
16 engages in “debt collection activities, order fulfillment, request processing, [or] the transfer of
17 ownership.” 18 U.S.C. § 2710(a)(2). And the Streaming Services fail to include any terms, let
18 alone terms “in a form distinct and separate” from other legal obligations, that come close to
19 satisfying the VPPA’s consent requirements. Under even a generous reading of the VPPA, the
20 Streaming Services flagrantly violate federal and state privacy laws.

21 78. Along with being unlawfully disclosed, a subscriber’s video-viewing history also
22 constitutes sensitive information. Plaintiffs and the Class members have a cognizable interest in
23 keeping detailed data about what video content they watch private. This is evinced by, among other
24 things, the various federal and state statutes—including a California statute—that specifically
25 protect video viewing histories. *See, e.g.*, Cal. Civ. Code § 1799.3 (“No person providing video
26 recording sales or rental services shall disclose any personal information or the contents of any
27 record, including sales or rental information, which is prepared or maintained by that person, to any
28 person, other than the individual who is subject of the record, without the written consent of that

1 individual.”).

2 79. Similarly, subscribers’ communications with the Streaming Services were
3 confidential. Subscribers had the reasonable expectation that no third parties would eavesdrop on
4 their protected communications with the Streaming Services.

5 80. Plaintiffs’ and Class members’ expectation of privacy was reasonable, not only
6 because of Facebook’s various representations, but also because of survey data showing the
7 expectations of Internet users. A number of studies examining the collection of consumers’
8 personal data confirms that the surreptitious taking of personal, confidential, and private
9 information—as Facebook has done—violates reasonable expectations of privacy that have been
10 established as general social norms. Privacy polls and studies uniformly show that the
11 overwhelming majority of Americans consider one of the most important privacy rights to be the
12 need for an individual’s affirmative consent before a company collects and shares a subscriber’s
13 personal data. Indeed, a recent study by Consumer Reports shows that 92% of Americans believe
14 that internet companies and websites should be required to provide consumers with a complete list
15 of the data that has been collected about them.⁸³

16 81. Likewise, a study published in the *Harvard Business Review* shows that consumers
17 are largely unaware of how their personal information is used by businesses, with less than 25% of
18 consumers realizing that they share their communication history, IP addresses, and web-surfing
19 history when using a standard web browser.⁸⁴ It is also common sense that Facebook should not
20 intercept or collect user communications when users are transmitting protected information, like
21 their video-viewing history.

22 82. Moreover, since 2018, states like California passed the CCPA, which requires that
23 data collection practices be disclosed at or before the actual collection is done. Otherwise, “[a]
24 business shall not collect additional categories of personal information or use personal information

25 ⁸³ *Consumers Less Confident About Healthcare, Data Privacy, and Car Safety, New Survey Finds*,
26 CONSUMER REPORTS (May 11, 2017), <https://www.consumerreports.org/consumer-reports/consumers-less-confident-about-healthcare-data-privacy-and-car-safety-a3980496907/>.

27 ⁸⁴ Timothy Morey, Theodore Forbath & Allison Shoop, *Customer Data: Designing for*
28 *Transparency and Trust*, HARV. BUS. REV. (May 2015), <https://hbr.org/2015/05/customer-data-designing-for-transparency-and-trust>.

1 collected for additional purposes without providing the consumers with notice consistent with this
2 section.” Cal. Civ. Code § 1798.100(b).

3 83. By collecting intimate, sensitive, and confidential communications, Facebook also
4 committed a highly offensive intrusion, especially when considering the quantum and nature of the
5 information collected, Facebook’s failure to respect consumers’ privacy choices, and the divergence
6 from the standard industry practice, which is to keep those communications confidential.

7 84. Facebook knows that it intercepted sensitive and unlawfully disclosed information
8 that the Streaming Services had no legal right to transmit. This conclusion is inescapable given
9 Facebook’s own history with the VPPA, its partnership with the Streaming Services, and the
10 amount of money the Streaming Services spend on advertisements.

11 **IV. FACEBOOK NEVER RECIEVES CONSENT TO INTENTIONALLY**
12 **INTERCEPT CONFIDENTIAL AND SENSITIVE INFORMATION**

13 **A. Facebook’s Terms of Service, Cookies Policy, and Data Policy**

14 85. Facebook never receives consent from users to intercept and collect electronic
15 communications containing their sensitive and unlawfully-disclosed information. In fact, Facebook
16 expressly warrants the opposite.

17 86. When first signing up, a user assents to three agreements: the Terms of Service,⁸⁵ the
18 Cookies Policy,⁸⁶ and the Data Policy.⁸⁷ For California residents, Facebook also publishes a
19 California Privacy Policy.⁸⁸

20 87. Facebook’s Terms of Service begins by stating that “[p]rotecting people’s privacy is
21 central to how we’ve designed our ad system.”⁸⁹ The Terms of Service then prohibits anyone from
22 using Facebook’s Products in a manner that is “unlawful, misleading, discriminatory or
23 fraudulent.”⁹⁰

24 88. Facebook’s Data Policy recognizes that there may be “[d]ata with special

25 ⁸⁵ FACEBOOK, TERMS OF SERVICE, <https://www.facebook.com/legal/terms/update>.

26 ⁸⁶ FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES,
<https://www.facebook.com/policies/cookies/>.

27 ⁸⁷ FACEBOOK, DATA POLICY, <https://www.facebook.com/about/privacy/update>.

28 ⁸⁸ FACEBOOK, CALIFORNIA PRIVACY NOTICE, <https://www.facebook.com/legal/policy/ccpa>.

⁸⁹FACEBOOK, TERMS OF SERVICE, <https://www.facebook.com/legal/terms/update..>

⁹⁰ *Id.*

1 protections,” meaning information that “could be subject to special protections under the laws of
2 your country.”⁹¹ The Data Policy goes on to describe how Facebook collects information from its
3 “Meta Business Tools,” including “our social plug-ins (such as the Like button), Facebook Login,
4 our APIs and SDKs, or the Meta pixel.”⁹² Specifically, Facebook acknowledges that “[p]artners
5 receive your data when you visit or use their services or through third parties they work with.”⁹³

6 89. Facebook then offers an express representation: “**We require each of these**
7 **partners to have lawful rights to collect, use and share your data before providing any data to**
8 **us.**”⁹⁴ Facebook does acknowledge collecting “data with special protections” to personalize ads,
9 but critically, only sensitive information that users “choose to provide.”⁹⁵

10 90. Facebook’s Cookies Policy ratifies those representations, stating “the Data Policy
11 will apply to our processing of the data that we collect via cookies.”⁹⁶

