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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

19 STEVEN PRICE, on behalf of himself and
20 all others similarly situated,

21 Plaintiff,

22 v.

23 FACEBOOK, INC., a Delaware
24 corporation; and DOES 1 through 10,
inclusive,

25 Defendants.

C09 03519 HRL

CLASS ACTION

**COMPLAINT FOR DAMAGES,
RESTITUTION, INJUNCTIVE RELIEF
AND DECLARATORY RELIEF**

DEMAND FOR JURY TRIAL

1 All allegations in this Complaint are based upon information and belief except those
2 allegations that pertain to Plaintiff, which are based on personal knowledge. Plaintiff's
3 information and belief are based upon, *inter alia*, Plaintiff's own investigation and the
4 investigation conducted by Plaintiff's attorneys. Each allegation in this Complaint either has
5 evidentiary support or, alternatively, is likely to have evidentiary support after a reasonable
6 opportunity for further investigation and/or discovery.

7 **NATURE OF THE ACTION**

8 1. This is an action to enjoin ongoing, unfair and unlawful business practices
9 and to recover monetary damages and restitution arising out of Facebook's unfair and unlawful
10 business practices of: (1) charging its "pay per click" advertising customers for "invalid clicks"
11 that never actually occurred; and (2) giving its advertising customers partial "credits", rather than
12 full cash refunds, for such invalid clicks.

13 2. Facebook's practices violate its agreement with its advertising customers as
14 memorialized in the standardized Facebook Advertising Guidelines and the Statement of Rights
15 and Responsibilities that Facebook enters into with its advertising customers. Facebook's
16 wrongful practices predictably involve small amounts of damages, and Facebook is attempting to
17 carry out a scheme to deliberately cheat large numbers of its advertising customers out of
18 individually small sums of money.

19 3. Facebook should be ordered to cease its wrongful practices and should be
20 required to refund to its present and former advertising customers all monies that Facebook has
21 collected as a result of its wrongful practices.

22 **PARTIES**

23 4. Plaintiff Steven Price ("Plaintiff") is a resident of the State of California,
24 residing in El Segundo, California.

25 5. Defendant Facebook, Inc. is a Delaware corporation registered to do
26 business in the State of California, with its principal place of business located in Palo Alto,
27 California. The Facebook website is a free-access social networking website that is operated and
28 privately owned by Facebook. The website is accessible to users throughout the United States.

1 the State of California. Facebook generally has maintained systematic and continuous business
2 contacts within the State of California.

3 13. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(b)(2)
4 because Facebook transacts substantial business within this judicial district thereby subjecting
5 Facebook to personal jurisdiction in this judicial district. In addition, a substantial part of the
6 events giving rise to the claims asserted by Plaintiff took place in this judicial district. Finally,
7 Facebook's Statements of Rights and Responsibilities, which governs Facebook's relationship
8 with, *inter alia*, its advertising customers, contains a venue provision providing that any claim,
9 cause of action or dispute arising out of Facebook's Statement of Rights and Responsibilities
10 should be resolved in a state or federal court located in Santa Clara County.

11 **FACTS RELATING TO FACEBOOK**

12 14. Founded in February 2004, Facebook develops technologies that facilitate
13 the sharing of information. Facebook is the second most-trafficked PHP site in the world and one
14 of the largest MySQL installations anywhere, running thousands of databases. Facebook is
15 accessible internationally.

16 15. To generate revenue, Facebook provides online advertising services. The
17 Internet research firm eMarketer estimates that Facebook generated about \$210 million in U.S.
18 advertising revenue in 2008. However, that amount pales in comparison to the estimated \$585
19 million in advertising revenue that was generated in 2008 by MySpace, Facebook's chief rival.
20 Recently, there has been speculation in the news media concerning Facebook's ability to survive
21 as an ongoing business enterprise given its inability to generate revenue.

22 16. Facebook ads appear in the right side column on Facebook pages. In order
23 to place an ad on Facebook, the advertiser must submit a bid. The Facebook ad system decides
24 which ads to run by employing an algorithm that estimates the best performing advertisement
25 based on a number of factors, including historical performance of the ad and its bid. The bid
26 necessary to win the advertisement fluctuates as the system learns more about the ad's actual
27 performance and as the pool of competing ads change.

28

1 17. Facebook users can access all of the advertisements that have been shown to
2 them within a given 24 hour time period through their page or via the “More Ads” link located
3 under the ads on their page.

