

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

2011 DEC 22 11:48

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
N.D. CA - SAN JOSE

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ADR

DEANNA THOMAS )

vs. )

CIVIL RIGHTS COMPLAINT

FACEBOOK Inc. )

NOTICE OF LAWSUIT

CV 11-06607 PSG

or

COMES NOW, Deanna Thomas, (hereinafter "Petitioner") through pro'se, filing this complaint against Mark Elliot Zuckerberg (hereinafter "Facebook"), pursuant to Rule 8(2)(3) and Rule 3 of the Federal Rules of Civil Procedure and supporting federal statutes. In support hereof, petitioner states the following:

That petitioner is a citizen of a state outside of California and moves this Court for leave to allow this petition pursuant to Title 28 U.S.C. § 1332(a)(1) as it relates to the diversity issue. Petitioner brings this claim for actual damages and/or punitive damages in the sum of \$150,000 for violation of petitioner's rights to privacy; in the alternative, the minimum of \$10,000. Such privacy rights under the Constitution include the right to keep certain types of information private. Petitioner will show entitlement to relief sought, thereby satisfying the required standing under Article III. Petitioner will further show an "injury-in-

fact", a clear violation of the federal statute which is an unauthorized use of personal information including, but not limited to, an invasion of privacy. Plaintiff is entitled to relief by electing statutory damages. Regardless of the adequacy of the evidence offered as to the actual damages, plaintiff is requesting the consideration of this Court's discretion pertaining to the profits of FACEBOOK from such an invasion. This Court has wide discretion in determining the amount of statutory damages to be awarded where the maximum damage amount is \$500,000 for a single statutory violation.

#### STATEMENT OF CLAIM

In or about the year 2008, petitioner became a subscriber to the FACEBOOK website, thereby agreeing to the terms of the privacy policy, which stated in part: "if you are logged out or do not have a facebook account and visit a website with the like button or another social plug-in, your browser sends us a more limited set of information. For example, because you are not logged in to FACEBOOK, we do not receive your user ID."

On or about February 2010, up until May 21, 2010, defendant FACEBOOK transmitted to advertisers the communications of plaintiff's identities and URL of the webpage used while clicking on to an advertisement. FACEBOOK has unlawfully tracked plaintiff's use even after she was offline, in violation of 18 U.S.C. § 2511. Defendant, FACEBOOK, has admitted that it has been watching the web

pages of its members--even when they have logged out. This information has been uncovered, and the practices of tracking users interests thereby making a profit from illegally gaining a target market for advertisers. Plaintiff has just recently discovered this information after so much public information pertaining to these illegal acts of FACEBOOK, and (technology bloggers) publishing the evidence. Plaintiff makes the following claims:

1. FACEBOOK violated her civil rights with full knowledge and intent of breaching the policy agreement. 18 U.S.C. § 2511;

2. FACEBOOK violated plaintiff's right to privacy thereby causing an injury-in-fact under Article III of the Constitution of the United States;

3. FACEBOOK breached their privacy agreement which is a substantial factor in causing additional harm to plaintiff, coupled with the statutory damages addressed herein.

FACEBOOK has gained an economic benefit as a result of the clear violation of privacy, and the breach. These findings of fact, and conclusions of law, although there exists no actual proof of harm, the punitive damages based on the profits alone demand that a civil penalty be deemed appropriate. The violations that FACEBOOK is presently responsible for are ongoing at the time of this complaint and could very well continue into the future if undeterred. This is the only action available to redress injuries and abating

violations to help prevent such future abuses.

#### BREACH OF CONTRACT

If this Court finds that defendant breached the contract in this action, then the Court must award the plaintiff damages in an amount that will fully compensate the plaintiff for harm that the breach caused to the plaintiff, unless some other rule of law on which plaintiff instructs this Court limits the amount that plaintiff may recover. However, plaintiff is entitled to recover only for harm that was caused by the breach. Such harm that is caused is whenever the breach was a substantial factor in bringing about the harm. Therefore, this Court may award the plaintiff damages for harm only if it finds that the breach was a substantial factor in bringing about the harm. Furthermore, the plaintiff may recover only for those harms that the parties could have been reasonably expected to realize at the time the contract was made, were likely to result if the contract was breached. This does not mean that any party had to actually realize that a particular harm would result from a breach of the contract, nor does it mean that any party would have been able to foresee the precise manner in which a harm would occur. It does mean that at the time the contract was made, any party acting reasonably and prudently should have been able to realize that a breach of the contract would cause the type of harm that actually did occur. The harm in question was plaintiff's Constitutional right to privacy of any and/or

all information which was violated by not only statutory violation, but also by the breach of contract.