12 91. For California residents, Facebook reiterates that policy: “We require each of these
13 partners to have rights to collect, use, and share your data before providing any data to us.”⁹⁷ The
14 California Privacy Policy also restrict Facebook’s ability to collect “data with special protections,”
15 stating they do so only when users “choose to provide it.”⁹⁸

16 92. Facebook intentionally intercepts sensitive and unlawfully disclosed information and
17 knowingly facilitates an advertiser’s violation of state and federal privacy law. That is enough to
18 show that Facebook violates its Terms of Service, Data Policy, Cookies Policy, and California
19 Privacy Policy. Facebook is no mere passive conduit to the Streaming Services’ unlawful conduct.
20 Facebook aids and abets the Streaming Services’ disclosure of personally identifiable information,
21 then profits from it. As one of the largest spenders on Facebook advertising, Facebook helps the
22 Streaming Services configure and set up their Business Tools. Facebook also helps the Streaming

23 _____
24 ⁹¹ FACEBOOK, DATA POLICY, <https://www.facebook.com/about/privacy/update>.

25 ⁹² FACEBOOK, DATA POLICY, <https://www.facebook.com/about/privacy/update>.

26 ⁹³ *Id.*

27 ⁹⁴ *Id.*

28 ⁹⁵ *Id.*

⁹⁶ FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES,
<https://www.facebook.com/policies/cookies/>.

⁹⁷ FACEBOOK, CALIFORNIA PRIVACY NOTICE, <https://www.facebook.com/legal/policy/ccpa>.

⁹⁸ *Id.*

1 Services strategize on how to distribute the part of their advertising budget apportioned for the
2 social media site, which totals millions of dollars annually. Rather than “require each of these
3 partners to have the rights to collect, use and share your data,” Facebook aids and abets a knowing
4 violation of federal and state laws.

5 93. At a minimum, Facebook knows the Streaming Services unlawfully disclose their
6 subscribers’ personally identifiable information. The Streaming Services are among the largest
7 subscription-based video providers in the country and spend millions of dollars annually on
8 Facebook’s targeted advertisements. The social media site must process those payments, analyze
9 the Streaming Services’ data, assimilate that data into the Streaming Services’ Custom Audiences,
10 and incorporate it into Core Audiences. Given the scale and persistence of these disclosures, the
11 only reasonable conclusion is that Facebook knows the Streaming Services disclose personally
12 identifiable information, a disclosure that the Streaming Services have no lawful right to make.
13 Users never choose to provide this sensitive information to Facebook because, among other reasons,
14 they never know whether a particular website uses its Business Tools, and, if so, what data those
15 tools collect.

16 **B. Facebook’s Other Representations**

17 94. Facebook’s other representations reinforce these warranties. In its Advertising
18 Policy, Facebook states “[w]e do not use sensitive personal data for ad targeting.”⁹⁹ And in a blog
19 post titled “About Restricted Meta Business Tools Data,” Facebook asserts it has “policies around
20 the kinds of information businesses can share with us.”¹⁰⁰ Facebook does not “want websites or
21 apps sending us sensitive information about people.”¹⁰¹ Sensitive information includes, among
22 other things, “any information defined as sensitive under applicable laws, regulations and applicable
23 industry guidelines.”¹⁰²

24 95. These representations are repeated frequently. Facebook created a “Help Center” to
25

26 ⁹⁹ FACEBOOK, ADVERTISING POLICY, <https://www.facebook.com/policies/ads/>.

27 ¹⁰⁰ FACEBOOK, ABOUT RESTRICTED META BUSINESS TOOLS DATA,
<https://www.facebook.com/business/help/1057016521436966?id=188852726110565>

28 ¹⁰¹ *Id.*

¹⁰² *Id.*

1 better explain its practices to users. In an article titled, “How does Facebook receive information
2 from other businesses and organizations?,” Facebook reiterates its promise to “prohibit businesses
3 or organizations from sharing sensitive information with us,” and if Facebook “determine[s] that a
4 business or an organization is violating our terms, we’ll take action against that business or
5 organization.”¹⁰³ In another article, titled, “How does Meta work with data providers?,” Facebook
6 repeats this promise, stating “[b]usinesses that advertise on Facebook are required to have any
7 necessary rights and permissions to use this information, as outlined in our Custom Audience Terms
8 that businesses must agree to.”¹⁰⁴

9 96. But by facilitating the Streaming Services’ unlawful disclosure of sensitive
10 information, Facebook fails to uphold this promise, a failure that also extends to other forms of
11 sensitive information. A recent Wall Street Journal investigation, for example, found that “[t]he
12 social-media giant collects intensely personal information from many popular smartphone apps just
13 seconds after users enter it, even if the user has no connection to Facebook, according to testing
14 done by The Wall Street Journal.”¹⁰⁵ The investigation focused on “analytics tools Facebook offers
15 developers, which allows them to see statistics about their users’ activities—and to target those
16 users with Facebook ads.”¹⁰⁶ That capability, the investigation noted, “is partly why Facebook’s
17 revenue is soaring.”¹⁰⁷

18 97. The investigation prompted the New York State Department of Financial Services to
19 initiate its own investigation, authoring an analysis titled, “Report on Investigation of Facebook Inc.
20 Data Privacy Concerns.”¹⁰⁸ That report concluded:

21 _____
22 ¹⁰³ FACEBOOK, HOW DOES FACEBOOK RECEIVE INFORMATION FROM OTHER BUSINESSES AND
23 ORGANIZATIONS, <https://www.facebook.com/help/2230503797265156>.

24 ¹⁰⁴ HOW DOES META WORK WITH DATA PROVIDERS?,
<https://www.facebook.com/help/494750870625830?ref=dp>.

25 ¹⁰⁵ Sam Schechner and Mark Secada, *You Give Apps Sensitive Personal Information. Then They
26 Tell Facebook*, WALL ST. J. (Feb. 22, 2019), <https://www.wsj.com/articles/you-give-apps-sensitive-personal-information-then-they-tell-facebook-11550851636>.

