

4. This Court has jurisdiction over this action and all defendants pursuant to 28 U.S.C. § 1331 in that this action arises under the statutes of the United States, specifically 18 U.S.C. § 2510 *et seq.*, entitled “The Wiretap Act” (hereinafter “Wiretap Act”).

5. Additionally, this Court has personal jurisdiction over Defendant Facebook pursuant to R.I.G.L. § 9-5-33 because Facebook transacted business and made contracts in Rhode Island directly through the website www.facebook.com, violated the law within the State of Rhode Island, committed tortious acts within Rhode Island, and otherwise has sufficient minimum contacts with the State of Rhode Island.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Plaintiff resides in this judicial district where a substantial part of the events giving rise to the claims at issue arose.

FACTS

7. Defendant Facebook operates a website, www.facebook.com, which is primarily a social networking site.

8. Plaintiff and Class members are individuals who subscribe to the online social media site “Facebook.”

9. Membership with Facebook is conditioned upon the user providing personal information to Facebook upon registration, including name, birth date, gender and email address.

10. Membership is also conditioned upon the user accepting numerous small files, called “cookies,” on the user’s computer which track the user’s online habits, while the user is logged onto Facebook.

11. Facebook has a number of governing policies and guidelines. These policies and guidelines state that Facebook will not track, collect, store, disseminate, or use their users' wire or electronic communications while the user is not logged-in to Facebook. For example:

a. Facebook's "Help Center" states:

"What information does Facebook receive when I visit a site with the Like button or another social plugin?"

If you're logged out or don't have a Facebook account and visit a website with the Like button or another social plugin, your browser sends us a more limited set of information. For example, because you're not logged in to Facebook, we don't receive your user ID."

Facebook Help Center, available at

<http://www.facebook.com/help/?faq=293506123997323#What-information-does-Facebook-receive-when-I-visit-a-site-with-the-Like-button-or-another-social-plugin?> (last viewed 11/30/11).

b. Facebook's "Data Use Policy" states: "We receive data whenever you visit a...website that uses Facebook Platform or visit a site with a Facebook feature... This may include the date and time you visit the site; the web address, or URL, you're on; technical information about the IP address, browser and the operating system you use; and, if you are logged in to Facebook, your user ID." *Facebook Data Use Policy*, available at http://www.facebook.com/full_data_use_policy (last viewed 11/30/11)(emphasis added).

c. Facebook's "Help Center" states:

"We do not use these cookies to create a profile of your browsing behavior on third-party sites." *Facebook Help Center*, available at <http://www.facebook.com/help/?faq=239530772765713#Does-Facebook-use-cookies-if-I-don't-have-an-account-or-have-logged-out-of-my-account?> (last viewed 11/30/11).

12. Facebook has admitted that they have been tracking, collecting, storing and using its users' wire and/or electronic communications while the users have been logged-out of Facebook.

13. On September 28, 2011, U.S. Representative Edward Markey and U.S. Representative Joe Barton, Co-Chairmen of the Congressional Bi-Partisan Privacy Caucus, submitted a joint letter to the Chairman of the Federal Trade Commission stating, "However, in this instance, Facebook has admitted to collecting information about its users even *after its users had logged out of Facebook.*" (attached Exhibit A).

14. Plaintiff did not give consent or otherwise authorize Facebook to intercept, track, collect and store his wire and/or electronic communications while he was not logged-in to Facebook.

15. The electronic information procured while Plaintiff was not logged-in to Facebook contained personal information and/or wire or electronic communications of the Plaintiff.

16. Defendant Facebook uses these "cookie" files to track, collect and store wire and/or electronic communications of its users, including but not limited to the users Internet browsing history.

17. Upon information and belief, Facebook aggregates this data and uses the information in furtherance of its business.

18. In said September 28, 2011 letter, U.S. Representatives Markey and Barton stated, “As co-Chairs of the Congressional Bi-Partisan Privacy Caucus, we believe that tracking user behavior without their consent or knowledge raises serious privacy concerns. When users log out of Facebook, they are under the expectation that Facebook is no longer monitoring their activities. We believe this impression should be the reality. Facebook users should not be tracked without their permission.”