4 18. Creation of an advertisement set to run on Facebook is a four-step process:
5 design, selection of target demographic, scheduling the running of the ad and setting the daily
6 budget, and finally design review and submission. All ads are designed using software created by
7 Facebook and accessible to the user via a link from the Facebook website. During the design
8 process, advertisers may choose to have their ad link either to their external web page or an
9 internal Facebook link such as a page, application, group or event.

10 19. Advertisers are able to target their exact audience with demographic and
11 psychographic filters. By default, Facebook targets all users 18 and older in the default location.
12 Advertisers can schedule their advertisement to run continuously starting once the ad is approved
13 or at a specified start and end date.

14 20. There is no set cost for Facebook advertisements; rather, Facebook
15 advertisers can choose to either to pay-per-click or pay for views. Facebook’s website touts that
16 an advertiser can reach more than 200,000,000 active Facebook users.

17 21. Pay-per-click (“PPC”) is an internet marketing formula used to price online
18 advertisements. Also known as cost-per-click (“CPC”), advertisers pay internet publishers based
19 on the number of individual clicks an advertisement receives. The cost of each click is
20 determined by a bidding process, wherein the highest bidder for a click would have its ad placed
21 on the Facebook site.

22 22. An advertiser must confirm the maximum amount he is willing to pay per
23 click or per 1000 impressions depending on the payment method selected. The suggested bid
24 range shows the advertiser what other advertisers are currently bidding to reach people in their
25 target.

26 23. Prior to final submission of their advertisement, advertisers are required to
27 agree to Facebook’s Statement of Rights and Responsibilities as well as Facebook’s Advertising
28 Guidelines -- which govern the advertiser’s relationship with Facebook.

FACTS RELATING TO PLAINTIFF

1
2 24. On or about May 26, 2009, Plaintiff purchased advertising from Facebook.
3 Under the terms of Plaintiff's agreement with Facebook, Facebook was required to provide
4 Internet advertising service to Plaintiff in exchange for payment from Plaintiff. Plaintiff
5 authorized Facebook to direct bill his credit card account for the payments due from him.

6 25. Plaintiff created his first advertisement on May 26, 2009. He selected the
7 pay-per-click payment method. Plaintiff's advertisement began running on the Facebook website
8 on or about May 27, 2009. Plaintiff's advertisement was designed such that a Facebook user who
9 clicked on Plaintiff's ad would be directed to Plaintiff's website.

10 26. Plaintiff received the first charge to his credit card from Facebook on or
11 about May 28, 2009. He received numerous additional charges thereafter. Between May 28,
12 2009 and June 21, 2009, Facebook charged Plaintiff's credit card account more than \$500 for his
13 advertisements. Facebook sent Plaintiff email invoices for each of the charges to his credit card
14 account. However, none of the email invoices details the number of clicks, time of the clicks or
15 origination of the clicks.

16 27. In an effort to ascertain this information -- which would allow him to tailor
17 his advertisements to maximize profitability -- Plaintiff accessed the Facebook Ad Manager Page.
18 The Facebook Ad Manager Page provides information regarding, *inter alia*, the number of clicks
19 made on an advertisement on a day-by-day basis. Upon reviewing the information related to his
20 ad, Plaintiff became concerned that the number of clicks was overstated. Therefore, Plaintiff used
21 Google Analytics to test the veracity of the data reflected on the Facebook Ad Manager Page.

22 28. Google Analytics is a software program that generates detailed statistics
23 about visitors to a website. Plaintiff used Google Analytics to test the veracity of the charges that
24 he was receiving from Facebook on eight days between May 27, 2009 and June 3, 2009. Based
25 upon the data Plaintiff received from Google Analytics for these eight days, Plaintiff determined
26 that approximately 66% of the clicks for which he was being charged by Facebook, as reflected
27 on the Facebook Ad Manager Page, were invalid clicks that had never even occurred.
28

1 29. On or about June 4, 2009, Plaintiff began to run Statcounter.com in
2 conjunction with the Google Analytics program. Statcounter.com is another web-tracker that
3 allows the user to analyze and monitor visitors to a website. Plaintiff used both Google Analytics
4 and Statcounter.com to test the veracity of the charges that he was receiving from Facebook on
5 five dates on which Plaintiff ran ads between June 4, 2009 and June 21, 2009.