27 ¹⁰⁶ *Id.*

28 ¹⁰⁷ *Id.*

¹⁰⁸ NEW YORK STATE DEPARTMENT OF FINANCE, REPORT ON INVESTIGATION OF FACEBOOK INC.
DATA PRIVACY CONCERNS,
https://www.dfs.ny.gov/system/files/documents/2021/02/facebook_report_20210218.pdf

1 [T]he sharing of sensitive user information by an app developer is a violation of
2 Facebook Business Tools’ terms of service. Merely stating a rule, however, has little
3 meaning if the rule is not enforced, and the unfortunate fact is that Facebook does
4 little to track whether app developers are violating this rule and takes no real action
5 against developers that do. ... Until there are real ramifications for violating
6 Facebook’s policies, Facebook will not be able to effectively prohibit the sharing of
7 sensitive user data with third parties.¹⁰⁹

8 98. the Streaming Services’ disclosures continue unabated because Facebook fails to
9 meaningfully require video service providers to protect a subscriber’s personally identifiable
10 information.

11 99. A reasonable user who reads Facebook’s terms and representations would
12 understand those terms as requiring Facebook to enforce an advertiser’s compliance with its terms.
13 At a minimum, those terms and representations require Facebook to build minimum safeguards for
14 sensitive information, like a subscriber’s personally identifiable information. No reasonable user
15 would read those terms and representations as permitting Facebook to intentionally intercept
16 electronic communications that it knows the law protects and deems sensitive. And no user,
17 reasonable or not, could read those terms as allowing Facebook to aid and abet another party’s
18 disclosure of such protected and sensitive information. In short, Facebook never receives consent
19 from users to intentionally intercept and monetize electronic communications disclosing sensitive
20 information that the law protects.

21 **V. FACEBOOK NEVER RECIEVES CONSENT TO GENERALLY
22 INTERCEPT ELECTRONIC COMMUNICATIONS BECAUSE IT
23 OBFUSCATES THE VOLUME, SPECIFICITY, AND TYPE OF DATA IT
24 COLLECTS**

25 100. For all electronic communications, Facebook still fails to receive informed consent
26 from users because it obfuscates the volume, specificity, and type of data it collects.

27 ¹⁰⁹ NEW YORK STATE DEPARTMENT OF FINANCE, REPORT ON INVESTIGATION OF FACEBOOK INC.
28 DATA PRIVACY CONCERNS,
https://www.dfs.ny.gov/system/files/documents/2021/02/facebook_report_20210218.pdf

1 101. Facebook offers a feature it calls “Off-Facebook activity,” a report that ostensibly
2 shows “a summary of activity that businesses and organizations share with us about your
3 interactions with them, such as visiting their apps and websites.”¹¹⁰

4 102. The report does provide some information. The report shows, for instance, that
5 Facebook intercepted Plaintiffs communications with the Streaming Services.

6 103. Within the reports is each respective Plaintiffs’ Pixel ID, which uniquely identifies
7 each Pixel. In practice, this means each website’s Facebook Tracking Pixel has a Pixel ID that
8 differs from all other websites.¹¹¹

9 104. Facebook has repeatedly said that the report shows “a summary of your activity that
10 we receive from businesses or organizations, which includes your activity on other apps and
11 websites.”¹¹²

12 105. Commentators and users bought into that description. For example, shortly after the
13 report’s introduction, a columnist for the Washington Post said it “offers an opportunity to see in
14 ugly detail how Facebook’s advertising surveillance system actually works.”¹¹³ Another article
15 called it a tool that “lets you see and control data that apps and websites share with the platform—
16 and monitor the kind of information third-party apps can access.”¹¹⁴

17 106. But the Off-Facebook Activity report only provides a selective glance at the data
18 Facebook collects—a deceptive and misleading glance at that.

19 107. Facebook partially acknowledges the report’s incompleteness. In an article titled,
20 “What is off-Facebook Activity?,” Facebook clarifies that it “receive[s] more details and activity
21

22 ¹¹⁰ FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES,
<https://www.facebook.com/policies/cookies/>.

23 ¹¹¹ FACEBOOK, GET STARTED, <https://developers.facebook.com/docs/meta-pixel/get-started>

24 ¹¹² FACEBOOK, WHAT IS OFF-FACEBOOK ACTIVITY?,
<https://www.facebook.com/help/2207256696182627>; FACEBOOK, COOKIES & OTHER STORAGE
25 TECHNOLOGIES, <https://www.facebook.com/policies/cookies/>.

26 ¹¹³ Geoffrey A. Fowler, *Facebook will now show you exactly how it stalks you – even when you’re
not using Facebook*, WASH. POST (Jan. 28, 2020),
<https://www.washingtonpost.com/technology/2020/01/28/off-facebook-activity-page/>.

27 ¹¹⁴ Katie Teague, *Take control of your privacy online with the Off-Facebook Activity tool*, CNET
28 (Nov. 15, 2021), <https://www.cnet.com/tech/services-and-software/take-control-of-your-privacy-online-with-the-off-facebook-activity-tool/>.

1 than what appears in your off-Facebook activity.”¹¹⁵ Specifically, the report omits “information
2 [Facebook] received when you’re not logged into Facebook, or when we can’t confirm that you’ve
3 previously used Facebook on that device.”¹¹⁶ In other words, the report only contains event data
4 that is transmitted alongside a c_user cookie. Every other identifier—from Advanced Matching
5 Parameters to the fr cookie—does not show. Facebook explains this discrepancy by citing
6 “technical and accuracy reasons.”¹¹⁷

7 108. But this partial acknowledgement is not a truthful one, with Facebook’s existing
8 capabilities belying that explanation. When advertisers integrate the Conversions API, for example,
9 Facebook offers an “Event Match Score” that “indicates how effective your server event’s customer
10 information parameters may be at matching it to a Meta account.”¹¹⁸ These parameters are the exact
11 same as those sent through Advanced Matching. The Event Match Score is measured “from 1 to
12 10,” with Facebook recommending an advertiser “[a]im for an Event Match Quality score of 6.0 or
13 higher.”¹¹⁹ Facebook offers this tool commercially, and it is meant to provide advertisers with
14 accurate data. But rather than apply that same tool, or build a similar one, for its Off-Facebook
15 Activity report, Facebook only displays data the company collects while a user is logged in. Any
16 other activity—even when sent with the same parameters measured by the Event Match Score—
17 never makes it into the report, including when Facebook has already matched those identifiers for
18 an advertiser’s Custom Audiences. Given Facebook’s capabilities, no such “technical and accuracy
19 reasons” can explain this shortcoming. Facebook omits this information because it seeks to
20 obfuscate the volume of information it collects.

21 109. Facebook also obfuscates the specificity of the information it collects. Facebook
22 offers a developer tool that lets advertisers receive a real-time and granular look at what data

23
24 ¹¹⁵ FACEBOOK, WHAT IS OFF-FACEBOOK ACTIVITY?,
<https://www.facebook.com/help/2207256696182627>.