19. On September 29, 2011 The Electronic Privacy Information Center along with The American Civil Liberties Union, the American Library Association, the Bill of Rights Defense Committee, the Center for Digital Democracy, the Center for Media and Democracy, Consumer Action, Consumer Watchdog, Privacy Activism, and Privacy Times wrote to the Federal Trade Commission and stated, “Facebook’s tracking of post-log-out Internet activity violates both the reasonable expectations of consumers and the company’s own privacy statements. Although Facebook has partially fixed the problem caused by its tracking cookies, the company still places persistent identifiers on users’ browsers that collect post-log-out data and could be used to identify users.” (attached Exhibit B).

20. At all material times, Defendant knew, or reasonably should have known, that their actions violated clearly established statutory and other rights of the Plaintiff and the Class members.

21. Facebook's actions are in contravention of the policies and procedures of Facebook-affiliated websites, as those policies and procedures are expressed on the websites of those affiliates. For Example:

- a. The New York Times Privacy Policy states:
"If you have registered online for one of our sites, The New York Times will not sell, rent, swap or authorize any third party to use your e-mail address without your permission. This also applies to any information that personally identifies you, except as noted immediately below;" and "NYTimes.com will not share personal information about you as an individual to third parties without your consent."
- b. The Washington Post Privacy Policy states:

"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."

CLASS ACTION ALLEGATIONS

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

All individuals in Rhode Island who subscribe/have subscribed to Facebook and whose electronic Internet information was intercepted by Facebook when the individuals were not logged-in to Facebook.

Excluded from the Class are (1) any individual plaintiff who opts out of the class; (2) any member of the immediate family of any individual defendant; and/or (3) any member of the undersigned attorney's immediate families.

23. The particular members of the Class are capable of being described without difficult managerial or administrative problems. The members of the Class are readily identifiable from the information and records in the possession or control of the Defendants.

24. The class members are so numerous that individual joinder of all members is impractical. Upon information and belief, Defendants have intercepted the personal information of millions of Facebook users.

25. There are questions of law and fact common to the Class that predominate over questions affecting only individual class members. The wrongs suffered and remedies sought are premised upon an unlawful scheme participated in by all Defendants. The principle common issues include, but are not limited to the following:

- a. The nature and extent of Defendants' participation in intercepting the wire and/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 violated the Wiretap Act;
- e. The nature and extent to which the wire or electronic communications of Plaintiff and the members of the Class were unlawfully intercepted, tracked, stored or used;
- f. The nature and extent of the actual damages suffered by Plaintiff and members of the Class;
- g. The nature and extent of the statutory penalties or damages for which the Defendants are liable to the Plaintiff and Class members; and
- h. Whether punitive damages are appropriate.

26. Plaintiff's claims are typical of those of the Class and are based on the same legal and factual theories.

27. Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has suffered injury in his own capacity from the practices complained of and is ready, willing and able to serve as class representative. Moreover, Plaintiff's counsel is experienced in handling class actions and mass torts. Neither Plaintiff nor his counsel has any interest that might cause them not to vigorously pursue this action.

28. Certification of a plaintiff class under Fed. R. Civ. P. 23(b)(3) is appropriate in that Plaintiff and the Class members seek monetary damages, common questions predominate over any individual questions, and a class action is superior for the fair and efficient adjudication of this controversy. A plaintiff class action will cause: (1) orderly and expeditious administration of the Class members' claims, (2) economy of time, effort and expense, and (3) uniformity of decisions. Moreover, the individual class members are unlikely to be aware of their rights and not in a position (either through experience or financially) to commence individual litigation against the Defendants.

29. Alternatively, certification of a plaintiff class under Fed. R. Civ. P. 23(b)(1) is appropriate in that inconsistent adjudications of individual Class members would establish incompatible standards of conduct for the defendants. It would also substantially impair or impede Class member's ability to protect their own interests.

COUNT I
(Violation of the Wiretap Act)

30. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

31. Defendant Facebook intercepted, collected, stored, and used wire and/or electronic communications from its users.

32. Defendant Facebook intercepted, collected, stored, and used this information from its users without their consent while the users were logged-out of Facebook.

