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 SAN JOSE

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ATTORNEYS FOR PLAINTIFF AND THE PUTATIVE CLASS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DAVID GOULD, an individual, on
 behalf of himself and all others similarly
 situated,

Plaintiff,

v.

FACEBOOK, INC., a Delaware
 corporation,

Defendant.

) Case No.

) COMPLAINT FOR:

- (1) Violations of Cal. Bus. & Prof.
Code § 17200;
- (2) Violations of Cal. Penal Code § 502;
- (3) Violations of Cal. Civ. Code § 1750;
- (4) Breach of Contract;
- (5) Breach of Implied Contracts;
- (6) Breach of the Implied Covenant of
Good Faith and Fair Dealing;
- (7) Violations of Cal. Civ. Code §§ 1572, 1573;
- (8) Unjust Enrichment;
- (9) Negligence;
- (10) Negligence Per Se.

) DEMAND FOR JURY TRIAL

) CLASS ACTION

COMPLAINT

FAXED

1 Plaintiff, by and through his attorneys, upon personal knowledge as to himself and his
2 own acts, and upon information and belief as to all other matters, alleges as follows:

3 **NATURE OF THE ACTION**

4 1. Plaintiff, David Gould ("Plaintiff" or "Mr. Gould"), brings this class action
5 complaint against Facebook, Inc. ("Facebook") for sharing its users' sensitive personally
6 identifiable information ("PII"), including users' real names, place of birth, current city,
7 schools attended, friend lists, pictures, genders, and more with Facebook's advertising
8 partners, in violation of its own Privacy Policy and accepted industry standards.

9 **PARTIES**

10 2. Plaintiff David Gould is a resident of South Lake Tahoe, California. He is a
11 registered user of Facebook, Inc.'s services and has been since at least 2008.

12 3. Defendant Facebook, Inc. is a Delaware corporation headquartered in San
13 Clara County, California, at 1601 South California Avenue, Palo Alto, California 94304.
14 Facebook does business throughout the State of California and the nation.

15 **JURISDICTION AND VENUE**

16 4. This Court has original jurisdiction over this action pursuant to 28 U.S.C.
17 § 1332(d), because (a) at least one member of the putative class is a citizen of a state
18 different from Defendant, (b) the amount in controversy exceeds \$5,000,000, exclusive of
19 interest and costs, and (c) none of the exceptions under the subsection apply to this action.

20 5. Personal jurisdiction and Venue are proper because Facebook is a corporation
21 headquartered in Santa Clara County and/or because the improper conduct alleged in the
22 Complaint occurred in, was directed from, and/or emanated or exported from California.

23 **INTRADISTRICT ASSIGNMENT**

24 6. Pursuant to Local Civil Local Rule 3-2(e), this case shall be assigned to the
25 San Jose Division.

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FACTS

About Facebook

7. Facebook is the world's largest social networking website, with over 400 million registered users worldwide.

8. According to Facebook, its "mission is to give people the power to share and make the world more open and connected." (www.facebook.com/facebook?v=info%ref=pf) To accomplish that mission, Facebook allows anyone with access to a computer and Internet connection to register for its services free of charge.

9. One of the only requirements Facebook places on its registrants is that they use their actual names, rather than create a "screen name" or "user name," as is commonplace with other website registrations.

10. Once registered, a Facebook user may post a multitude of information to their own personal "Facebook profile" page, including their birth date, place of birth, current and past addresses, present and past employment, relationship status, personal pictures, videos, and more. Facebook, in fact, presents users with pre-made forms in which users may enter this type of personal information.

11. As of May 21, 2010, Facebook's default privacy settings allow everyone on the internet, including advertisers, to see a user's real name, gender, picture, friends, networks, wall posts, photos, and likes, among other data.

12. In many ways, Facebook is accomplishing its official mission. Facebook users share unprecedented personal information through the service. And while users may do so in order to connect with other Facebook users, they are also sharing this information with Facebook. And all this personal information is valuable to Facebook because it is valuable to advertisers.

