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 FACEBOOK, INC.

11
 12 **UNITED STATES DISTRICT COURT**
 13 **NORTHERN DISTRICT OF CALIFORNIA**
 14 **SAN JOSE DIVISION**

15
 16 FACEBOOK, INC., a Delaware
 corporation,

17 Plaintiff,

18 v.

19 Brian Fabian, Josh Raskin, Ming Wu, and
 20 JOHN DOES 4-10, individuals; and Istra
 Holdings Inc., Slickcash.com, 1564476
 21 Ontario Limited, and JOHN DOES 14-20,
 corporations,

22 Defendants.

Case No. C-07-03404 HRL

FIRST AMENDED COMPLAINT FOR:

- 1) VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT;
- 2) VIOLATION OF THE CALIFORNIA COMPREHENSIVE COMPUTER DATA ACCESS AND FRAUD ACT
- 3) BREACH OF CONTRACT

[DEMAND FOR JURY TRIAL]

1 FACEBOOK, Inc. ("FACEBOOK") hereby amends its complaint to add defendants and
2 facts, and alleges as follows:

3 **I. PARTIES**

4 1. Plaintiff FACEBOOK is a Delaware corporation with its principal place of
5 business in Palo Alto, California.

6 2. Defendant Brian Fabian is an individual residing or working at 48 Hayden Street,
7 Toronto, Ontario M4Y 1V8.

8 3. Defendant Josh Raskin is an individual residing or working at 48 Hayden Street,
9 Toronto, Ontario M4Y 1V8.

10 4. Defendant Ming Wu is an individual residing or working at 27 Forest Valley
11 Road, Markham, Ontario L6R 1T8.

12 5. Defendants John Does 4-10 are individuals of unknown residence and citizenship.
13 FACEBOOK does not know their identities or locations at this time. FACEBOOK will amend its
14 complaint to name John Does 4-10 when their identities are learned.

15 6. Defendant Istra Holdings, Inc. is a corporation located at 48 Hayden Street,
16 Toronto, Ontario M4Y 1V8.

17 7. Upon information and belief, defendant Slickcash.com is the trade name or is
18 otherwise affiliated with 1564476 Ontario Limited, and is located at 48 Hayden Street, Toronto,
19 Ontario M4Y 1V8.

20 8. Defendant 1564476 Ontario Limited is a corporation located at 48 Hayden Street,
21 Toronto, Ontario M4Y 1V8.

22 9. Defendant John Does 14-20 are corporations of unknown locations of
23 incorporation. FACEBOOK does not know the identities or locations of John Does 14-20 at this
24 time. FACEBOOK will amend its complaint to name John Does 14-20 when their identities are
25 learned.

26 **II. JURISDICTION AND VENUE**

27 10. This Court has federal question jurisdiction of this action under 28 U.S.C. § 1331,
28 because this action alleges violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030.

1 11. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and 1391(d).
2 Depending on the residence of defendants, venue may also be proper under 28 U.S.C.
3 § 1391(b)(1) or § 1391(b)(3).

4 III. FACTS AND BACKGROUND

5 12. FACEBOOK, Inc. ("FACEBOOK") owns and operates a social networking Web
6 site located at <http://www.facebook.com>.

7 13. FACEBOOK requires users of its social networking Web site to register with a
8 unique username and password in order to access its proprietary computer network.

9 14. Before a username is activated, the user must agree to FACEBOOK's Terms of
10 Use, before FACEBOOK activates their accounts.

11 15. FACEBOOK's Terms of Use sets forth the terms of authorized use of its
12 proprietary computer network and prohibit users from conducting certain activities. Among the
13 prohibited activities are sending unsolicited or unauthorized advertising, promotional materials,
14 junk mail, spam, chain letters, pyramid schemes, soliciting passwords and personally identifiable
15 information (which is often the intent of so-called "phishing" schemes), and using automated
16 software scripts to send large volumes of requests to the FACEBOOK network. Furthermore,
17 FACEBOOK's Terms of Use prohibit users from disseminating any forms of mass-mailing, mass-
18 contact, or sales schemes over FACEBOOK's Web site.

19 16. FACEBOOK users may create profiles that contain personal data such as contact
20 information (including email addresses, mailing addresses and telephone numbers), pictures, and
21 other content that is personal in nature.

