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 RICHARD W. WIEKING
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 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND

ADR

8 **IN THE UNITED STATES DISTRICT COURT**
 9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

10 LANA BRKIC,
 11 Individually and on Behalf of All
 12 Others Similarly Situated,
 13 Plaintiff,
 14 vs.
 15 FACEBOOK, INC., a Delaware Corporation,
 16 and DOES 1-10,
 17 Defendants.

) Case No.: **C11-04935**
)
) **CLASS ACTION COMPLAINT AND**
) **DEMAND FOR JURY TRIAL**
)
) **FIRST CAUSE OF ACTION - Violation of**
) **the Wiretap Act**
)
) **SECOND CAUSE OF ACTION - Unjust**
) **Enrichment**
)
) **THIRD CAUSE OF ACTION - Intrusion upon**
) **Seclusion**
)
) **FOURTH CAUSE OF ACTION - Trespass to**
) **Personal Property**

HRL

CLASS ACTION COMPLAINT

22 Plaintiff Lana Brkic, on behalf of herself and all others similarly situated, alleges and
23 avers as follows:

INTRODUCTION

25 1. This class action arises out of improper and unlawful actions by the Defendants who
26 participated in a scheme to intercept, endeavor to intercept, or procure the Plaintiff and
27 the Class members' personal information as prohibited by law.
28

1 2. Plaintiff and the Class members are individuals who subscribe to the online social media
2 site Facebook.

3 3. Facebook maintains personal information pertaining to each individual as well as
4 monitors the individual online habits of its users keeping track of websites they visit.

5 4. Upon obtaining personal information and/or wire or electronic communications of the
6 Plaintiff, Facebook conspired to use said information for target marketing which
7 pertained to the Plaintiff and the individual Class members, over the Internet.
8

9 5. Such conduct was committed in violation of Title III of the Omnibus Crime Control and
10 Safe Streets Act of 1968 as amended by the Electronic Communication Privacy Act of
11 1986, 18 U.S.C. § 2511, *et seq.* (the "Wiretap Act").
12

13 **PARTIES**

14 **Plaintiffs**

15 4. Plaintiff Lana Brkic is an individual who resides in Los Angeles County, California.
16 Upon information and belief, Defendants intercepted, collected and stored personal
17 information from Plaintiff.
18

19 **Defendants**

20 5. Defendant is a company organized and existing under the laws of Delaware with its
21 principal place of business at 1601 S. California Ave. Palo Alto, California. 94304. Upon
22 information and belief, Facebook, Inc. owns and/or operates websites including
23 www.facebook.com, which offer online social interaction and picture storage.
24

25 6. Defendants Doe 1 through 10 are the remaining directors, employees, agents, or
26 contractors of Facebook that are yet to be named and whose identity will become known
27 through discovery and/or by requests made by Plaintiff or the members of the plaintiff
28

1 class, after which such remaining defendants will be added as individual defendants.

2 **JURISDICTION AND VENUE**

3 7. This Court has jurisdiction over this action and all the defendants pursuant to 28 U.S.C. §
4 1331 in that this action arises under statutes of the United States, specifically violations
5 of the "Wiretap Act".

6
7 8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(c) substantial amount of the
8 acts and omissions giving rise to this cause of action occurred in the Northern District of
9 California, and Defendant is headquartered in the judicial district.

10 **GENERAL ALLEGATIONS**

11 9. Defendant Facebook, Inc. operates a website, www.facebook.com, which is primarily a
12 social networking site.

13
14 10. In conducting its business, Facebook, Inc. aggregates data on individual members of the
15 public and uses that information in furtherance of marketing and advertising.

16 11. Facebook tracks, collects and stores wire or electronic communications of its users,
17 including but not limited to their Internet browsing history.

18
19 12. Leading up to September 23, 2011, Facebook tracked, collected and stored its users' wire
20 or electronic communications, including but not limited to portions of their Internet
21 browsing history even when the users were not logged-in to Facebook.

22 13. Plaintiff did not give consent or otherwise authorize Facebook to intercept, track, collect
23 and store his wire or electronic communications, including but not limited to his Internet
24 browsing history when not logged-in to Facebook.

25
26 14. The electronic information procured by Facebook, Inc. while Plaintiff was not logged-in
27 to Facebook contained personal information and/or wire or electronic communications of
28

1 the Plaintiff.

- 2 15. At all times material, Defendant knew, or reasonably should have known, that their
3 actions violated clearly established statutory rights of the Plaintiff and the Class
4 members.