25 ¹¹⁶ FACEBOOK, WHAT IS OFF-FACEBOOK ACTIVITY?,
26 <https://www.facebook.com/help/2207256696182627>.

27 ¹¹⁷ *Id.*

28 ¹¹⁸ FACEBOOK, BEST PRACTICES FOR CONVERSIONS API,
<https://www.facebook.com/business/help/308855623839366?id=818859032317965>

¹¹⁹ *Id.*

1 Facebook intercepts. The allegations above rely in part on that developer tool. The tool helps
 2 developers troubleshoot the Facebook Tracking Pixel, and as a consequence, its fundamental
 3 purpose is to be a reliable measurement. For the Streaming Services, for example, the tool shows
 4 the communications Facebook intercepts, identifying with particularity, for instance, a specific
 5 video watched. Plaintiffs’ Off-Facebook Activity, however, only shows Facebook received a
 6 “custom” event.¹²⁰ This supplies less information than the Beacon published publicly,¹²¹ and it is a
 7 level of ambiguity that applies consistently across the Off-Facebook Activity report. Facebook
 8 could build a tool, like it does for the Streaming Services, that records these categories of
 9 information. Facebook could, if privacy were a concern, disclose only the categories of information
 10 collected, not the content. But Facebook instead provides descriptions that are empty and
 11 generalized. As opposed to “technical and accuracy reasons,” Facebook omits this information to
 12 mislead users and the public from the true extent of its data collection practices.

13 110. Along with specificity and volume, Facebook also obfuscates the type of information
 14 it collects. Facebook allows advertisers, like the Streaming Services, to manually upload customer
 15 lists to Facebook’s ad system.¹²² The customer lists must contain “‘identifier[s]’ (such as email,
 16 phone number, address),”¹²³ thereby allowing Facebook to link to “profiles so that [advertisers] can
 17 advertise to [their] customers on Facebook, Instagram and Audience Network.”¹²⁴ That way, when
 18 advertisers create an ad campaign, Facebook can “match the offline data [they] upload to the event
 19 set so that [they] can see how much [their] ads resulted in offline activity.”¹²⁵ Facebook
 20 recommends timestamping this event data “to the minute or second.”

21
 22
 23
 24 ¹²⁰ See Figure 18.

25 ¹²¹ Compare with Figure 1.

26 ¹²² FACEBOOK, CREATE A CUSTOMER LIST CUSTOM AUDIENCE,
 27 <https://www.facebook.com/business/help/170456843145568?id=2469097953376494>

28 ¹²³ *Id.*

¹²⁴ FACEBOOK, ABOUT CUSTOMER LIST CUSTOM AUDIENCES,
<https://www.facebook.com/business/help/341425252616329?id=2469097953376494>

¹²⁵ FACEBOOK, UPLOAD OFFLINE EVENT DATA,
<https://www.facebook.com/business/help/155437961572700?id=565900110447546>.

1
2 111. Customer lists help Facebook catch a user’s off-site activity that an advertiser’s
3 Business Tools, like the Streaming Services’ Business Tools, cannot collect.

4 112. Because the Off-Facebook Activity report is “a summary of activity that businesses
5 and organisations share with us about your interactions with them,” the data Facebook collects from
6 customer lists should be included in that report. Likewise, when a user disables Facebook’s ability
7 to collect Off-Facebook Activity, that should also apply to off-site activity collected through
8 customer lists. Both presumptions are incorrect.

9 113. Disabling off-Facebook activity has no impact on customer list data. In fact, to
10 exercise any control over information from lists, users must navigate to an entirely different part of
11 Facebook’s website.

12
13 **To turn off your future off-Facebook activity for all apps and websites:**

- 14
15 1. Click  in the top right of Facebook.
16 2. Select **Settings & Privacy**, then click **Settings**.
17 3. Click **Your Facebook Information** in the left column, then click **Off-Facebook Activity**.
18 4. Click **Manage Your Off-Facebook Activity**, then click **Manage Future Activity**.
19 5. Click **Manage Future Activity**.
20 6. Click next to **Future Off-Facebook Activity**, then click **Turn Off** to turn off your future
21 off-Facebook activity.

22
23 114. Should a user somehow intuit this distinction and successfully navigate to Ad
24 Preferences, Facebook still provides little reprieve. For customer lists, users can exercise control
25 over an advertiser’s event data, meaning “data that advertisers and other partners provide to us
26 about your activity on their websites and apps, as well as some of your offline interactions, such as
27
28

1 purchases.”¹²⁶ But Facebook still helps advertisers match identifiers contained in customer lists
2 with users’ Facebook profiles, even when those users have disabled personalized ads. For this
3 feature, Facebook, unlike how it handles event data, offers users no control and lets advertisers use
4 this information to build audiences.

5 115. These omissions and misrepresentations are contrary to Facebook’s terms and
6 representations. Facebook emphasizes to users that they can control and review the data Facebook
7 collects. Facebook’s Terms of Service informs users they “have controls over the types of ads and
8 advertisers you see, and the types of information we use to determine which ads we show you.”¹²⁷
9 Facebook’s Cookies Policy states users can “use your ad preferences to learn why you’re seeing a
10 particular ad and control how we use information that we collect to show you ads.”¹²⁸ If users wish
11 to review the data Facebook collects, the Cookies Policy recommends “review[ing] your Off-
12 Facebook activity, which is a summary of activity that businesses and organisations share with us
13 about your interactions with them, such as visiting their apps or websites.”¹²⁹ And Facebook’s Data
14 Policy tells users they can exercise “choices over the data we use to select ads and other sponsored
15 content for you in the Facebook Settings and Instagram Settings.”¹³⁰ But as set forth, Facebook’s
16 tools for controlling and reviewing its data collection practices are incomplete, inaccurate, and
17 intentionally designed to deceive and confuse users.

18 116. Like any transaction, the terms between users and Facebook must be fairly disclosed,
19 not misrepresented. Users exchange activity and permissions for access to Facebook’s platform.
20 By misrepresenting users’ ability to review and control how their activity is collected, Facebook
21 misrepresents terms that form the basis of the bargain, leaving users unable to properly assent or
22 consent.

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24
25 ¹²⁶ FACEBOOK, HOW CAN I ADJUST HOW ADS ON FACEBOOK ARE SHOWN TO ME BASED ON DATA
ABOUT MY ACTIVITY FROM PARTNERS?, <https://www.facebook.com/help/568137493302217>.

26 ¹²⁷ FACEBOOK, TERMS OF SERVICE, <https://www.facebook.com/terms.php>.