6 30. Based upon the data Plaintiff received from Statcounter.com for the five
7 dates, Plaintiff determined that approximately 67% of the clicks for which he was being charged
8 by Facebook, as reflected on the Facebook Ad Manager Page, were invalid clicks that had never
9 even occurred. Therefore, the data results from Statcounter.com confirmed the findings of
10 Google Analytics: that is, approximately two-thirds of the clicks for which Plaintiff was being
11 charged were invalid clicks that had never even occurred.

12 31. Attached hereto as Exhibit "A" is an excel spreadsheet that demonstrates the
13 discrepancies between the clicks for which Plaintiff was charged by Facebook and the clicks that
14 actually occurred as tracked by Google Analytics and Statcounter.com. For example, for May 27,
15 2009, the Facebook Ad Manager Page reflects 95 clicks, whereas Google Analytics tracked only
16 19 clicks – a difference of 76 invalid clicks.

17 32. Facebook has charged, and Plaintiff has paid, for all clicks on Plaintiff's ads.
18 On June 26, 2009, Facebook notified Plaintiff that "Recently, we have detected an increase in
19 invalid clicks on Facebook. Your account was impacted and as a result, we are crediting your
20 account. Your credit has been automatically deposited into your Facebook account and will apply
21 toward future advertising campaigns. Your credits expire December 15, 2009."

22 33. By voluntarily crediting Plaintiff's account, Facebook admitted that it had
23 charged Plaintiff for invalid clicks. However, rather than refunding to Plaintiff the monies he had
24 been charged and paid for these invalid clicks, Facebook gave Plaintiff "credits" in the amount of
25 \$105.01 that could only be used to purchase additional advertising from Facebook. Moreover,
26 unlike the cash refund to which Plaintiff is entitled, these credits expire December 15, 2009.
27 Finally, these credits do not even come close to compensating Plaintiff for the monies that he has
28 been wrongfully charged and paid to Facebook for invalid clicks.

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39. Facebook customer "Jbenet" has complained that:

I have been experimenting with FC ads 3 times now, and for certain Statcounter shows that I was billed TWICE for every incoming click from falsebook on my last campaign.

Just set up a new site, with google analytics AND statcounter, the site is getting zero organic traffic, and FB tells me 5 people clicked it, YET I have had zero visitors still...

So either google and statcounter are junk, or... my guess is that Facebook is running a scam, and maybe Ralph Nader should get his Consumer Reports to look into it.

40. Facebook customer "Marc" has complained that:

We started using Facebook Ads about a week ago. Our site only has around 30 unique visitors per day and around 100 returning visitors a day. We use Google Analytics to watch this traffic and monitor what States our advertising is doing better in. We setup a campaign in two cities, Boston and Las Vegas. Facebook charged us for 27 clicks in Las Vegas and 36 in Boston over the first few days. Google Analytics tells me that we only received a total of 4 new visitors in Las Vegas and only 3 in Boston over the last week. None of which came from Facebook and none of the days Facebook claimed the took place on. We have two Facebook pages that sent traffic of 32 unique visits "Before" we used the Ads system and those visits took place over a week before we started the Ads campaign. We have no proof that Facebooks Adds were legitimate clicks, we can only prove that Facebook has charged us \$1.00 for each click.

We have a feeling all of these clicks are fraudulent and false. We are also having trouble contacting Facebook to get the issue resolved and have discontinued our Ads in the time being.

CLASS ACTION ALLEGATIONS

41. Plaintiff brings this class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a class of advertising customers of Facebook as defined herein. Plaintiff is a member of the class that he seeks to represent.

42. Pursuant to Facebook's Statements of Rights and Responsibilities, which governs Facebook's relationship with advertising customers and others who interact with

1 Facebook, California law applies to the claims of all advertising customers of Facebook. As a
2 result, Plaintiff shall seek to represent a nationwide class (“the Class”) as to all claims for relief
3 alleged herein. Plaintiff proposes to define the Class as follows:

4 All pay-per-click advertising customers of Facebook who reside in
5 the United States and who were charged for “invalid clicks”.

6 43. The members of the Class shall be referred to herein
7 collectively as the “Class Members”.

8 44. The following pay-per-click advertising customers of Facebook shall be
9 excluded from the Class and therefore shall not qualify as Class Members: (a) all employees,
10 officers, directors, agents and legal representatives of Facebook; (b) any judge, justice or judicial
11 officer assigned to hear any proceeding in relation to this case; and (c) all persons who validly
12 exclude themselves from the Class.