1 **Advertising on Facebook**

2 13. Because users share so much information through Facebook, Facebook is able
3 to use that data to help its advertisers target their ads to finely tailored audiences.

4 14. This targeting may help explain Facebook's success in generating
5 advertisement impressions. According to comScore's Ad Metrix services, Facebook now
6 serves more ad impressions than any other online entity. comScore reports that in the first
7 quarter of 2010, Facebook served up over 176 billion display ad impressions, which accounts
8 for 16.2% of the market.¹

9 15. In fact, the information Facebook possesses allows its advertisers to target
10 their ads based on age, city of residence, gender, and interests, such as mountain biking for
11 example. This allows a local mountain bike maker to only pay for ads that Facebook serves
12 to 20 to 30-year old men in Moab, Utah who have expressly shared with Facebook an interest
13 in mountain biking.

14 16. The only thing better for the advertiser would be to know the true identity of
15 that 20-something male mountain biker. But Facebook's own Privacy Policy prohibits this.
16 It states:

17 **5. How We Use Your Information**

18 **To serve personalized advertising to you.** We don't share your
19 information with advertisers without your consent. . . .

20 17. As a result, while Facebook advertisers are able to engage in very targeting
21 advertising, Facebook promises not to share anyone's true identity or personal information
22 with any advertisers.
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25 ¹
26 [http://www.comscore.com/Press Events/Press Releases/2010/5/Americans Received 1 Tril](http://www.comscore.com/Press%20Events/Press%20Releases/2010/5/Americans_Received_1_Trilion_Display_Ads_in_Q1_2010_as_Online_Advertising_Market_Rebounds_from_2009_Recession)
27 [lion Display Ads in Q1 2010 as Online Advertising Market Rebounds from 2009 Rec](http://www.comscore.com/Press%20Events/Press%20Releases/2010/5/Americans_Received_1_Trilion_Display_Ads_in_Q1_2010_as_Online_Advertising_Market_Rebounds_from_2009_Recession)
28 [ession.](http://www.comscore.com/Press%20Events/Press%20Releases/2010/5/Americans_Received_1_Trilion_Display_Ads_in_Q1_2010_as_Online_Advertising_Market_Rebounds_from_2009_Recession)

1 18. Facebook requires its users to agree to this Privacy Policy upon registering
2 with the site.

3 **Facebook violates its own Privacy Policy**

4 19. Unfortunately for Facebook users, Facebook—in violation of its own Privacy
5 Policy—shares its users’ information with third-party advertisers without consent.

6 20. When a Facebook user clicks on an advertisement posted on Facebook’s
7 website, Facebook sends what is known as a “Referrer Header” to the relevant advertiser.
8 The Referrer Header is similar in many ways to a web address that a typical Internet user
9 might use to navigate to a particular website, except that the Referrer Headers sent by
10 Facebook to its advertisers include the user ID of the user who clicked the ad.

11 21. Because Facebook requires its users to use their real names, navigating to any
12 user’s site will reveal that user’s real name, and many times much more.

13 22. Accordingly, once an advertiser receives the Referrer Header containing a
14 Facebook user ID, an advertiser can simply navigate back to the specific user’s profile and
15 obtain any personal information the user has made publicly available. And remember, the
16 default privacy settings that many users never change make the user’s name, photo, and more
17 available.

18 23. Thus, Facebook advertisers are able to gain the ultimate demographic
19 information: users’ true identities, including real name, gender, friends, interests, and more.
20 All in violation of Facebook’s own Privacy Policy.

21 24. The importance of this systematic practice of privacy violations cannot be
22 understated. As noted Harvard professor, Ben Edelman, stated on *NBC Nightly News*, “[i]t’s
23 like giving away your social security number. Once someone has this code, they can look up
24 everything else that Facebook knows about you.”²

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26
27 ² <http://www.msnbc.msn.com/id/21134540/vp/37283838#37283838>.

