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 8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**
 10 **SAN JOSE DIVISION**

11 MIKE ROBERTSON, individually and on behalf
 12 of all others similarly situated,

13 Plaintiff,

14 vs.

15 FACEBOOK, INC., a Delaware corporation, and
 16 DOES 1-50, inclusive,

17 Defendant.

Case No.

CLASS ACTION

COMPLAINT FOR:

- 1. **BREACH OF CONTRACT;**
- 2. **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;**
- 3. **VIOLATION OF THE ELECTRONIC COMMUNICATIONS PRIVACY ACT;**
- 4. **VIOLATION OF STORED COMMUNICATIONS ACT; AND**
- 5. **UNJUST ENRICHMENT.**

ACTION FILED: 05/31/10

JURY TRIAL DEMANDED

22 Plaintiff brings this suit on behalf of himself and all others similarly situated, and makes the
 23 following allegations on information and belief, except as to allegations pertaining to Plaintiff,
 24 which are based on his personal knowledge:

25 **I. INTRODUCTION**

26 1. This is a class action lawsuit, brought by, and on behalf of similarly-situated
 27 individuals whose privacy was violated by the actions of Facebook, Inc. ("Facebook").
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2 2. Facebook’s own policies state that “We never share your personal information with
3 our advertisers” and “We do not give your content of information to advertisers without your
4 consent.”

5 3. Unbeknownst to Facebook members, and in violation of Facebook’s own stated
6 policies, Facebook intentionally and knowingly transmitted personal user information to third party
7 advertisers without member consent.

8 4. Facebook’s conduct violated one or more of the following:

9 a. Facebook’s own terms and conditions with its members;

10 b. Electronic Communications Privacy Act, 18 U.S.C. § 2510 *et seq.* (the “ECPA”);
11 and

12 c. Stored Communications Act, 18 U.S.C. § 2701 *et seq.* (the “SCA”).

13 **II. PARTIES**

14 5. Plaintiff Mike Robertson is a resident of Marin County, California. Between June
15 2008 and June 2010, Plaintiff clicked on at least one advertising banner from his Facebook profile
16 page.

17 6. Defendant Facebook, Inc. (hereinafter, “Facebook”) is a Delaware corporation which
18 maintains its headquarters in Palo Alto, California.

19 **III. JURISDICTION AND VENUE**

20 7. This Court has personal jurisdiction over all defendants because (a) a substantial
21 portion of the wrongdoing alleged in this complaint took place in this state, (b) all defendants are
22 authorized to do business here, have sufficient minimum contacts with this state, and/or otherwise
23 intentionally avail themselves of the markets in this state through the promotion, marketing and sale
24 of products and services in this state, to render the exercise of jurisdiction by this Court permissible
25 under traditional notions of fair play and substantial justice.

26 8. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act
27 of 2005, U.S.C. §§ 1332(a) and 1332(d) because the amount in controversy exceeds \$5,000,000.00
28 exclusive of interest and costs, and more than two-thirds of the members of the putative class are
citizens of states different than that of Facebook.

1 a. Facebook's Privacy Guide states as follows:
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3 *We never share your personal information with our advertisers.*
4 *Facebook's ad targeting is done entirely anonymously. If advertisers*
5 *select demographic targeting for their ads, Facebook automatically*
6 *matches those ads to the appropriate audience. Advertisers only*
7 *receive anonymous data reports.*

8 Controlling How You Share, <http://www.facebook.com/privacy/explanation.php> (last visited May
9 31, 2010)(emphasis in original).

10 b. Facebook's Privacy Policy states as follows:
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12 *To serve personalized advertising to you. We don't share your*
13 *information with advertisers without your consent. (An example of*
14 *consent would be if you asked us to provide your shipping address to*
15 *an advertiser to receive a free sample.) We allow advertisers to choose*
16 *the characteristics of users who will see their advertisements and we*
17 *may use any of the non-personally identifiable attributes we have*
18 *collected (including information you may have decided not to show to*
19 *other users, such as your birth year or other sensitive personal*
20 *information or preferences) to select the appropriate audience for*
21 *those advertisements. For example, we might use your interest in*
22 *soccer to show you ads for soccer equipment, but we do not tell the*
23 *soccer equipment company who you are. You can see the criteria*
24 *advertisers may select by visiting our advertising page. Even though*
25 *we do not share your information with advertisers without your*
26 *consent, when you click on or otherwise interact with an advertisement*
27 *there is a possibility that the advertiser may place a cookie in your*
28 *browser and note that it meets the criteria they selected.*

Facebook's Privacy Policy, <http://www.facebook.com/policy.php> (last visited May 31, 2010)
(emphasis in original).

c. Facebook's Statement of Rights and Responsibilities states as follows:

About Advertisements on Facebook

Our goal is to deliver ads that are not only valuable to advertisers, but also valuable to you. In order to do that, you agree to the following:

1. *You can use your privacy settings to limit how your name and profile picture may be associated with commercial or sponsored content served by us. You give us permission to use your name and profile picture in connection with that content, subject to the limits you place.*

2. *We do not give your content or information to advertisers without your consent.*

Statement of Rights and Responsibilities, <http://www.facebook.com/terms.php> (last visited on May 31, 2010).