5 **CLASS ACTION ALLEGATIONS**

- 6 16. This action is properly brought as a plaintiff class action pursuant to Fed. R. Civ. P.
7 23(b)(3). Plaintiff brings this action on his own behalf and all others similarly situated,
8 as representative of the following class and subclass:
9

10 All individuals in the United States who subscribe to Facebook and whose
11 electronic internet information was intercepted by Facebook when the
12 individuals were not logged-in to Facebook.
13

14 Excluded from the Class are any individuals who opt out of the class.

- 15 17. The particular members of the Class are capable of being described without difficult
16 managerial or administrative problems. The members of the Class are readily identifiable
17 from the information and records in the possession or control of the defendants.
18

- 19 18. The Class members are so numerous that individual joinder of all members is impractical.
20 This allegation is based upon information and belief that Defendant intercepted the
21 personal information of millions of Facebook users of which there are more than 150
22 million in the United States.
23

- 24 19. There are questions of law and fact common to the Class, which questions predominate
25 over any questions affecting only individual members of the Class, and, in fact, the
26 wrongs suffered and remedies sought by Plaintiff and the other members of the Class are
27 premised upon an unlawful scheme participated in by all defendants. The principal
28

common issues include, but are certainly not limited to the following:

- a. The nature and extent of the Defendant's participation in intercepting the and/or wire or electronic communications of class members;
 - b. Whether or not the interception of wire or electronic communications was intentional;
 - c. Whether or not Defendant should be enjoined from intercepting any wire or electronic communications without the consent of its users;
 - d. Whether the actions taken by Defendant in intercepting the wire or electronic communications of class members violate the Wiretap Act;
 - e. The nature and extent to which the wire or electronic communications of Class members was unlawfully intercepted, tracked, stored or used;
 - f. The nature and extent to which Defendant was unjustly enriched;
 - g. The nature and extent to which Defendant committed a trespass to Class members' personal property;
 - h. The nature and extent to which Defendant intruded upon Class members' seclusion
 - i. The nature and extent of the Class members actual damages;
 - j. The nature and extent of all statutory penalties or damages for which the Defendant are liable to the Class members; and
 - k. Whether punitive damages are appropriate.
20. Plaintiff's claims are typical of those of the Class and are based on the same legal and factual theories.
21. Plaintiff will fairly and adequately represent and protect the interests of the Class. She

1 has suffered injury in her own capacity from the practices complained of and is ready,
2 willing and able to serve as class representative. Moreover, Plaintiff's counsel is
3 experienced in handling class actions and actions involving unlawful commercial
4 practices. Neither Plaintiff nor his counsel has any interest that might cause them not to
5 vigorously pursue this action.

6
7 22. Certification of a plaintiff class under Fed. R. Civ. P. 23(b)(3) is appropriate in that
8 Plaintiff and the Class members seek monetary damages, common questions predominate
9 over any individual questions, and a plaintiff class action is superior for the fair and
10 efficient adjudication of this controversy. A plaintiff class action will cause an orderly
11 and expeditious administration of the Class members' claims and economies of time,
12 effort and expense will be fostered and uniformity of decisions will be ensured.
13 Moreover, the individual class members are unlikely to be aware of their rights and not in
14 a position (either through experience or financially) to commence individual litigation
15 against the likes of the defendants.

16
17 23. Alternatively, certification of a plaintiff class under Fed. R. Civ. P. 23(b)(1) is
18 appropriate in that inconsistent or varying adjudications with respect to individual
19 members of the Class would establish incompatible standards of conduct for the
20 defendants or adjudications with respect to individual members of the Class as a practical
21 matter would be dispositive of the interests of the other members not parties to the
22 adjudications or would substantially impair or impede their ability to protect their
23 interests.
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FIRST CAUSE OF ACTION

Violation of the Wiretap Act

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2
3
4 24. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

5 25. As described herein, Facebook, Inc. intentionally intercepted and collected wire or
6 electronic communications from its users.

7 26. At times, Facebook, Inc. intercepted and collected information from its users without
8 their consent while the users were not logged-in to Facebook.

9
10 27. The transmission of data between Plaintiff's computer and the Internet constitute
11 "electronic communication" within the meaning of 18 U.S.C. § 2510(12).

12 28. Facebook's data collection practices as described herein constitute "interceptions" within
13 the meaning of § 2510(4).