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

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

35. Defendants violated 18 U.S.C. § 2511 in that the Defendants:

- a. Intercepted, endeavored to intercept, or procured another person to intercept wire and/or electronic communications of the Plaintiff;
- b. Upon belief and predicated upon further discovery, disclosed or endeavored to disclose to another person the contents of Plaintiff's wire and/or electronic communications, knowing or having reason to know that the information was obtained in violation of 18 U.S.C. § 2511;
- c. Upon belief and predicated upon further discovery, by other actions as well.

WHEREFORE, Plaintiff on behalf of himself and all members of the Class, demands judgment against Defendants pursuant to 18 U.S.C. § 2520 for: (1) statutory damages, (2) injunctive and declaratory relief, (3) punitive damages in an amount sufficient to prevent the same or similar conduct by Facebook and others in the future, and (4) reasonable attorney's fees and other litigation costs, plus interest. Plaintiff also demands judgment against Defendants for all other damages arising from Defendants' violation of 18 U.S.C. 2510 *et seq.*, known as the "Wire Tap Act," plus interest and costs.

COUNT II
(R.I.G.L. § 9-1-2)

36. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

37. The “Wiretap Act” imposes criminal penalties in addition to statutory damages.

38. Plaintiff has suffered injuries as a result of Defendant’s violating the “Wiretap Act.”

39. Defendant is liable to Plaintiff pursuant to R.I.G.L. § 9-1-2.

WHEREFORE, Plaintiff on behalf of himself and all members of the Class, demands judgment against Defendants pursuant to R.I.G.L. § 9-1-2 for injuries sustained as a result of Defendant’s violation of the “Wiretap Act.”

COUNT III
(Unjust enrichment)

40. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

41. Plaintiff conferred a benefit on Defendants without Plaintiff’s consent, namely access to his wire and/or electronic communications over the Internet.

42. Acceptance and retention of such benefit without Plaintiff’s consent is unjust and inequitable without payment of compensation to the Plaintiff.

WHEREFORE, Plaintiff on behalf of himself and all members of the Class, demands judgment against Defendants in a just and equitable amount, including the disgorgement of Defendants unlawful gains and proceeds, plus interest and costs and whatever further relief this Honorable Court deems appropriate.

COUNT IV
(Intrusion upon Seclusion)

43. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

44. In intercepting Plaintiff's wire and/or electronic communications on the Internet, Defendants intentionally intruded upon Plaintiff's solitude and/or seclusion in violation of R.I.G.L. § 9-1-28.1.

45. Plaintiff's wire and/or electronic communications were entitled to be private and were expected to be private.

46. Plaintiff did not consent to Defendant's intrusions.

47. Defendant's intentional intrusion on Plaintiff's solitude and/or seclusion without his consent is highly offensive to a reasonable person.

WHEREFORE, Plaintiff on behalf of himself and all members of the Class, demands judgment against Defendants pursuant to R.I.G.L. § 9-1-28.1 for damages, equitable relief and attorneys fees, plus interest and costs and whatever further relief this Honorable Court deems appropriate.

COUNT V
(Breach of Contract)

48. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

49. In exchange for allowing users to sign up for an account on its website, www.facebook.com, Defendant Facebook requires its users to agree to a form contract, which includes its Terms of Use and Privacy Policy.

50. The Privacy Policy provides that Facebook does not track personal account information from its users without their consent while the users are not logged-in to Facebook.

51. Defendant Facebook tracked, collected and stored its users' wire and/or electronic communications, including but not limited to portions of their Internet browsing history when the users were not logged-in to Facebook.

52. In doing so, Facebook breached its contract with Plaintiff and members of the Class.

53. As a result of the breach of contract, Plaintiff and the Class members suffered a substantial and ascertainable loss of money, property and/or other damages.

WHEREFORE, Plaintiff on behalf of himself and all members of the Class, demands judgment against Defendant for all damages resulting from this breach of contract, plus interest and costs and whatever further relief this Honorable Court deems appropriate.

COUNT VI
(R.I.G.L. § 6-13.1: Rhode Island Deceptive Trade Practices)

54. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

55. The Rhode Island Deceptive Trade Practices Act was enacted to prohibit "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." R.I.G.L. § 6-13.1-2.

56. Defendant Facebook's operation of the website, www.facebook.com, constitutes "trade" and/or "commerce" within the meaning of the Rhode Island Deceptive Trade Practices Act. R.I.G.L. § 6-13.1-1(5).