22 17. FACEBOOK's Web site enables users to add "friends" to their profiles. This
23 process connects one registrant's profile to another registrant's profile, giving each of the
24 connected "friends" access to the other "friends" connected to the respective profiles. A
25 FACEBOOK user cannot add a "friend" to his or her profile until the friend confirms to
26 FACEBOOK that he or she consents to being added to the user's friend list. In this manner,
27 FACEBOOK's Web site creates a virtual social network of interconnected profiles. "Friends"
28 can send messages to one another over FACEBOOK's proprietary computer network. Users may

1 also send email to one another over the Internet.

2 18. FACEBOOK user profiles are available for viewing and FACEBOOK users may
3 be contacted only by FACEBOOK or persons who have a FACEBOOK username and password.

4 19. FACEBOOK requires its users to refrain from the prohibited actions described in
5 its Terms of Use because they have the potential to overwhelm FACEBOOK's proprietary
6 computer network and disrupt or degrade service to FACEBOOK users. Furthermore, the
7 prohibited actions detract from the FACEBOOK user environment because they are often
8 associated with unwanted or harmful activities targeting FACEBOOK users or attempting to
9 compromise FACEBOOK's security.

10 20. Sometime between or before June 1, 2007 and June 15, 2007, the Defendants,
11 acting individually and in concert, used Internet Protocol Address ("IP Address") 216.127.50.20
12 to access FACEBOOK's Web site hundreds of thousands of times. During the fifteen-day period
13 from June 1, 2007 to June 15, 2007, the Defendants sent more than 200,000 separate page
14 requests to FACEBOOK. Upon information and belief, each of these requests sought to direct
15 FACEBOOK's computers to send information on other FACEBOOK users back to IP Address
16 216.127.50.20.

17 21. Upon information and belief, the Defendants used IP Address 216.127.50.20
18 between June 1 and June 15, 2007 to access FACEBOOK's computer system without
19 authorization and to execute an automated script (automated computer commands) that attempted
20 to harvest information from other FACEBOOK users. These requests for information from
21 FACEBOOK generated error messages, and were detected as unauthorized attempts to access and
22 harvest proprietary information belonging to FACEBOOK.

23 22. FACEBOOK reported the unauthorized activity originating from IP Address
24 216.127.50.20 to the Internet Service Provider ("ISP") responsible for administrating the IP
25 Address. In response to FACEBOOK's request, the ISP blocked the offending IP address from
26 accessing IP addresses associated with FACEBOOK's proprietary computer system. Thereafter,
27 FACEBOOK continued to detect similar unauthorized attempts to access its computer network
28 and obtain its proprietary information originating from other IP Addresses that upon information

1 and belief originated from Defendants.

2 23. As a direct and proximate result of the unauthorized access to FACEBOOK's
3 proprietary computer network by the Defendants as described in paragraphs 20-22, FACEBOOK
4 has incurred substantial damages in excess of \$5,000.

5 24. Subsequent to filing the original Complaint in this action, FACEBOOK obtained
6 an order permitting it to conduct certain discovery for the purpose of identifying Defendants.
7 FACEBOOK served a discovery request on the ISP responsible for IP address 216.127.50.20 to
8 ascertain the identity of the defendants. The ISP produced a Web Hosting Agreement wherein
9 Defendant 1564476 Ontario Limited is identified as the entity that had sole control and access to
10 a band of IP addresses, including IP address 216.127.50.20. IP Address 216.127.50.020 was
11 assigned to a dedicated single server named "slick17." Defendant Brian Fabian signed the Web
12 Hosting Agreement on behalf of Defendant 1564476 Ontario Limited as its "Director." The Web
13 Hosting Agreement and related billing correspondence produced by the ISP also listed Defendant
14 Josh Raskin as the contact person for the Web Hosting Agreement, with the email address at
15 josh@slickcash.com.

16 25. Upon information and belief, Defendants 1564476 Ontario Limited,
17 slickcash.com, Brian Fabian and Josh Raskin were responsible for directing the "slick 17" server
18 to access FACEBOOK's computer network without authorization, either through their direct
19 actions or as a result of their control of IP address 216.127.50.20.

20 26. The ISP also produced logs from the server "slick 17," which indicated that "slick
21 17" had received commands from two other IP Addresses on or about the time that it attempted to
22 gain access to FACEBOOK's proprietary information without authorization. The two other IP
23 addresses had accessed server "slick17" and had uploaded scripts that were directed at
24 FACEBOOK's network. These two IP addresses were: IP address 74.117.158.224 and IP address
25 207.136.118.110.