1 **Facebook has been on notice of this problem, but failed to fix it**

2 25. While the story regarding this problem broke on May 21, 2010 in the *Wall*
3 *Street Journal*,³ Facebook was put on notice of this problem in August 2009.

4 26. In August 2009, Balachander Krishnamurthy and Craig E. Wills published an
5 article titled, "On the Leakage of Personally Identifiable Information Via Online Social
6 Networks."⁴ In this article, the authors detail the exact manner in which Facebook shares
7 with its advertisers information it promises to protect. The authors also sent this article to
8 Facebook.

9 27. Facebook confirmed its knowledge of the violation in September 2009, as
10 reported by Wendy Davis of *Media Post*,⁵ yet it did not fix the problem, which would have
11 been easy to do.

12 28. Troublingly, while Facebook knew of the problem, it continued to make
13 public statements to the contrary.

14 29. On April 5, 2010, Facebook stated in an official blog post:

15 We don't share your information with advertisers unless you tell us to
16 (e.g. to get a sample, hear more, or enter a contest). Any assertion to
17 the contrary is false. Period. Instead, we enable advertisers to target
18 anonymized demographics and attributes. That is, a company selling
19 boats can target people between 40 and 50 years old who expressed an
20 interest in boating. However, we never provide the advertiser any
21 names or other information about the people who are shown, or even
22 who click on, the ads.

23 30. As demonstrated throughout this Complaint, this statement is not only false,
24 but is knowingly and willfully false.

25 31. Also troubling is the fact that problem would have been easy to fix or prevent
26 from ever occurring by making minor adjustments to its software.⁶

27 ³ <http://online.wsj.com/article/SB10001424052748704513104575256701215465596.html>.

28 ⁴ <http://conferences.sigcomm.org/sigcomm/2009/workshops/wosn/papers/p7.pdf>.

⁵ http://www.mediapost.com/publications/index.cfm?fa=Articles.showArticle&art_aid=114344.

1 **FACTS RELATING TO PLAINTIFF**

2 32. During the relevant time period, Plaintiff Gould was a registered account
3 holder with Facebook. Plaintiff registered with Facebook prior to December 31, 2008.

4 33. During the relevant time period, Plaintiff clicked on at least one third-party
5 advertisement displayed on Facebook.com.

6 **CLASS ALLEGATIONS**

7 34. Plaintiff Gould brings this action pursuant to Fed. R. Civ. P. 23(b)(2)
8 and (3) on behalf of himself and a Class of similarly situated individuals, defined as
9 follows:

10 All Facebook users in the United States who clicked on a third-party
11 advertisement displayed on Facebook.com between February 4, 2004
and May 21, 2010.

12 Excluded from the Class are Defendant, its legal representatives, assigns, and successors, and
13 any entity in which Defendant has a controlling interest. Also excluded is the judge to whom
14 this case is assigned and the judge's immediate family.

15 35. The Class consists of millions of individuals and other entities, making joinder
16 impractical.

17 36. Plaintiff's claims are typical of the claims of all of the other members of the
18 Class.

19 37. Plaintiff will fairly and adequately represent and protect the interests of the
20 other members of the Class. Plaintiff has retained counsel with substantial experience in
21 prosecuting complex litigation and class actions. Plaintiff and his counsel are committed to
22 vigorously prosecuting this action on behalf of the members of the Class, and have the
23 financial resources to do so. Neither Plaintiff nor his counsel have any interest adverse to
24 those of the other members of the Class.

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27 ⁶ <http://www.benedelman.org/news/052010-1.html#do>.

1 38. Absent a class action, most members of the Class would find the cost of
2 litigating their claims to be prohibitive and will have no effective remedy. The class
3 treatment of common questions of law and fact is also superior to multiple individual actions
4 or piecemeal litigation in that it conserves the resources of the courts and the litigants, and
5 promotes consistency and efficiency of adjudication.