14 29. As a direct and proximate result of such unlawful conduct, Defendant violated 18 U.S.C.
15 § 2511 in that the Defendants:

16
17 a. Intentionally intercepted, endeavored to intercept, or procured another person to
18 intercept wire and/or electronic communications of the Plaintiff;

19 b. Upon belief predicated upon further discovery, intentionally disclosed or endeavored
20 to disclose to another person the contents of Plaintiff's wire or electronic
21 communications, knowing or having reason to know that the information was
22 obtained through the interception of wire or electronic communications in violation
23 of 18 U.S.C. §2511(1)(a).

24
25 c. Upon belief predicated upon further discovery, intentionally used or endeavored to
26 use the contents of Plaintiff's wire or electronic communications, knowing or having
27 reason to know that the information through the interception of wire or electronic
28

communications in violation of 18 U.S.C. §2511(1)(a).

1
2 30. Facebook Inc.'s actions described in ¶29 occurred without the consent of Plaintiff and
3 violated Facebook Inc's own Privacy Policy per the following promises it made to users:

4 a. "We receive data whenever you visit a....website that uses Facebook Platform or visit
5 a site with a Facebook feature....This may include the date and time you visit the site;
6 the web address, or URL, you're on; technical information about the IP address,
7 browser and the operating system you use; and, if you are logged in to Facebook,
8 your User ID." *Facebook Data Use Policy*, available at
9 http://www.facebook.com/full_data_use_policy as of October 4, 2011 and last
10 updated September 23, 2011.

11
12 b. "Does Facebook use cookies if I don't have an account or have logged out of my
13 account? When you log out of Facebook, we remove the cookies that identify your
14 particular account, but we do use other cookies primarily to help keep you and others
15 on Facebook safe and secure. For example, we use cookies to identify and disable the
16 accounts of spammers and phishers, to prevent people who are underage from signing
17 up with a false birth date, to help you recover your account if you lose access to it or
18 it's compromised, to power our opt-in security features like Login Notifications and
19 Login Approvals, and to help identify public computers so that we can discourage
20 people from using "Keep me logged in." We may also use anonymized or aggregate
21 information to improve our products. We also use cookies if you don't have a
22 Facebook account, but have visited facebook.com. Again, these cookies help us
23 protect Facebook and the people who use it from malicious activity. For example,
24 they help us detect and prevent denial-of-service attacks and the mass creation of fake
25
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1 accounts. We do not use these cookies to create a profile of your browsing behavior
2 on third-party sites. *Facebook Frequently Asked Questions*, available at permalink:
3 [https://www.facebook.com/help/?faq=239530772765713#Does-Facebook-use-](https://www.facebook.com/help/?faq=239530772765713#Does-Facebook-use-cookies-if-I-don't-have-an-account-or-have-logged-out-of-my-account?)
4 [cookies-if-I-don't-have-an-account-or-have-logged-out-of-my-account?](https://www.facebook.com/help/?faq=239530772765713#Does-Facebook-use-cookies-if-I-don't-have-an-account-or-have-logged-out-of-my-account?) on October 4,
5 2011.

6
7 c. “What information does Facebook receive when I visit a site with the Like button or
8 another social plugin?..... If you’re logged out or don’t have a Facebook account and
9 visit a website with the Like button or another social plugin, your browser sends us a
10 more limited set of information. For example, because you’re not logged in to
11 Facebook, we don’t receive your user ID.” *Facebook Frequently Asked Questions*,
12 available at [https://www.facebook.com/help/?faq=293506123997323#What-information-does-](https://www.facebook.com/help/?faq=293506123997323#What-information-does-Facebook-receive-when-I-visit-a-site-with-the-Like-button-or-another-social-plugin?)
13 [Facebook-receive-when-I-visit-a-site-with-the-Like-button-or-another-social-plugin?](https://www.facebook.com/help/?faq=293506123997323#What-information-does-Facebook-receive-when-I-visit-a-site-with-the-Like-button-or-another-social-plugin?)
14 on October 4, 2011.

15
16
17 31. Facebook Inc.’s actions described in ¶30 occurred without the consent of Facebook-
18 affiliated websites, including, for example, the websites for the New York Times and
19 Washington Post newspapers, in that.

20
21 a. The interception and collection of information described in this paragraph caused the
22 New York Times to violate its own Privacy Policy for its websites, including
23 www.nytimes.com, which informs readers:

24
25 i. “If you have registered online for one of our sites, The New York Times will
26 not sell, rent, swap or authorize any third party to use your e-mail address
27 without your permission. This also applies to any information that personally
28

identifies you, except as noted immediately below;" and

ii. "NYTimes.com will not share personal information about you as an individual to third parties without your consent."

b. The interception and collection of information described in this paragraph caused the Washington Post to violate its own Privacy Policy for its websites, including www.washingtonpost.com, which informs readers:

Do other companies or people have access to personally identifiable information I provide to washingtonpost.com?