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2 17. Facebook’s Director of Corporate Communications and Public Policy posted the
3 following on the Facebook Blog:

4 *Still others asked to be opted-out of having their information shared*
5 *with advertisers. This reflects a common misconception about*
6 *advertising on Facebook. We don't share your information with*
7 *advertisers unless you tell us to (e.g. to get a sample, hear more, or*
8 *enter a contest). Any assertion to the contrary is false. Period. Instead,*
9 *we enable advertisers to target anonymized demographics and*
10 *attributes. That is, a company selling boats can target people between*
11 *40 and 50 years old who expressed an interest in boating. However,*
12 *we never provide the advertiser any names or other information about*
13 *the people who are shown, or even who click on, the ads.*

14 The Facebook Blog, <http://blog.facebook.com/blog.php?post=379388037130> (last visited May 31,
15 2010).

16 **B. Facebook Intentionally Shares Personal Data with Advertisers Without Member**
17 **Knowledge or Consent**

18 18. In August 2009, a paper entitled “On the Leakage of Personally Identifiable
19 Information Via Online Social Networks” (hereinafter, “August 2009 Research Paper”) written by
20 researchers at AT&T Labs and Worcester Polytechnic Institute flagged Facebook’s sharing of
21 member PII. The August 2009 Research Paper highlighted Facebook’s practice of transmitting its
22 members’ user names or ID numbers tied to personal profiles being viewed when members click on
23 ads. The researchers concluded that by using such leaked information in combination with tracking
24 cookies, third parties, such as advertisers, could gain access to a Facebook member’s other PII listed
25 in Paragraph 13 of this Complaint, identify individual Facebook members, and even follow their
26 movements across the internet.

27 19. According to an exposé published by the online Wall Street Journal on May 21, 2010
28 (“WSJ Exposé”), Facebook had been sending to advertisers information that directed those
advertisers back to a Facebook member’s profile page full of personal information of the type set
forth in Paragraph 13 of this Complaint. According to the article, in some cases Facebook signaled
“which user name or ID was clicking on the ad as well as the user name or ID of the page being
viewed. By seeing what ads a user clicked on, an advertiser could tell something about a user’s
interests.”

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2 20. Also according to the WSJ Exposé, although the researchers who published the
3 August 2009 Research Paper contacted Facebook about the transmission of personal data,
4 Facebook's practice persisted. According to the WSJ Exposé, it wasn't until after being contacted
5 by the Wall Street Journal that Facebook changed its software to prevent the indentifying code tied
6 to the user from being transmitted:

7 *A Facebook spokesman acknowledged it has been passing data to ad*
8 *companies that could allow them to tell if a particular user was*
9 *clicking an ad.*

10 VI. CLASS ACTION ALLEGATIONS

11 21. Plaintiff brings this action on behalf of himself and all other persons in the following
12 similarly-situated class: ***all Facebook members who, at any time after June 1, 2006, clicked on an***
13 ***advertisement banner located on their Facebook profile page*** (the "Class"). Excluded from the
14 Class are Facebook, its officers and directors, members of their immediate families and each of their
15 legal representatives, officers, directors, successors or assigns and any entity in which Facebook has
16 or have had a controlling interest, the judge to whom this case is assigned and any member of the
17 judge's immediate family.

18 22. Every member of the proposed Class is a party to Facebook's terms and conditions as
19 alleged herein.

20 23. The Class is composed of numerous people, whose joinder in this action would be
21 impracticable. The disposition of their claims through this class action will benefit Class members,
22 the parties and the courts. Since 2006, Facebook has grown from millions of users to over 300
23 million users. Upon information and belief, there are thousands of persons in the Class.

24 24. Upon information and belief, the identities and addresses of the individual members
25 of the Class are available through Facebook's electronic records.

26 25. There is a well-defined community of interest in questions of law and fact affecting
27 the Class. These questions of law and fact predominate over individual questions affecting
28 individual Class members, including, but not limited to, the following:

- a. What and how personally identifiable data was transmitted to advertisers;

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- 2 b. Whether Facebook’s terms and conditions prohibit Facebook from sending
- 3 personally identifiable data to advertisers;
- 4 c. Whether any Class member knew or consented to Facebook’s transmission of
- 5 personally identifiable data to advertisers;
- 6 d. Whether Class members are entitled to damages as a result of Facebook’s
- 7 conduct, and, if so, what is the measure of those damages;
- 8 e. Whether Facebook’s conduct towards the members of the Class violated the
- 9 ECPA, and the SCA, its contract with the Class, and whether Facebook was
- 10 unjustly enriched thereby, as alleged below.

11 26. Facebook engaged in a common course of conduct giving rise to the legal rights

12 sought to be enforced by Class members. Similar or identical statutory and common law violations,

13 business practices and injuries are involved. Individual questions, if any, pale by comparison to the

14 numerous common questions that dominate.