27 ¹²⁸ FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES,
<https://www.facebook.com/policies/cookies>.

28 ¹²⁹ *Id.*

¹³⁰ FACEBOOK, DATA POLICY, <https://www.facebook.com/policy.php>.

CLASS ACTION ALLEGATIONS

1
2 117. Plaintiffs bring this class action on behalf of all persons with Facebook accounts who
3 subscribe to Paramount+, ESPN+, Hulu, and Starz (the “Class”).

4 118. Plaintiff Starzinski also brings this suit on behalf of all persons with a Paramount+
5 subscription (the “Paramount Subclass”).

6 119. Plaintiff Odumosu also brings this suit on behalf of all persons with an ESPN+
7 subscription (the “ESPN Subclass”).

8 120. Plaintiffs Odumosu and Medina also bring this suit on behalf of all persons with a
9 Hulu subscription (the “Hulu Subclass”).

10 121. Plaintiff McCoy also brings this suit on behalf of all persons with a Starz
11 subscription (the “Starz Subclass”).

12 122. Excluded from the Classes are Defendant, the officers and directors of the Defendant
13 at all relevant times, members of their immediate families and their legal representatives, heirs,
14 successors or assigns and any entity in which either Defendant have or had a controlling interest.

15 123. Plaintiffs are members of the Class and Subclasses they seek to represent.

16 124. Members of the putative class and subclass are so numerous that their individual
17 joinder herein is impracticable. On information and belief, members of the putative class and
18 number in the millions. The precise number of putative class members and their identities are
19 unknown to Plaintiffs at this time but may be determined through discovery. Putative class
20 members may be notified of the pendency of this action by mail and/or publication through the
21 distribution records of Defendant.

22 125. Common questions of law and fact exist as to all putative class and subclass
23 members and predominate over questions affecting only individual class members. Common legal
24 and factual questions include, but are not limited to:

- 25 a. Whether Facebook represented to Class and Subclass members that it would not
26 collect sensitive, confidential, protected, or unlawfully disclosed information;

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- b. Whether Facebook represented to Class and Subclass members that they could control and review the activity Facebook collected and analyzed outside of the Facebook platform;
- c. Whether Facebook gave the Class and Subclass a reasonable expectation of privacy that their communications of personally identifiable information, as defined by the VPPA, were not being intercepted, received, or collected by Facebook when they accessed and ordered video content through the Streaming Services;
- d. Whether Facebook gave the Class and Subclass members a reasonable expectation of privacy that any communications with a video content provider with which they subscribed, like the Streaming Services, were not being intercepted, received, or collected by Facebook;
- e. Whether Facebook in fact intercepted, received, or collected communications from Class and Subclass members when those members communicated generally with the Streaming Services or were transmitting personally identifiable information to the Streaming Services;
- f. Whether Facebook in fact intercepted, received, or collected communications from Class and Subclass when Class and Subclass members communicated with websites that integrated Facebook’s Business Tools;
- g. Whether Facebook’s practice of intercepting, receiving, or collecting communications of personally identifiable information or other communications between the Streaming Services and Class and Subclass members violated state and federal privacy laws;
- h. Whether Facebook’s practice of intercepting, receiving, or collecting electronic communications violated state and federal privacy laws;
- i. Whether Facebook’s practice of intercepting, receiving, or collecting communications of personally identifiable information or other communications

1 between the Streaming Services and Class and Subclass members violated state
2 and federal anti-wiretapping laws;

3 j. Whether Facebook’s practice of intercepting, receiving, or collecting electronic
4 communications violated state and federal anti-wiretapping laws;

5 k. Whether Plaintiffs and Class members are entitled to declaratory and/or
6 injunctive relief to enjoin the unlawful conduct alleged herein; and

7 l. Whether Plaintiffs and Class members have sustained damages as a result of
8 Facebook’s conduct and if so, what is the appropriate measure of damages or
9 restitution.

10 126. Plaintiffs’ claims are typical of the claims of the members of the Classes as all
11 members of the Classes are similarly affected by Defendant’s wrongful conduct. Plaintiffs have no
12 interests antagonistic to the interests of the other members of the Classes. Plaintiffs and all
13 members of the Classes have sustained economic injury arising out of Defendant’s violations of
14 common and statutory law as alleged herein.

15 127. Plaintiffs are adequate representatives of the Classes because their interests do not
16 conflict with the interests of the putative class members they seek to represent, they have retained
17 counsel competent and experienced in prosecuting class actions, and they intend to prosecute this
18 action vigorously. The interests of the Classes will be fairly and adequately protected by Plaintiffs
19 and their counsel.

20 128. The class mechanism is superior to other available means for the fair and efficient
21 adjudication of the claims of Plaintiffs and the putative members of the Classes. Each individual
22 Class member may lack the resources to undergo the burden and expense of individual prosecution
23 of the complex and extensive litigation necessary to establish Defendant’s liability. Individualized
24 litigation increases the delay and expense to all parties and multiplies the burden on the judicial
25 system presented by the complex legal and factual issues of this case. Individualized litigation also
26 presents a potential for inconsistent or contradictory judgments. In contrast, the class action device
27 presents far fewer management difficulties and provides the benefits of single adjudication,
28 economy of scale, and comprehensive supervision by a single court on the issue of Defendant’s

1 liability. Class treatment of the liability issues will ensure that all claims are consistently
2 adjudicated.

3 129. California law applies to the entirety of the Classes. California's substantive laws
4 apply to every member of the Classes, regardless of where in the United States the Class member
5 resides. Defendant's own Terms of Service explicitly state that "the laws of the State of California
6 will govern these Terms and any claim, without regard to conflict of law provisions." By choosing
7 California law for the resolution of disputes covered by its Terms of Service, Facebook concedes
8 that it is appropriate for this Court to apply California law to the instant dispute to all Class
9 members. Further, California's substantive laws may be constitutionally applied to the claims of
10 Plaintiffs and the Class members under the Due Process Clause, *see* U.S. Const. amend. XIV, § 1,
11 and the Full Faith and Credit Clause, *see* U.S. Const. art. IV, § 1, of the U.S. Constitution.

12 California has significant contact, or significant aggregation of contacts, the claims asserted by the
13 Plaintiffs and all Class members, thereby creating state interests that ensure that the choice of
14 California state law is not arbitrary or unfair. Defendant's decision to reside in California and avail
15 itself of California's laws, and to engage in the challenged conduct from and emanating out of
16 California, renders the application of California law to the claims herein constitutionally
17 permissible. The application of California laws to the Classes is also appropriate under California's
18 choice of law rules because California has significant contacts to the claims of Plaintiffs and the
19 proposed Classes and California has the greatest interest in applying its laws here.