6 39. Facebook has acted and failed to act on grounds generally applicable to
7 Plaintiff and the other members of the Class, requiring the Court's imposition of uniform
8 relief to ensure compatible standards of conduct toward the members of the Class.

9 40. The factual and legal bases of Facebook's liability to Plaintiff and to the other
10 members of the Class are the same and resulted in injury to Plaintiff and all of the other
11 members of the Class. Plaintiff and the other members of the Class have all suffered harm as
12 a result of Facebook's unlawful conduct.

13 41. There are many questions of law and fact common to the claims of Plaintiff
14 and the other members of the Class, and those questions predominate over any questions that
15 may affect individual members of the Class. Common questions for the Class include but are
16 not limited to the following:

17 (a) whether Facebook violated its Terms of Service and Privacy Policy by
18 making its users' personal information available to third-parties without
19 authorization;

20 (b) whether Facebook's conduct described herein violated California's
21 Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.*);

22 (c) whether Facebook's conduct described herein violated California's
23 Computer Crime Law (Cal. Penal Code § 502);

24 (d) whether Facebook's conduct describe herein violated the California
25 Legal Remedies Act (Cal. Civ. Code § 1750);
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1 (e) whether Facebook's conduct described herein constitutes a breach of
2 contract;

3 (f) whether Facebook's conduct described herein constitutes breach of the
4 implied covenants of good faith and fair dealing;

5 (g) whether Facebook's conduct described herein constitutes breach of
6 implied contracts;

7 (h) whether Facebook's conduct described herein was negligent and/or
8 grossly negligent;

9 (i) whether Facebook's conduct described herein constitutes negligence
10 per se;

11 42. Plaintiff reserves the right to revise the above class definition based on facts
12 learned in discovery.

13 **FIRST CAUSE OF ACTION**

14 **Violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200**

15 **(On Behalf of Plaintiff and the Class)**

16 43. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

17 44. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code
18 § 17200, *et seq.*, protects both consumers and competitors by promoting fair competition in
19 commercial markets for goods and services.

20 45. The UCL prohibits any unlawful, unfair or fraudulent business act or practice.
21 A business practice need only meet one of the three criteria to be considered unfair
22 competition. An unlawful business practice is anything that can properly be called a business
23 practice and that at the same time is forbidden by law.

24 46. As described herein, Facebook's disclosure of its users' personal information
25 to third-party advertisers without their authorization is a violation of the UCL.

1 47. Facebook has violated the “unlawful” prong of the UCL in that Defendant’s
2 conduct violated the Consumer Legal Remedies Act (Cal. Civ. Code § 1750 *et seq.*), the
3 California Computer Crime Law (Cal. Penal Code § 502), and the California Security Breach
4 Information Act (Cal. Civ. Code § 1798.80, *et seq.*).

5 48. Facebook violated the fraudulent prong of the UCL by explicitly representing
6 in its Privacy Policy and in subsequent public statements that it would not make users’
7 personal information available to any third-party without authorization. Facebook used those
8 misrepresentations to induce users to submit their personally identifiable information to its
9 website. Facebook then knowingly transmitted that information to third parties without its
10 users’ authorization.

11 49. Facebook violated the unfair prong of the UCL by gaining control over its
12 users’ PII under false pretenses.

13 50. Defendant’s unfair or deceptive practices occurred primarily and substantially
14 in California. Decisions concerning the retention and safeguarding the disclosure of user
15 information were made in California, Facebook maintains all or a substantial part of its
16 computer systems containing user information in California, and the disclosure of its users’
17 information took place primarily and substantially in California.

18 51. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff seeks an order of this
19 Court permanently enjoining Facebook from continuing to engage in the unfair and unlawful
20 conduct described herein. Plaintiff seeks an order requiring Facebook to (1) immediately
21 cease the unlawful practices stated in this Complaint; and (2) awarding Plaintiff and the Class
22 reasonable costs and attorneys’ fees pursuant to Cal. Code Civ. Proc. § 1021.5.