To prevail on a claim for breach of contract a party must establish (1) existence of a valid contract; (2) performance or excuse for non-performance; (3) breach; and (4) resulting damages. The actual damage requirement for a breach of contract claim centers around the loss of faith from dealing with this network. The personal information that has been illegally obtained has created not only frustration, but the emotional distress of not knowing when this may happen again; the time and effort in preparing an unartfully done petition for the Court, which is to be liberally construed in favor of the pro'se plaintiff; the mental anguish of simply experiencing such a breach of trust in relation to FACEBOOK violating plaintiff's privacy rights, after explicitly stating within the agreement that they would not do so. Plaintiff does not possess the technological skill to monitor any aspect of the network, which might prevent this particular type of event from happening again. This realization in itself has caused an even greater anxiety.

Plaintiff, being a privacy rights victim is entitled to recover without reference to proof of damages, actual or otherwise. It is logical to become entitled to recover without reference to damages because analogous common law would not require plaintiff to show particular items of injury in order to receive a dollar recovery. Traditionally, the common law has provided such victims with a claim for "general" damages, which for privacy and deprivation, are

presumed damages; a monetary award calculated without reference to specific harm.

Plaintiff maintains no abandonment of her right to have private information protected by the laws of the United States under the Constitution, or without the fear of being intentionally infringed upon, and knowingly disclosed to others for a profit. These statutes undeniably protect this venerable right of privacy. Concomitantly, they further the First Amendment rights of the plaintiffs to private web information. Here lies the principle that each person should decide for themselves the ideas and beliefs, desires, and interests deserving of personal expression, consideration, and adherence, thereby protecting the privacy of individual thought and expression.

#### STATUTORY DAMAGES

Plaintiff asserts that she has demonstrated an injury-in-fact by effectively showing that she was a subscriber during the relevant time period sufficient to establish that the defendant's conduct did impart a concrete injury. Pursuant to 18 U.S.C. § 2520 this Court is authorized to order damages for plaintiff to recover. The injury required by Article III can exist solely by virtue of "statutes creating legal rights, the invasion of which creates the standing."

California's three-year statute of limitations for statutory violations apply to this claim. FACEBOOK acted with negligence by providing a privacy agreement which they

breached, thereby violating plaintiff's rights, causing statutory damages. The relief sought is appropriate due to the Constitutionally based claim, which relies on factual predicates as the statutory violations.

FACEBOOK intentionally violated the privacy rights of plaintiff, without the consent of plaintiff, thereby causing the harm. Defendant's conduct was a substantial factor in causing the plaintiff's harm, entitling plaintiff to statutory damages.

The Federal Rules of Civil Procedure generally allow for broad discovery, authorizing parties to obtain discovery regarding "any non-privileged matter that is relevant to any party's claim or defense." Rule 26(b)(1). Also for good cause, the Court may order discovery of any matter relevant to the subject matter involved in the action. Whatever reasonable information that would help prove to be admissible evidence, in which would not be a requirement that the information sought directly relates to a particular issue in this case.

Plaintiff seeks the interrogatory injunction as it relates to any matter that may be inquired under Rule 26(b). This will allow FACEBOOK the opportunity to object and/or answer fully under oath. The burden of proving the nonconsensual privacy violation as well as the statutory violations, and the breach of the privacy agreement, is now the burden of the defendant to defend.

In light of the above information, FACEBOOK has unlawfully infringed on the civil rights of plaintiff for

the purpose of direct commercial advantage.

If this Court finds that FACEBOOK's actions were willful and done for purposes of direct or indirect commercial advantage, or private financial gain, this Court in its discretion may increase the award of damages, whether actual or statutory, by an amount not more than \$100,000 for each violation discovered. Plaintiff also asserts that defendant's are repeat offenders, as another suit for numerous statutory and state violations is pending against them in this district, and this too warrants significantly enhanced statutory damages. Emphasizing the need for deterrence as to FACEBOOK and others, plaintiff requests that it be awarded \$100,000 in enhanced statutory damages.

This action is hereby commenced and petitioner certifies that this is a true, correct, and complete document. That I have read this complaint and issue the same with full intent and understanding of its contents. That this is done under penalty of perjury in compliance to the declaration and the laws of the United States pursuant to 28 U.S.C. § 1746.

Respectfully Submitted,

Aleanna R. Thomas

CERTIFICATE/PROCESS OF SERVICE

I hereby certify that I have caused a copy of the foregoing petition (Civil Action) to be served upon the defendant by placing same in the United States Postal mail, Certified Mail--Return Receipt Requested. The Clerk of this Court is requested to order service of Summons to be made to defendant, upon plaintiff being authorized to proceed In Forma Pauperis under 28 U.S.C. § 1915. This request is pursuant to Rule 4(c)(3).

Defendant has thirty (30) days to respond to this complaint or will be in default.

CLERK OF COURT

United States Courthouse  
280 South First St., Room 2112  
San Jose, CA 95113-3002

FACEBOOK Inc.

Legal Department  
1601 South California  
Palo Alto, CA 94304

Respectfully Submitted,

Sheanna R. Thomas