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

12 IN RE: FACEBOOK INTERNET  
13 TRACKING LITIGATION

No: 5:12-md-02314-EJD

14 \_\_\_\_\_  
15 JANE PEDDICORD  
16 Individually and on Behalf of All  
17 Others Similarly Situated,

No: 5:12 -CV-00670-EJD

18 Plaintiffs,

19 v.

20 FACEBOOK, INC

21 DOES 1 THROUGH 10,

22 Defendants  
23

24 **FIRST AMENDED CLASS ACTION COMPLAINT**

25 Plaintiff, on behalf of herself and all others similarly situated, alleges and avers as follows:  
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## INTRODUCTION

1. This class action arises out of improper and unlawful actions by the Defendants, who participated in a scheme to intercept, endeavor to intercept, or procure the Plaintiff and the Class members' personal information as prohibited by law.
2. Plaintiff and the Class members are individuals who subscribe to the online social media site Facebook, Inc. ("Facebook").
3. Facebook maintains personal information pertaining to each individual as well as monitors the individual online habits of its users keeping track of websites they visit.
4. Upon obtaining personal information and/or wire or electronic communications of the Plaintiff and the Class members, Facebook conspired to use said information for target marketing which pertained to the Plaintiff and the individual Class members, over the Internet.
5. Such conduct was committed in violation of Title III of the Omnibus Crime Control and Safe Streets Act of 1968 as amended by the Electronic Communication Privacy Act of 1986, 18 U.S.C. § 2511, *et seq.* (the "Wiretap Act").

## PARTIES

### Plaintiffs

6. Plaintiff, Jane Peddicord is an individual who resides in Austin, Texas. Upon information and belief, Defendants intercepted, collected and stored personal information from Plaintiff.

### Defendants

7. Defendant is a company organized and existing under the laws of Delaware with its principal place of business at 1601 S. California Ave. Palo Alto, California 94304. Upon

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information and belief, Facebook owns and/or operates websites including www.facebook.com, which offer online social interaction and picture storage. Facebook is registered with the Texas Secretary of State to do business in Texas and may be served through its registered agent for service, CSC dba CSC-Layers Incorporating Service Company, 211 E. 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701.

8. Defendants Does 1 through 10 are the remaining directors, employees, agents, or contractors of Facebook that are yet to be named and whose identity will become known through discovery and/or by requests made by Plaintiff or the members of the plaintiff class, after which such remaining defendants will be added as individual defendants.

**JURISDICTION AND VENUE**

9. This Court has jurisdiction over this action and all the defendants pursuant to 28 U.S.C. § 1331 in that this action arises under statutes of the United States, specifically violations of the “Wiretap Act”.
10. Additionally, this Court has personal jurisdiction over Defendant Facebook pursuant to the Texas long-arm statute, § 17.042 TXCPRC., since Facebook transacted business and made contracts in Texas directly through the website www.facebook.com, violated the law within the state of Texas, and otherwise has sufficient minimum contacts with the state of Texas as more particularly described below.
11. Defendant Facebook has sufficient minimum contacts such that the maintenance of this suit does not offend traditional notions of fair play and substantial justice. Facebook has voluntarily submitted itself to the jurisdiction of this Court and jurisdiction is proper because, among other things:
- a. Facebook directly and purposefully obtained, misappropriated and used personal

1 information and/or information relating to wire or electronic communications of  
2 individuals living in Texas, including the Plaintiff and the individual Class  
3 members;

4 b. Facebook committed tortuous acts within this state by misappropriating personal  
5 information and/or wire or electronic communications of citizens of Texas and  
6 otherwise violating the Wiretap Act and 42 U.S.C. § 1983;

7 c. Plaintiff's and the Class members' causes of action directly arise from Facebook's  
8 commission of tortious and unlawful acts in Texas.

9 d. Plaintiff's and the Class members' causes of action directly arise from  
10 Facebook's transaction of business in Texas;

11 e. Facebook should reasonably anticipate being haled into court in Texas to answer for  
12 its unlawful acts. Texas has a strong interest in providing a forum for its residents  
13 aggrieved by violations of the law.