20 130. Plaintiffs reserve the right to revise the foregoing class allegations and definitions
21 based on facts learned and legal developments following additional investigation, discovery, or
22 otherwise.

23 **COUNT I**
24 **Violation Of The Federal Wiretap Act, 18 U.S.C. § 2510, *et seq.***
25 **(The Class and Subclasses)**

26 131. Plaintiffs repeat the allegations contained in the paragraphs above as if fully set forth
27 herein.
28

1 132. The Federal Wiretap Act, as amended by the Electronic Communications Privacy
2 Act of 1986, prohibits the intentional interception of the contents of any wire, oral, or electronic
3 communications through the use of a device. 18 U.S.C. § 2511.

4 133. The Wiretap Act protects both the sending and receiving of communications.

5 134. 18 U.S.C. § 2520(a) provides a private right of action to any person whose wire, oral
6 or electronic communication is intercepted.

7 135. Facebook’s actions in intercepting and tracking communications between the
8 Streaming Services and subscribers containing subscribers’ personally identifiable information, as
9 defined by the VPPA, was intentional. On information and belief, Facebook is aware that it is
10 intercepting communications in these circumstances and has taken no remedial action.

11 136. Facebook’s actions in intercepting and tracking electronic communications were
12 intentional. On information and belief, Facebook is aware that it is intercepting communications in
13 these circumstances and has taken no remedial action.

14 137. Facebook’s intentional interception of internet communications that Plaintiffs and
15 Class members were sending and receiving while navigating websites that integrated Facebook’s
16 Business Tools was done contemporaneously with the Plaintiffs’ and Class and Subclass members’
17 sending and receipt of those communications.

18 138. Facebook’s interception of internet communications that Class and Subclass
19 members and Plaintiffs were sending and receiving while on the Streaming Services was done
20 contemporaneously with Plaintiffs’ and Class members’ sending and receipt of those
21 communications.

22 139. The communications intercepted by Facebook included “contents” of electronic
23 communications made from Plaintiffs and Class and Subclass members. These communications
24 include those sent and received by Plaintiffs and Class and Subclass members containing detailed
25 URL requests.

26 140. The communications intercepted by Facebook included “contents” of electronic
27 communications made from Plaintiffs and Class and Subclass members to the Streaming Services.
28 These communications include those sent and received by Plaintiffs and Class and Subclass

1 members containing detailed URL requests, form field entries like email address and name, button
2 clicks and associated text, and a complete transcription of the subscriber’s communicated request,
3 down to the videos that the subscribers asked the Streaming Services to deliver.

4 141. The transmission of data between Plaintiffs and Class members were “transfer[s] of
5 signs, signals, writing, ... data, [and] intelligence of [some] nature transmitted in whole or in part by
6 a wire, radio, electromagnetics, photoelectronic, or photo optical system that affects interstate
7 commerce[,]” and were therefore “electronic communications” within the meaning of 18 U.S.C. §
8 2510(12).

9 142. The following constitute “devices” within the meaning of 18 U.S.C. 2510(5):

- 10 a. The computer codes and programs Facebook used to track Plaintiffs’ and the
11 Class members’ communications while they were navigating websites that
12 integrated Facebook’s Business Tools;
- 13 b. Plaintiffs’ and Class member’s browsers, mobile applications, and television
14 applications;
- 15 c. Plaintiffs’ and Class and Subclass members’ computing, streaming, and mobile
16 devices;
- 17 d. Facebook’s web and ad servers;
- 18 e. The web and ad-servers from which Facebook tracked and intercepted Plaintiffs’
19 and Class and Subclass members’ communications while they were using a web
20 browser, mobile application, or television application to navigate platforms that
21 integrated Facebook’s Business Tools;
- 22 f. The computer codes and programs used by Facebook to effectuate its tracking
23 and interception of Plaintiffs’ and Class and Subclass members’ communications
24 while they were navigating platforms that integrated Facebook’s Business Tools;
25 and
- 26 g. The plan Facebook carried out to effectuate its tracking and interception of
27 Plaintiffs’ and Class and Subclass members’ electronic communications.
28

1 143. The transmission of data between Plaintiffs and Class and Subclass members and the
2 Streaming Services while subscribing, logging in, selecting videos and watching videos were
3 “transfer[s] of signs, signals, writing, ... data, [and] intelligence of [some] nature transmitted in
4 whole or in part by a wire, radio, electromagnetics, photoelectronic, or photooptical system that
5 affects interstate commerce[,]” and were therefore “electronic communications” within the meaning
6 of 18 U.S.C. § 2510(12).

7 144. The following constitute “devices” within the meaning of 18 U.S.C. 2510(5):

- 8 a. The computer codes and programs Facebook used to track Plaintiffs’ and Class
9 and Subclass members’ communications while they were subscribing to the
10 Streaming Services, logging into the Streaming Services, and selecting and
11 watching videos on the Streaming Services;
- 12 b. Plaintiffs’ and Class and Subclass members’ browsers, mobile applications, and
13 television applications;
- 14 c. Plaintiffs’ and Class and Subclass members’ computing, streaming, and mobile
15 devices;
- 16 d. Facebook’s web and ad servers;
- 17 e. The web and ad-servers from which Facebook tracked and intercepted Plaintiffs’
18 and Class and Subclass members’ communications while they were using a web
19 browser, mobile application, or television application to subscribe to, access, or
20 watch videos on the Streaming Services;
- 21 f. The computer codes and programs used by Facebook to effectuate its tracking
22 and interception of Plaintiffs’ and Class and Subclass members’ communications
23 while they were using a web browser, mobile application, or television
24 application to subscribe to, access, or watch videos on the Streaming Services;
25 and
- 26 g. The plan Facebook carried out to effectuate its tracking and interception of
27 Plaintiffs’ and Class and Subclass members’ communications while they were
28

1 using a web browser, mobile application, or television application to subscribe
2 to, access, or watch videos on the Streaming Services.

3 145. Facebook, in its conduct alleged here, was not providing an “electronic
4 communication service,” as that term is defined in 18 U.S.C. § 2510(12) and is used elsewhere in
5 the Wiretap Act. Facebook was not acting as an Internet Service Provider (“ISP”). The conduct
6 alleged here does not arise from Facebook’s separate instant messenger business.