When you are on an area of washingtonpost.com and are asked for personally identifiable information, you are providing that information to The Washington Post Company, its divisions or affiliates, or vendors providing contractual services for washingtonpost.com (such as hosting vendors and list managers). If personally identifiable information is being provided to and/or maintained by any company other than these, our policy is that we will not transfer that personally identifiable information unless notice is given prior to transfer. If you do not want your information to be shared, you can choose not to allow the transfer by not using that particular service or by expressing this preference, if requested.

32. Regardless of the consent alleged by Facebook, Inc. from Plaintiff or the Facebook-affiliated websites, such consent was not valid because Facebook Inc.'s actions described herein were for the purpose of committing tortious acts in violation of the laws of the United States or of any State. In taking its actions, Facebook, Inc. committed the following tortious acts alleged in this petition:

a. Unjust enrichment

1 40. Plaintiff did not consent to Defendant's intrusion.

2 41. Defendant's intentional intrusion on Plaintiff's solitude or seclusion without his consent
3 would be highly offensive to a reasonable person.

4 **FOURTH CAUSE OF ACTION**

5 **Trespass to Personal Property**

6
7 42. Plaintiff incorporates all preceding paragraphs as though set forth herein.

8 43. Defendant, intentionally and without consent or other legal justification, tracked
9 Plaintiff's activity while the Plaintiff was logged-off of the website Facebook.com, and,
10 in the process, connected Plaintiff's personally identifiable information to her specific
11 actions on the Internet.

12
13 44. Defendant, intentionally and without consent or other legal justification, placed cookies
14 on Plaintiff's computers which tracked her activity while logged-off of Facebook.

15 45. Defendant's intentional and unjustified placing of a cookie designed to track Plaintiff's
16 Internet activities while logged-off of Facebook and actual tracking of Plaintiff's
17 activities interfered with Plaintiff's use of the following personal property owned by the
18 Plaintiff:

- 19
20 a. Plaintiff's computer; and
21 b. Plaintiff's personally identifiable information
22

23 **PRAYER FOR DAMAGES**

24 WHEREFORE, Plaintiff, on behalf of herself and all members of the Class respectfully
25 prays for judgment against the defendants as follows:

- 26
27 a) For an order certifying that this action may be maintained as a class action under Fed. R.
28 Civ. P. 23(b)(3) or, in the alternative, Fed. R. Civ. P. 23(b)(1) and appointing Plaintiff

1 and his counsel, to represent the Class and directing that reasonable notice of this action
2 be given to all other members of the Class as necessary and appropriate;

- 3 b) For a declaration that the Defendants' actions violated the 18 U.S.C. 2511 *et seq.*;
- 4 c) For a declaration that the Defendants, through their actions and misconduct as alleged
5 above, have been unjustly enriched and an order that Defendants disgorge such unlawful
6 gains and proceeds;
- 7
8 d) For a declaration that the Defendants, through their actions and misconduct as alleged
9 above, have intruded upon Class members' seclusion;
- 10 e) For a declaration that the Defendants, through their actions and misconduct as alleged
11 above, have committed a trespass to Class members' personal property;
- 12
13 f) For all actual damages, statutory damages, penalties, and remedies available for the
14 defendants' violations of 18 U.S.C. 2511 *et seq.*;
- 15 g) That judgment be entered against Defendant for statutory damages pursuant to 18 U.S.C.
16 2520(c)(2)(B);
- 17
18 h) That judgment be entered against Defendant for statutory damages pursuant to 18 U.S.C.
19 2520(b)(2);
- 20 i) That Plaintiff and the Class recover pre-judgment and post-judgment interest as permitted
21 by law;
- 22
23 j) For an award to Plaintiff and the Class of their reasonable attorneys fees and other
24 litigation costs reasonably incurred pursuant to 18 U.S.C. 2520(b)(3);
- 25 k) That the court enter an order granting Plaintiff and the Class a preliminary and permanent
26 injunction restraining and enjoining Defendant from any act to intercept electronic
27 information from its users when they are not logged in and from disclosing any of the
28


1 information already acquired on its servers;

2 I) That the Court grant such other and further relief as may be just and proper;

3 **JURY DEMAND**

4 Plaintiff demands that all issues so triable in this Complaint be tried to a jury.

5
6
7 Dated this 5th day of October, 2011.

8
9
10 By: 
11 CONAL DOYLE
12 Attorneys for Plaintiffs
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