57. Defendant Facebook intentionally intercepted and collected wire and/or electronic communications from its users without consent or authorization and disclosed such information to third-parties.

58. In failing to disclose such conduct or obtain consent from Plaintiff and the Class, Facebook employed an unfair trade practice and omitted, concealed and suppressed material information and failed to inform Plaintiff and the Class of a material fact in connection with its conduct of "trade" and/or "commerce" in violation of R.I.G.L. § 6-13.1-2.

59. The aforementioned violations of the Rhode Island Deceptive Trade Practices Act have caused Plaintiff and the Class damages.

60. Plaintiff has been forced to hire attorneys to enforce his rights under the Rhode Island Deceptive Trade Practices Act.

WHEREFORE, Plaintiff on behalf of himself and all members of the Class, demands judgment against Defendants pursuant to R.I.G.L. § 6-13.1 *et seq.* for damages, equitable relief and attorneys fees, plus interest and costs and whatever further relief this Honorable Court deems appropriate

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all members of the Class respectfully prays for relief against the Defendants as follows:

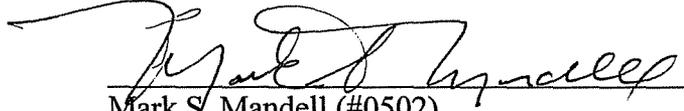
- a. For an order certifying that this action may be maintained as a class action under Fed. R. Civ. P. 23(b)(3) or, in the alternative, Fed. R. Civ. P. 23(b)(1) and appointing Plaintiff as its representative;
- b. For an order directing that reasonable notice of this action be given to all other members of the Class as necessary and appropriate;
- c. For a declaration that the Defendants' actions violated 18 U.S.C. § 2510 *et seq.*;
- d. For all actual damages, statutory damages, penalties, equitable relief, attorneys fees and other remedies available for defendants' violations of 18 U.S.C. § 2510 *et seq.*;
- e. That judgment be entered against Defendant for statutory damages pursuant to 18 U.S.C. § 2520;
- f. For a declaration that the Defendants, through their actions and misconduct, have been unjustly enriched and an order that Defendants compensate Plaintiff in a just and equitable amount, including disgorging Defendants' unlawful gains and proceeds;
- g. For a declaration that the Defendants, through their actions and misconduct, have intruded upon the seclusion of the Plaintiff and all of the members of the Class and an order that Defendants compensate Plaintiff pursuant to R.I.G.L. § 9-1-28.1 *et seq.* and for all other damages arising out of Defendants violation of R.I.G.L. § 9-1-28.1 *et seq.*

- h. For a declaration that the Defendants breached their contract with the Plaintiff and an order that Defendants compensate Plaintiff for all damages arising out of Defendants breach of contract;
- i. For a declaration that the Defendants tortiously interfered with a contract of the Plaintiff and an order that Defendants compensate Plaintiff for all damages arising out of Defendants tortious interference;
- j. For a declaration that the Defendants were in violation of R.I.G.L. § 6-13.1 *et seq.* and an order that Defendants compensate Plaintiff for all damages pursuant to R.I.G.L. § 6-13.1 *et seq.* and/or all other damages arising out of Defendants violation of R.I.G.L. § 6-13.1 *et seq.*
- k. That Plaintiff and the Class recover pre-judgment interest and post-judgment interest as permitted by law;
- l. For an award to Plaintiff and the Class of their reasonable attorneys fees and other litigation costs reasonably incurred pursuant to 18 U.S.C. 2520(b)(3), R.I.G.L. § 6-13.1-5.2(d), other statutes and/or equity;
- m. That the Court enter an order granting Plaintiff and the Class a preliminary and permanent injunction restraining and enjoining Defendant from any act to intercept electronic information from its users when they are not logged-in and from disclosing any of the information already acquired on its servers;
- n. That the Court grant such other and further relief as may be just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Respectfully Submitted,



Mark S. Mandell (#0502)

MANDELL, SCHWARTZ & BOISCLAIR

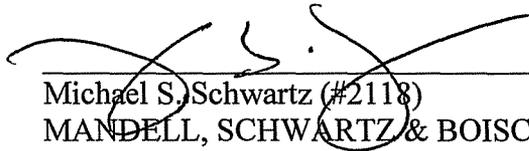
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