7 146. Facebook also was not an authorized party to the communications because Plaintiffs
8 and Class and Subclass members were unaware of Facebook’s redirecting of the referrer URL, form
9 field entries, or communication transcriptions to Facebook itself, did not knowingly send any
10 communication to Facebook, were accessing content on the internet, when Facebook intercepted the
11 communications from Plaintiffs. Facebook could not manufacture its own status as a party to
12 Plaintiffs’ and Class and Subclass members’ communications with others by surreptitiously
13 redirecting or intercepting those communications.

14 147. Facebook was not an authorized party to the communications because Plaintiffs and
15 Class and Subclass members were unaware of Facebook’s redirecting of the referrer URL, form
16 field entries, or communication transcriptions to Facebook itself, did not knowingly send any
17 communication to Facebook, were accessing and ordering video content while logged into their
18 Streaming Services subscriptions, when Facebook intercepted the communications between
19 Plaintiffs and the Streaming Services. Facebook could not manufacture its own status as a party to
20 Plaintiffs’ and Class and Subclass members’ communications with others by surreptitiously
21 redirecting or intercepting those communications.

22 148. As illustrated herein, the communications between Plaintiffs and Class members on
23 the one hand, and websites on the other, were simultaneous to, but *separate from*, the channel
24 through which Facebook acquired the contents of those communications.

25 149. Plaintiffs and Class and Subclass members did not consent to Facebook’s
26 interception or continued gathering of the user’s communications after accessing a platform that
27 integrated Facebook’s Business Tools because Facebook obfuscated the data it collected and users
28 had no ability to check Facebook’s claims.

1 150. Plaintiffs and Class and Subclass members did not consent to Facebook’s
2 interception or continued gathering of the user’s communications after accessing a video tape
3 service provider’s platform, where Plaintiffs and Class and Subclass members then logged into their
4 Streaming Services subscription and ordered and watched videos. Indeed, Facebook represented to
5 Plaintiffs and Class and Subclass members, and the public at large, that it would not collect
6 sensitive or protected information unless authorized by the user. Moreover, the communications
7 intercepted by Facebook were plainly confidential, which is evidenced by the numerous state and
8 federal statutes that protect a subscriber’s video-viewing history from being disclosed.

9 151. The interception by Facebook in the aforementioned circumstances were unlawful
10 and tortious.

11 152. After intercepting the communications, Facebook then used the contents of the
12 communications knowing or having reason to know that such information was obtained through the
13 interception of electronic communications in violation of 18 U.S.C. § 2511(a).

14 153. As the result of the above actions and pursuant to 18 U.S.C. § 2520, the Court may
15 assess statutory damages to Plaintiffs and Class and Subclass members; injunctive and declaratory
16 relief; punitive damages in an amount to be determined by a jury, but sufficient to prevent the same
17 or similar conduct by Facebook in the future, and a reasonable attorney’s fee and other litigation
18 costs reasonably incurred.

19
20 **COUNT II**
21 **Violation Of The California Invasion Of Privacy Act,**
22 **Cal. Penal Code § 631**
23 **(The Class and Subclasses)**

24 154. Plaintiffs repeat the allegations contained in the paragraphs above as if fully set forth
25 herein.

26 155. Plaintiffs bring this Count individually and on behalf of the members of the Class
27 and Subclasses.

28 156. The California Invasion of Privacy Act (“CIPA”) is codified at Cal. Penal Code §§
630 to 638. The Act begins with its statement of purpose.

1 The Legislature hereby declares that advances in science and technology have led to
2 the development of new devices and techniques for the purpose of eavesdropping
3 upon private communications and that the invasion of privacy resulting from the
4 continual and increasing use of such devices and techniques has created a serious
5 threat to the free exercise of personal liberties and cannot be tolerated in a free and
6 civilized society.

7 Cal. Penal Code § 630.

8 157. California Penal Code § 631(a) provides, in pertinent part:

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

19 158. A defendant must show it had the consent of all parties to a communication.

20 159. Facebook has its principal place of business in California; designed, contrived and
21 effectuated its scheme to track its users generally and track users who logged into a subscription-
22 based platform for a video service provider and accessed and watched videos; and has adopted
23 California substantive law to govern its relationship with its users.

24 160. At all relevant times, Facebook's tracking and interceptions of Plaintiffs' and Class
25 and Subclass members' internet communications while accessing platforms that integrated
26 Facebook's Business Tools was without authorization and consent from Plaintiffs and Class and
27 Subclass members. The interceptions by Facebook in the aforementioned circumstances were
28 unlawful and tortious.

161. At all relevant times, Facebook's tracking and interceptions of Plaintiffs' and Class
and Subclass members' internet communications while accessing and watching videos on the
Streaming Services was without authorization and consent from Plaintiffs and Class and Subclass
members. The interceptions by Facebook in the aforementioned circumstances were unlawful and
tortious.

1 162. Facebook’s non-consensual tracking of Plaintiffs’ and Class and Subclass members’
2 internet communications who were accessing a platform that integrated Facebook’s Business Tools
3 was designed to attempt to learn at least some meaning of the content in the URLs and the content
4 of the materials requested.

5 163. Facebook’s non-consensual tracking of Plaintiffs’ and Class and Subclass members’
6 internet communications who were accessing and watching videos on the Streaming Services was
7 designed to attempt to learn at least some meaning of the content in the URLs and the content of the
8 videos requested.

9 164. The following items also constitute “machine[s], instrument[s], or contrivance[s]”
10 under the CIPA, and even if they do not, Facebook’s deliberate and admittedly purposeful scheme
11 that facilitated its interceptions falls under the broad catch-all category of “any other manner”:

- 12 a. The computer codes and programs Facebook used to track Plaintiffs’ and Class
13 members’ communications while they were navigating websites that integrated
14 Facebook’s Business Tools;
- 15 b. Plaintiffs’ and Class and Subclass members’ browsers, mobile applications, and
16 television applications;
- 17 c. Plaintiffs’ and Class and Subclass members’ computing, streaming, and mobile
18 devices;
- 19 d. Facebook’s web and ad servers;
- 20 e. The web and ad-servers from which Facebook tracked and intercepted Plaintiffs’
21 and Class and Subclass members’ communications while they were using a web
22 browser, mobile application, or television application to navigate platforms that
23 integrated Facebook’s Business Tools;
- 24 f. The computer codes and programs used by Facebook to effectuate its tracking
25 and interception of Plaintiffs’ and Class and Subclass members’ communications
26 while they were navigating platforms that integrated Facebook’s Business Tools;
27 and

1 g. The plan Facebook carried out to effectuate its tracking and interception of
2 Plaintiffs’ and Class and Subclass members’ electronic communications.