23
24 **SECOND CAUSE OF ACTION**

25 **Violation of California’s Computer Crime Law (“CCCL”), Cal. Penal Code § 502**

26 **(On Behalf of Plaintiff and the Class)**

1 52. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

2 53. Facebook knowingly accessed and without permission used any data,
3 computer, computer system, or computer network in order to execute a scheme or artifice to
4 deceive and/or to wrongfully control or obtain money, property, or data in violation of
5 § 502(c)(1). Facebook did so by accessing and sharing with advertisers the personal
6 information of Plaintiff and Class members in order to deceive Facebook users and/or to
7 wrongfully obtain money from advertisers and more data from Facebook users.

8 54. Facebook knowingly accessed and without permission took, copied, or made
9 use of Plaintiff and Class members' personal information in violation of § 502(c)(2).

10 55. Facebook knowingly and without permission used or caused to be used
11 computer services by impermissibly accessing, collecting, and transmitting Plaintiff and
12 Class members' personal information in violation of § 502(c)(3).

13 56. Facebook knowingly and without permission provided or assisted in providing
14 a means of accessing a computer, computer system, or computer network by creating a
15 command that allowed it to impermissibly access, collect, and transmit Plaintiff and Class
16 members' personal information in violation of § 502(c)(6).

17 57. Facebook knowingly and without permission accessed or caused to be
18 accessed Plaintiff and Class members' computers and/or computer networks by
19 impermissibly collecting Plaintiff and Class members' personal information in violation of
20 § 502(c)(7).

21 58. Facebook knowingly and without permission introduced a computer
22 contaminant, as defined in § 502(b)(10), by introducing computer instructions designed to
23 record or transmit information—Plaintiff and Class members' personal information—on
24 Plaintiff and Class members' computers and/or computer networks without the intent or
25 permission of the owners of that information in violation of § 502(c)(8).

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1 59. As a direct and proximate result of Facebook's violation of § 502, Facebook
2 caused loss to Plaintiff and the Class members in an amount to be proven at trial. Plaintiff
3 and the Class are entitled to the recovery of attorneys' fees pursuant to § 502(e).

4 60. Plaintiff and Class members have also suffered irreparable injury as a result of
5 Defendant's unlawful conduct, including the collection and sharing of their personal
6 information. Additionally, because the stolen information cannot be returned, the harm from
7 the security breach is ongoing and compounding. Accordingly, Plaintiff and the Class have
8 no adequate remedy at law, entitling them to injunctive relief.

9 **THIRD CAUSE OF ACTION**

10 **Violation of the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.***

11 **(On Behalf of Plaintiff and the Class)**

12 61. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

13 62. The Consumers Legal Remedies Act prohibits the act, use or employment by
14 any person of any deception, fraud, false pretense, false promise, misrepresentation,
15 concealment, suppression or omission of any material fact with intent that others rely upon
16 such act in connection with the sale or advertisement of any merchandise whether or not any
17 person has in fact been misled, deceived or damaged thereby.

18 63. As described within, Facebook has engaged in deceptive practices, unlawful
19 methods of competition, and/or unfair acts as defined by Cal. Civ. Code §§ 1750, *et seq.*, to
20 the detriment of Plaintiff and the Class.

21 64. Facebook, acting with knowledge, intentionally and unlawfully brought harm
22 upon Plaintiff and the Class by deceptively inducing Plaintiff and the Class to register with
23 Facebook and click on advertisements based upon deceptive and misleading representations
24 that it would not disclose their personal information to third-parties without authorization.
25 Specifically, Facebook violated Cal. Civ. Code § 1750 in at least the following respects:

26 (a) In violation of § 1770(a)(5) by representing that goods or services have
27 characteristics and benefits that they do not have;

1 (b) In violation of § 1770(a)(14) by representing that a transaction confers or
2 involves rights, remedies, or obligations which it does not have or involve, or
3 which are prohibited by law;

4 (c) In violation of § 1770(a)(16) by representing that the subject of a transaction
5 has been supplied in accordance with a previous representation when it has
6 not.