13
14 45. While the exact number of Class Members is unknown to Plaintiff at this
15 time and can only be determined by appropriate discovery, membership in the Class is ascertainable
16 based upon the billing records maintained by Facebook. The Class consists of many
17 hundreds, if not many thousands, of members, the identities of which are within the knowledge of
18 and can be ascertained by Facebook by reference to its customer records. Therefore, the Class
19 Members are sufficiently numerous that joining all Class Members in a single action is
20 impracticable under Fed. R. Civ. P. 23(a)(1), and the resolution of their claims through the
21 procedure of a class action will be of benefit to the parties and the Court.

22 46. Common questions of law and fact exist as to the Class Members, as
23 required by Fed. R. Civ. P. 23(a)(2), and predominate over any questions that affect only
24 individual Class Members within the meaning of Fed. R. Civ. P. 23(b)(3).

25 47. The questions of fact that are common to the Class Members include, but
26 are not limited to, the following:
27
28

- 1 a. whether Facebook improperly assesses charges to the Class
- 2 Members for invalid clicks;
- 3 b. whether Facebook generated or caused to be generated the invalid
- 4 clicks;
- 5 c. whether Facebook provides partial “credits”, rather than full cash
- 6 refunds, to the Class Members for invalid clicks; and
- 7 d. whether the Class Members were damaged as a result of
- 8 Facebook’s actions and conduct.

9 48. The questions of law that are common to the Class Members include, but
10 are not limited to, the following:

- 11 a. whether Facebook breached the terms and/or implied covenants of
- 12 its contracts with the Class Members;
- 13 b. whether the Class Members are entitled to declaratory relief under
- 14 the Declaratory Judgment Act;
- 15 c. whether Facebook has committed one or more acts of “unfair
- 16 competition” within the meaning of and in violation of California
- 17 Business and Professions Code §17200, *et seq.*; and
- 18 d. whether Facebook, by its actions and conduct, has been unjustly
- 19 enriched at the expense and to the detriment of the Class Members.

20 49. Plaintiff’s claims are typical of the claims of the Class Members whom he
21 seeks to represent under Fed. R. Civ. P. 23(a)(3) because Plaintiff and each of the Class Members
22 have been subjected to the same improper practices and have been damaged in the same manner.

23 50. Plaintiff will fairly and adequately represent and protect the interests of the
24 Class Members as required by Fed. R. Civ. P. 23(a)(4). Plaintiff is an adequate representative of
25 the Class, as he has no interests that are adverse to the Class Members. Plaintiff is committed to
26 the vigorous prosecution of this action on behalf of the Class Members and, to that end, Plaintiff
27 has retained counsel who are competent and experienced in handling class action litigation.

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1 51. A class action is superior to other available methods for the fair and
2 efficient adjudication of the claims asserted in this action under Fed. R. Civ. P. 23(b)(3) because:

- 3 a. the Class Members have no interest in individually controlling the
4 prosecution of separate actions on their own behalves because the
5 expense and burden of individual litigation make it economically
6 unfeasible for the Class Members to seek redress other than through
7 the procedure of a class action;
- 8 b. the Class Members have not commenced and are not pursuing other
9 litigation against Facebook arising out of the subject matter of this
10 class action lawsuit, and if separate actions were brought by
11 individual Class Members, the resulting duplicity of lawsuits would
12 cause undue hardship and expense to the Court and the litigants by
13 necessitating multiple trials of similar factual issues;
- 14 c. it is desirable to concentrate the litigation of the Class Members'
15 claims in this forum because all of the Class Members are residents
16 of the State of California and because the Class Members allege
17 claims under federal law and California state law; and
- 18 d. Plaintiff is aware of no difficulty likely to be encountered in the
19 management of this litigation that should preclude its maintenance
20 as a class action.

21 52. In the alternative, this action is certifiable under the provisions of Fed. R.
22 Civ. P. 23(b)(1) and/or (b)(2) because:

- 23 a. the prosecution of separate actions by individual Class Members
24 would create a risk of inconsistent or varying adjudications with
25 respect to individual Class Members which would establish incom-
26 patible standards of conduct for Facebook;
- 27 b. the prosecution of separate actions by individual Class Members
28 would create a risk of adjudications with respect to them which

1 would, as a practical matter, be dispositive of the interests of the
2 other Class Members not parties to the adjudications, or
3 substantially impair or impede their ability to protect their interests;
4 and

5 c. Facebook has acted or refused to act on grounds generally
6 applicable to the Class Members, thereby making appropriate final
7 injunctive relief or corresponding declaratory relief with respect to
8 the Class Members as a whole and necessitating that any such relief
9 be extended to the Class Members on a mandatory, class-wide
10 basis.