3 165. The following items constitute “machine[s], instrument[s], or contrivance[s]” under
4 the CIPA, and even if they do not, Facebook’s deliberate and admittedly purposeful scheme that
5 facilitated its interceptions falls under the broad catch-all category of “any other manner”:

6 a. The computer codes and programs Facebook used to track Plaintiffs’ and Class
7 and Subclass members’ communications while they were subscribing to the
8 Streaming Services, logging into the Streaming Services, and selecting and
9 watching videos on the Streaming Services;

10 b. Plaintiffs’ and Class and Subclass members’ browsers, mobile applications, and
11 television applications;

12 c. Plaintiffs’ and Class and Subclass members’ computing, streaming, and mobile
13 devices;

14 d. Facebook’s web and ad servers;

15 e. The web and ad-servers from which Facebook tracked and intercepted Plaintiffs’
16 and Class and Subclass members’ communications while they were using a web
17 browser, mobile application, or television application to subscribe to, access, or
18 watch videos on the Streaming Services;

19 f. The computer codes and programs used by Facebook to effectuate its tracking
20 and interception of Plaintiffs’ and Class and Subclass members’ communications
21 while they were using a web browser, mobile application, or television
22 application to subscribe to, access, or watch videos on the Streaming Services;
23 and

24 g. The plan Facebook carried out to effectuate its tracking and interception of
25 Plaintiffs’ and Class and Subclass members’ communications while they were
26 using a web browser, mobile application, or television application to subscribe
27 to, access, or watch videos on the Streaming Services.
28

1 166. Plaintiffs and Class and Subclass members have suffered loss by reason of these
2 violations, including, but not limited to, violations of their rights of privacy, loss of value in their
3 electronic communications, and loss of value in their personally-identifiable information.

4 167. Pursuant to California Penal Code § 637.2, Plaintiffs and Class and Subclass
5 members have been injured by the violation of California Penal Code § 631 and each seek damages
6 for the greater of \$5,000 or three times the actual amount of damages, as well as injunctive relief.

7
8 **COUNT III**
9 **Violation Of The California Invasion Of Privacy Act,**
10 **Cal. Penal Code § 632**
11 **(The Class and Subclasses)**

12 168. Plaintiffs repeat the allegations contained in the paragraphs above as if fully set forth
13 herein.

14 169. Plaintiffs bring this Count individually and on behalf of the members of the Class
15 and Subclasses.

16 170. The California invasion of Privacy Act (“CIPA”) is codified at Cal. Penal Code §§
17 630 to 638. The Act begins with its statement of purpose

18 The Legislature hereby declares that advances in science and technology have led to
19 the development of new devices and techniques for the purpose of eavesdropping
20 upon private communications and that the invasion of privacy resulting from the
21 continual and increasing use of such devices and techniques has created a serious
22 threat to the free exercise of personal liberties and cannot be tolerated in a free and
23 civilized society.

24 Cal. Penal Code § 630.

25 171. California Penal code § 632(a) provides, in pertinent part:

26 A person who, intentionally and without the consent of all parties to a confidential
27 communication, uses an electronic amplifying or recording device to eavesdrop upon
28 or record the confidential communication, whether the communication is carried on
among the parties in the presence of one another or by means of a telegraph,
telephone, or other device, except a radio, shall be punished by a fine not exceeding
two thousand five hundred dollars (\$2,500) per violation.

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

173. The following items constitute “an electronic amplifying or recording device” under
the CIPA:

- a. The computer codes and programs Facebook used to track Plaintiffs’ and Class and Subclass members’ communications while they were subscribing to the Streaming Services, logging into the Streaming Services, and selecting and watching videos on the Streaming Services;
- b. Plaintiffs’ and Class and Subclass members’ browsers, mobile applications, and television applications;
- c. Plaintiffs’ and Class and Subclass members’ computing, streaming, and mobile devices;
- d. Facebook’s web and ad servers;
- e. The web and ad-servers from which Facebook tracked and intercepted Plaintiffs’ and Class and Subclass members’ communications while they were using a web browser, mobile application, or television application to subscribe to, access, or watch videos on the Streaming Services;
- f. The computer codes and programs used by Facebook to effectuate its tracking and interception of Plaintiffs’ and Class and Subclass members’ communications while they were using a web browser, mobile application, or television application to subscribe to, access, or watch videos on the Streaming Services; and
- g. The plan Facebook carried out to effectuate its tracking and interception of Plaintiffs’ and Class and Subclass members’ communications while they were using a web browser, mobile application, or television application to subscribe to, access, or watch videos on the Streaming Services.

174. The data collected by Facebook constitutes “confidential communications,” as that term is used in Section 632, because Plaintiffs and Class and Subclass members had objectively reasonable expectations of privacy while ordering and accessing videos on the Streaming Services.

175. Pursuant to Cal. Penal Code § 637.2, Plaintiffs and Class and Subclass members have been injured by the violations of Cal. Penal Code § 635, and each seek damages for the greater of \$5,000 or three times the amount of actual damages, as well as injunctive relief.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs prays for relief and judgment, as follows:

- 3 a. Determining that this action is a proper class action;
- 4 b. For an order certifying the Classes, naming Plaintiffs as representatives of the
- 5 Class and Subclasses, and naming Plaintiffs’ attorneys as Class Counsel to
- 6 represent the Class and Subclasses;
- 7 c. For an order declaring that Defendant’s conduct violates the statutes referenced
- 8 herein;
- 9 d. For an order finding in favor of Plaintiffs and the Class and Subclasses on all
- 10 counts asserted herein;
- 11 e. Award compensatory damages, including statutory damages where available, to
- 12 Plaintiffs and the Class and Subclass members against Defendant for all damages
- 13 sustained as a result of Defendant’s wrongdoing, in an amount to be proven at
- 14 trial;
- 15 f. For punitive damages, as warranted, in an amount to be determined at trial;
- 16 g. Ordering Defendant to disgorge revenues and profits wrongfully obtained;
- 17 h. For prejudgment interest on all amounts awarded;
- 18 i. For injunctive relief as pleaded or as the Court may deem proper;
- 19 j. For an order awarding Plaintiffs and the Class their reasonable attorneys’ fees
- 20 and expenses and costs of suit; and
- 21 k. Grant Plaintiffs and the Class and Subclass members such further relief as the
- 22 Court deems appropriate.

23 **DEMAND FOR TRIAL BY JURY**

24 Plaintiffs hereby demand a trial by jury of all issues so triable.

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26

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1 Dated: June 27, 2024

Respectfully submitted,

2 **BURSOR & FISHER, P.A.**

3 By:  _____

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