26 27. FACEBOOK determined that Rogers Communications, Inc. ("Rogers") in Canada
27 was responsible for IP address 74.117.158.224 and that it would not release information related to
28 the subscriber responsible for IP Address 74.117.158.224 without a court order. FACEBOOK

1 obtained an order from this Court permitting discovery in Canada from Rogers and subsequently
2 obtained an order from the applicable Canadian Court authorizing this discovery. In response to
3 the order directing Rogers to release the subscriber information for IP Address 74.117.158.224,
4 Rogers produced documents indicating that Defendant Ming Wu was assigned IP address
5 74.117.158.24 during the relevant period of time.

6 28. Upon information and belief, Defendant Ming Wu was responsible for directing
7 the "slick 17" server to access FACEBOOK's computer network without authorization, either
8 through his direct actions or as a result of his control of IP address 74.117.158.224.

9 29. FACEBOOK determined that Look Communications, Inc. ("Look") in Canada was
10 responsible for IP Address 207.136.118.110 and that it would not release information related to
11 the subscriber assigned to IP Address 207.136.118.110 without a court order. FACEBOOK
12 obtained an order from this Court permitting discovery in Canada from Look and subsequently
13 obtained an order from the applicable Canadian Court authorizing this discovery. In response to
14 the order directing Look to release the subscriber information for IP Address 207.136.118.110,
15 Look produced documents indicating that Defendant Istra Holdings, Inc. ("Istra") was the user of
16 IP Address 207.136.118.110 during the relevant period of time. Defendant Brian Fabian is the
17 "Manager" contact for Istra's contract with Look.

18 30. Upon information and belief, Defendants Istra Holdings and Brian Fabian were
19 responsible for directing the "slick 17" server to access FACEBOOK's computer network without
20 authorization, either through their direct actions or as a result of their control of IP address
21 207.136.118.110.

22 **IV. CLAIMS FOR RELIEF**

23 **COUNT I – COMPUTER FRAUD AND ABUSE ACT, 18 U.S.C. § 1030**

24 31. Plaintiff FACEBOOK realleges and incorporates by reference, as if fully set forth
25 herein, the allegations in paragraphs 1-30 above.

26 32. FACEBOOK's Web site operates in interstate commerce.

27 33. The Defendants intentionally accessed FACEBOOK's Web site without
28 authorization, including but not limited to more than 200,000 separate requests sent from IP

1 Address 216.127.50.20, which caused or recklessly caused damage and loss in excess of \$5,000
2 to FACEBOOK.

3 34. The Defendants' attempts to access FACEBOOK's Web site have harmed
4 FACEBOOK in that, among other things, FACEBOOK has been required to expend resources to
5 investigate the attempted unauthorized access and abuse of its computer network and to prevent
6 such access or abuse from occurring.

7 **COUNT II – CALIFORNIA COMPREHENSIVE COMPUTER DATA ACCESS**
8 **AND FRAUD ACT, CALIFORNIA PENAL CODE § 502(C)**

9 35. Plaintiff FACEBOOK realleges and incorporates by reference, as if fully set forth
10 herein, the allegations in paragraphs 1-34 above.

11 36. FACEBOOK's proprietary computer network that hosts its Web sites is located in
12 the State of California.

13 37. The Defendants knowingly and without permission used FACEBOOK's
14 proprietary computers, computer system, or computer network.

15 38. The Defendants knowingly and without permission accessed FACEBOOK's
16 proprietary computers, computer system, or computer network.

17 39. Upon information and belief, the Defendants knowingly and without permission
18 took, copied, or made use of, data from FACEBOOK's proprietary computers and computer
19 network.

20 40. As a direct and proximate result of the Defendants' actions, FACEBOOK has been
21 irreparably harmed and damaged in that, among other things, FACEBOOK has been required to
22 expend resources to investigate the attempted unauthorized access and abuse of its computer
23 network and to prevent such access or abuse from occurring. The extent and amount of such
24 injury and damage will be demonstrated at trial.

25 **COUNT III – BREACH OF CONTRACT**

26 41. Plaintiff FACEBOOK realleges and incorporates by reference, as if fully set forth
27 herein, the allegations in paragraphs 1-40 above.

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JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), plaintiff demands a trial by jury as to all issues so triable in this action.

DATED: December 12, 2007

PERKINS COIE LLP

By: /s/ David Chiappetta
David Chiappetta

Attorneys for Plaintiff
FACEBOOK, INC.