15 27. The injuries sustained by members of the Class flow, in each instance, from a

16 common nucleus of operative facts. In each case, Facebook caused or permitted unauthorized

17 communications of private and personally indentifying information to be delivered to third parties

18 without adequate or any notice, consent or opportunity to opt out.

19 28. Given the similar nature of the Class members’ claims and the absence of material

20 differences in the statutes and common laws upon which the Class members’ claims are based, a

21 nationwide class will be easily managed by the Court and the parties.

22 29. Because of the relatively small size of the individual Class members’ claims, no Class

23 member could afford to seek legal redress on an individual basis.

24 30. Plaintiff’s claims are typical of those of the Class as all members of the Class are

25 similarly affected by Facebook’s uniform and actionable conduct as alleged herein.

26 31. Plaintiff will fairly and adequately protect the interests of the Class and has retained

27 counsel competent and experienced in class action litigation. Plaintiff has no interests antagonistic

28 to, or in conflict with, the Class that Plaintiff seeks to represent.

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COUNT I
(Breach of Contract)

32. Plaintiff repeats and realleges each of the preceding paragraphs, as if set forth fully herein.

33. Plaintiff and members of the Class signed up to be members of Facebook, pursuant to which each entered into an agreement with Facebook (e.g., Facebook's Statement of Rights and Responsibilities). Pursuant to the terms and conditions of that agreement, Plaintiff and the Class provided Facebook with valuable personally identifiable information and Facebook promised not to transmit such information to advertisers absent member consent. Facebook's terms and conditions were non-negotiable and offered by Facebook on a take-it-or-leave-it basis.

34. Plaintiff and members of the Class never authorized Facebook to transmit PII to any advertisers.

35. Facebook breached its contractual obligations by transmitting PII, including user names and user IDs, to advertisers without consent.

36. Plaintiff and the Class have performed their obligations under the contracts.

37. As a direct and proximate result of Facebook's breach of their agreement with Plaintiff and members of the Class, Plaintiff and the Class have been damaged in an amount to be proven at trial.

COUNT II
(Breach of Implied Covenant of Good Faith and Fair Dealing)

38. Plaintiff repeats and realleges each of the preceding paragraphs, as if set forth fully herein.

39. Facebook expressly and/or impliedly agreed to carry out its contractual obligations in good faith and fair dealing and not to do anything that would have the effect of injuring the right of Plaintiff and the Class to receive the benefits of the agreement.

40. Plaintiff and members of the Class reasonably rely upon Facebook to act in good faith both with regard to Facebook's terms and conditions and in the methods and manner in which Facebook carries out those terms and conditions. Facebook's transmission of PII evidences bad faith and ill motive.

1 communications without the consent, knowledge or authorization of Plaintiff and members of the
2 Class in violation of the SCA.

3 58. Facebook intentionally and knowingly disclosed to Plaintiff's and the Class members'
4 electronic communication contents and user information, in violation of the SCA.

5 59. Each incident in which Facebook provided personally identifiable information of a
6 Facebook member is a separate and distinct violation of the SCA, subject to the remedies provided
7 under the SCA, and specifically pursuant to 18 U .S.C. § 2707(a).

8 60. Plaintiff and members of the Class therefore seek remedy as provided for by 18
9 U.S.C. § 2707(b) and (c), including such preliminary and other equitable or declaratory relief as may
10 be appropriate, damages consistent with subsection (c) of that section to be proven at trial, punitive
11 damages to be proven at trial, and a reasonable attorney's fee and other litigation costs reasonably
12 incurred.

13 61. Plaintiff and the Class, pursuant to 18 U.S.C. §2707(c), are entitled to preliminary,
14 equitable, and declaratory relief, in addition to statutory damages of no less than \$1,000 per
15 violation, , actual and punitive damages, reasonable attorneys' fees, and Facebook's profits obtained
16 from the above-described violations.

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18 **COUNT V**
(Unjust Enrichment)

19 62. Plaintiff repeats and realleges each of the preceding paragraphs, as if set forth fully
20 herein.

21 63. A benefit has been conferred upon Facebook by Plaintiffs and the Class. On
22 information and belief, Facebook, directly or indirectly, has received and retains information
23 regarding the affiliation and business relationships between Plaintiffs and internet product and
24 service providers, and has received and retains information regarding specific purchase and
25 transactional information that is otherwise private, confidential, and not of public record

26 64. Facebook appreciates or has knowledge of said benefit.

27 65. Under principles of equity and good conscience, Facebook should not be permitted to
28 retain the information which it has acquired by virtue of its unlawful conduct. All funds, revenues,

1 Dated: May 31, 2010

2 Respectfully submitted,
3 NASSIRI & JUNG LLP

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6 Kassra P. Nassiri
7 Attorneys for Plaintiff

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JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: May 31, 2010

Respectfully submitted,
NASSIRI & JUNG LLP



Kassra P. Nassiri
Attorneys for Plaintiff