7 65. Plaintiff and the Class have suffered harm as a direct and proximate result of
8 the Facebook's violations of law and wrongful conduct.

9 66. Under Cal. Civ. Code § 1780(a) & (b), Plaintiff and the Class seek injunctive
10 relief requiring Defendant to cease and desist the illegal conduct described herein, and any
11 other appropriate remedy for violations of the CLRA. For the sake of clarity, Plaintiff
12 explicitly disclaims any claim for damages under the CLRA at this time.

13 **FOURTH CAUSE OF ACTION**

14 **Breach of Contract**

15 **(On Behalf of Plaintiff and the Class)**

16 67. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

17 68. In order to register for and use its social-networking website, Facebook
18 required that Plaintiff and the Class affirmatively assent to its Terms and Conditions and
19 Privacy Policy (the "Agreement").

20 69. The Agreement's provisions constitute a valid and enforceable contract
21 between Plaintiff and the Class on the one hand, and Facebook on the other.

22 70. Under the Agreement, Plaintiff and the Class transmitted several pieces of
23 sensitive PII to Facebook in exchange for Facebook's promise that it would not share their
24 personal information with third parties, including but not limited to advertisers, without their
25 authorization.

26 71. Defendant materially breached the terms of the Agreement through its
27 unlawful conduct alleged herein, including its disclosure of Plaintiff and the Class's personal
28 information to its advertiser partners.

1 72. As a result of Defendant's misconduct and breach of the Agreement described
2 herein, Plaintiff and the Class suffered injury.

3 **FIFTH CAUSE OF ACTION**

4 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

5 **(On Behalf of Plaintiff and the Class)**

6 73. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

7 74. In order to use Defendant's social-networking website, Plaintiff and the Class
8 affirmatively assented to Defendant's Terms and Conditions and Privacy Policy.

9 94. The Agreement's provisions constitute a valid and enforceable contract
10 between Plaintiff and the Class on the one hand, and Facebook on the other.

11 95. Implicit in the Agreement were contract provisions that prevented Facebook
12 from engaging in conduct that frustrated or injured Plaintiff's and the Class's rights to
13 receive the benefits of the Agreement.

14 96. Defendant's obligation to prevent the disclosure of Plaintiff and the Class's
15 personal information to third-parties without their authorization was a material term of the
16 Agreement.

17 97. Furthermore, implicit in the terms of the Agreement was Facebook's
18 obligation to comply with Cal. Bus. & Prof. Code §§ 17200, *et seq.*, Cal. Penal Code § 502,
19 Cal. Civ. Code §§ 1798.80, *et seq.*, and Cal. Civ. Code §§ 1750, *et seq.*

20 98. Defendant breached the implied covenant of good faith and fair dealing by
21 disclosing Plaintiff and the Class's personal information to third-parties without their
22 authorization, and further by failing to fully comply with the proscriptions of applicable
23 statutory law.

24 99. Defendant's misconduct and breach of the implied covenant of good faith and
25 fair dealing as described herein resulted in injury to Plaintiff and the Class.

1 **SIXTH CAUSE OF ACTION**

2 **Breach of Implied Contracts**

3 **(On Behalf of Plaintiff and the Class)**

4 100. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

5 101. In order to register for Facebook's social-networking website, Plaintiff and the
6 Class transmitted several pieces of sensitive PII to Facebook.

7 102. By providing that sensitive PII and upon Facebook's acceptance of such
8 information, Plaintiff and the Class, on the one hand, and Defendant, on the other hand,
9 entered into implied contracts whereby Facebook was obligated not to disclose that
10 information to third-parties without Plaintiff and the Class's authorization.