11 53. The names and addresses of the Class Members are available from
12 Facebook's records. Notice can be provided to the Class Members via first class mail or
13 otherwise using techniques and a form of notice similar to those customarily used in class actions
14 arising under California state law and federal law. Specifically, notice can be provided to the
15 Class Members by posting a notice on the Facebook main page. Additionally notice can be
16 provided to the Class Members who are current advertising customers of Facebook by including a
17 notice in or on the monthly bill sent to Facebook 's advertising customers with the minimal cost
18 of such notice to be borne by Facebook.

19 **FIRST CLAIM FOR RELIEF**
20 **(Breach of Contract)**

21 54. Plaintiff repeats and incorporates herein by reference the allegations
22 contained in paragraphs 1 through 53 of this Complaint.

23 55. Plaintiff brings this claim for relief on behalf of himself and the members
24 of the Class.

25 56. The relationship between Facebook and its advertising customers is
26 governed by Facebook's Statement of Rights and Responsibilities. A true and correct copy of
27 Facebook's Statement of Rights and Responsibilities is attached hereto as Exhibit "B".
28

1 customers partial “credits”, rather than full cash refunds, for such invalid clicks are improper and
2 unlawful, while Facebook maintains that its actions and conduct are lawful and proper.

3 66. A judicial declaration is necessary and appropriate at this time, under the
4 circumstances presented, in order that Plaintiff and the Class Members may ascertain their rights
5 and duties with respect to Facebook’s practices of charging its advertising customers for invalid
6 clicks that never even occurred and giving its advertising customers partial “credits”, rather than
7 full cash refunds, for such invalid clicks.

8 **THIRD CLAIM FOR RELIEF**
9 **(Unjust Enrichment)**

10 67. Plaintiff repeats and incorporates herein by reference the allegations
11 contained in paragraphs 1 through 53 of this Complaint.

12 68. Plaintiff brings this claim for relief on behalf of himself and the members
13 of the Class.

14 69. Facebook has engaged in the unfair, inequitable and/or unconscionable
15 practices of: (1) charging and collecting fees for invalid clicks that never even occurred; and (2)
16 giving its advertising customers partial “credits”, rather than full cash refunds, for such invalid
17 clicks.

18 70. As a direct and proximate result of Facebook’s unfair, inequitable and/or
19 unconscionable practices, Facebook has been unjustly enriched at the expense of and to the
20 detriment of Plaintiff and the Class Members.

21 71. By reason of Facebook’s conduct, Plaintiff and the Class Members are
22 entitled to restitution of all monies paid to Facebook for invalid clicks that never even occurred.
23

24 **FOURTH CLAIM FOR RELIEF**
25 **(Violation of California Business and Professions Code § 17200, et seq.)**

26 72. Plaintiff repeats and incorporates herein by reference the allegations
27 contained in paragraphs 1 through 62 and 68 through 71 of this Complaint.
28

1 On The Second Claim For Relief

2 That this Court declare that Facebook's practices of charging and collecting fees for
3 invalid clicks that never even occurred and giving its advertising customers partial "credits",
4 rather than full cash refunds, for such invalid clicks are improper and unlawful.

5 On The Third Claim For Relief

6 For disgorgement and restitution to Plaintiff and the Class Members of all monies
7 wrongfully obtained and retained by Facebook; and

8 For prejudgment interest through the date of entry of judgment.

9 On The Fourth Claim For Relief

10 For disgorgement and restitution to Plaintiff and the Class Members of all monies
11 wrongfully obtained and retained by Facebook;

12 For an order enjoining Facebook from: (1) charging and collecting fees for invalid clicks
13 that never even occurred; and (2) giving its advertising customers partial "credits", rather than full
14 cash refunds, for such invalid clicks; and

15 For prejudgment interest through the date of entry of judgment.

16 On All Claims For Relief

17 For all attorneys' fees, expenses and recoverable costs reasonably incurred in connection
18 with the commencement and prosecution of this action, provided that this action results in a
19 common fund for the benefit of the Class Members and/or confers a substantial benefit on the
20 Class Members; and

21 For such other and further relief as the Court deems just and proper.

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JURY TRIAL DEMAND

Plaintiff demands a trial by jury of all issues so triable in this action.

Dated: July 30th, 2009

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