11 103. Without such implied contracts, Plaintiff and the Class would not have
12 provided their personal information to Defendant.

13 104. By disclosing Plaintiff and the Class's sensitive PII to third-parties without
14 their authorization, Facebook breached its implied contracts with Plaintiff and the Class.

15 105. Facebook's breach and other misconduct described herein resulted in injury to
16 Plaintiff and the Class.

17 **SEVENTH CAUSE OF ACTION**

18 **Violation of Cal. Civ. Code §§ 1572 & 1573**

19 **(On Behalf of Plaintiff and the Class)**

20 106. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

21 107. Cal. Civ. Code § 1572 provides in relevant part that actual fraud exists when a
22 party to a contract suppresses "that which is true, by one having knowledge or belief of the
23 fact" "with intent to deceive another party thereto, or to induce him to enter into the
24 contract."

108. Cal. Civ. Code § 1573 provides in relevant part that constructive fraud exists “[i]n any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud.”

109. Facebook violated § 1572 through its positive assertions that it would not share the identity of its users with its advertisers without consent, as described herein. Facebook further violated this section by suppressing its knowledge of this fact.

110. Additionally and/or alternatively, Facebook violated § 1573 by breaching its duty to protect its users' identities from its advertisers and gaining an advantage in doing so, by misleading its users to their prejudice, as described herein.

111. Plaintiff, on behalf of himself and the Class, seeks damages from Facebook, including but not limited to disgorgement of all proceeds Facebook obtained from its unlawful business practices.

EIGHTH CAUSE OF ACTION

Unjust Enrichment (In the Alternative)

(On Behalf of Plaintiff and the Class)

112. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

113. Plaintiff and the Class have conferred a benefit upon Facebook. Facebook has received and retained money belonging to Plaintiff and the Class as a result of sharing its users' personal information with its advertisers without their consent, as described herein.

114. Facebook appreciates or has knowledge of said benefit.

115. Under principles of equity and good conscience, Facebook should not be permitted to retain money belonging to Plaintiff and the Class that it unjustly received as a result of its actions.

116. Plaintiff and the Class have suffered loss as a direct result of Facebook's conduct.

117. Plaintiff, on his own behalf and on behalf of the Class, seeks the imposition of a constructive trust on and restitution of the proceeds of Facebook received as a result of its conduct described herein, as well as attorney's fees and costs pursuant to Cal. Civ. Proc. Code § 1021.5.

NINTH CAUSE OF ACTION

Negligence

(On Behalf of Plaintiff and the Class)

118. In order to register for Facebook's social-networking website, Plaintiff and the Class transmitted several pieces of sensitive PII to Defendant.

119. By agreeing to accept Plaintiff and the Class's sensitive PII, Facebook assumed a duty, which required it to exercise reasonable care in protecting that information from its unauthorized disclosure to third-parties.

120. Defendant failed to protect Plaintiff and the Class's sensitive PII from its unauthorized disclosure to third-parties, including by failing to ensure that user IDs and other identifying information that would allow third-parties to navigate to individual users' profile pages were not included in the referrer URL's transmitted to its advertiser partners.

121. By failing to take appropriate measures to protect Plaintiff and the Class's sensitive PII from unauthorized disclosure as described herein, Defendant's conduct was grossly negligent and departed from all reasonable standards of care.

122. As a direct and proximate result of Facebook's conduct described herein, Plaintiff and the Class's sensitive PII was disclosed to third-parties without their authorization.

123. That disclosure of Plaintiff and the Class's sensitive PII was reasonably foreseeable by Defendant.

124. Neither Plaintiff nor the other members of the Class contributed to the unauthorized disclosure of their sensitive PII described herein.

1 125. As a direct and proximate result of Facebook's misconduct described herein,
2 Plaintiff and the Class were injured.

3 **TENTH CAUSE OF ACTION**

4 **Negligence Per Se**

5 **(On behalf of Plaintiff and the Class)**

6 126. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

7 127. Defendant's violations of Cal. Bus. & Prof. Code §§ 17200, *et seq.*, Cal. Penal
8 Code § 502, Cal. Civ. Code §§ 1798.80, *et seq.*, and Cal. Civ. Code §§ 1750, *et seq.*, resulted
9 in injury to Plaintiff and the Class.

10 128. The harm Defendant caused to Plaintiff and the Class are injuries that result
11 from the type of occurrences those statutes were designed to prevent.

12 129. Plaintiff and the Class are the type of persons for whose protection those
13 statutes were adopted.

14 130. Defendant's violations of the foregoing statutes as described herein resulted in
15 injury to Plaintiff and the Class.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for the
18 following relief:

19 A. Certify this case as a class action on behalf of the Class defined above,
20 appoint Plaintiff Gould as class representative, and appoint his counsel as class counsel;

21 B. Declare that Facebook's actions, as described herein, violate the California
22 Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.*), the Computer Crime Law
23 (Cal. Penal Code § 502), the California Security Breach Information Act (Cal. Civ. Code
24 § 1798.80, *et seq.*), and the Consumer Legal Remedies Act (Cal. Bus. & Prof. Code § 1750),
25 and constitute breach of contract, breach of implied covenant of good faith and fair dealing,
26 breach of implied contract, fraud, unjust enrichment, negligence, and negligence per se;

1 C. Awarding injunctive and other equitable relief as is necessary to protect the
2 interests of the Class, including, *inter alia*, an order prohibiting Facebook from engaging in
3 the wrongful and unlawful acts described herein;

4 D. Disgorge Facebook of all revenue earned from displaying third-party
5 advertising on Facebook.com during the class period;

6 E. Awarding damages, including statutory damages where applicable, to Plaintiff
7 and the Class in an amount to be determined at trial;

8 F. Awarding all economic, monetary, actual, consequential, and compensatory
9 damages caused Facebook's conduct, and if its conduct is proved willful, award Plaintiff and
10 the Class exemplary damages;

11 G. Award restitution against Facebook for all money to which Plaintiff and the
12 Class are entitled in equity;

13 H. Awarding Plaintiff and the Class their reasonable litigation expenses and
14 attorneys' fees;

15 I. Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent
16 allowable; and

17 J. Awarding such other and further relief as equity and justice may require.

18 **JURY TRIAL**

19 Plaintiff demands a trial by jury for all issues so triable.

20 Respectfully submitted,

21 EDELSON MCGUIRE, LLP

22 Dated: May 28, 2010

23
24 By: _____
25 Sean Reis
26 One of the Attorneys for Plaintiff
27
28

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2 interests of the Class, including, *inter alia*, an order prohibiting Facebook from engaging in
3 the wrongful and unlawful acts described herein;

4 D. Disgorge Facebook of all revenue earned from displaying third-party
5 advertising on Facebook.com during the class period;

6 E. Awarding damages, including statutory damages where applicable, to Plaintiff
7 and the Class in an amount to be determined at trial;

8 F. Awarding all economic, monetary, actual, consequential, and compensatory
9 damages caused Facebook's conduct, and if its conduct is proved willful, award Plaintiff and
10 the Class exemplary damages;

11 G. Award restitution against Facebook for all money to which Plaintiff and the
12 Class are entitled in equity;

13 H. Awarding Plaintiff and the Class their reasonable litigation expenses and
14 attorneys' fees;

15 I. Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent
16 allowable; and

17 J. Awarding such other and further relief as equity and justice may require.

18 **JURY TRIAL**

19 Plaintiff demands a trial by jury for all issues so triable.

20 Respectfully submitted,

21 EDELSON MCGUIRE, LLP

22 Dated: May 28, 2010

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25 Sean Reis
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