14 12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(c) because a substantial  
15 amount of the acts and omissions giving rise to this cause of action occurred in the  
16 Western District of Texas.

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20 **GENERAL ALLEGATIONS**

21 13. Defendant Facebook operates a website, [www.facebook.com](http://www.facebook.com), which is primarily a social  
22 networking site.

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

25 15. Facebook tracks, collects and stores wire or electronic communications of its users,  
26 including but not limited to their Internet browsing history.  
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1 16. Leading up to September 23, 2011, Facebook tracked, collected and stored its users' wire  
2 or electronic communications, including but not limited to portions of their Internet  
3 browsing history even when the users were not logged-in to Facebook.

4 17. Plaintiff and Class members did not give consent or otherwise authorize Facebook to  
5 intercept, track, collect and store her wire or electronic communications, including but not  
6 limited to her Internet browsing history when not logged-in to Facebook.  
7

8 18. The electronic information procured by Facebook while Plaintiff and Class members were  
9 not logged-in to Facebook contained personal information and/or wire or electronic  
10 communications of the Plaintiff and Class members.  
11

12 19. At all times material, Defendants knew, or reasonably should have known, that their  
13 actions violated clearly established statutory rights of the Plaintiff and the Class members.  
14

#### **CLASS ACTION ALLEGATIONS**

15 20. This action is properly brought as a plaintiff class action pursuant to Fed. R. Civ. P.  
16 23(b)(3). Plaintiff brings this action on her own behalf and all others similarly situated, as  
17 representative of the following class and subclass:  
18

19 All individuals in the United States who subscribe to Facebook and whose  
20 electronic internet information was intercepted by Facebook when the  
21 individuals were not logged-in to Facebook.

22 Excluded from the Class are (1) any individual who opts out of the class and/or (2) any  
23 individual defendant and any member of the immediate family of any individual  
24 defendant.

25 21. The particular members of the Class are capable of being described without difficult  
26 managerial or administrative problems. The members of the Class are readily identifiable  
27 from the information and records in the possession or control of the defendants.  
28

1 22. The Class members are so numerous that individual joinder of all members is impractical.  
2 This allegation is based upon information and belief that Defendants intercepted the  
3 personal information of millions of Facebook users of which there are more than 150  
4 million in the United States.

5  
6 23. There are questions of law and fact common to the Class, which questions predominate  
7 over any questions affecting only individual members of the Class, and, in fact, the  
8 wrongs suffered and remedies sought by Plaintiff and the other members of the Class are  
9 premised upon an unlawful scheme participated in by all defendants. The principal  
10 common issues include, but are certainly not limited to the following:

- 11 a. The nature and extent of the Defendants' participation in intercepting the  
12 and/or wire or electronic communications of Class members;
- 13  
14 b. Whether or not the interception of wire or electronic communications was  
15 intentional;
- 16  
17 c. Whether or not Defendants should be enjoined from intercepting any wire or  
18 electronic communications without the consent of its users;
- 19  
20 d. Whether the actions taken by Defendants in intercepting the wire or electronic  
21 communications of Class members violate the Wiretap Act;
- 22  
23 e. The nature and extent to which the wire or electronic communications of Class  
24 members was unlawfully intercepted, tracked, stored or used;
- 25  
26 f. The nature and extent to which Defendants were unjustly enriched by their actions;
- 27  
28 g. The nature and extent to which Defendants intruded upon the seclusion of Class  
members
- h. The nature and extent to which Defendants committed a trespass to Class

1 members' personal property

2 i. The nature and extent of the Class members actual damages;

3 j. The nature and extent of all statutory penalties or damages for which the  
4 Defendants are liable to the Class members; and

5 k. Whether punitive damages are appropriate.  
6

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

9 25. Plaintiff will fairly and adequately represent and protect the interests of the Class. She has  
10 suffered injury in her own capacity from the practices complained of and is ready, willing  
11 and able to serve as class representative. Moreover, Plaintiff's counsel is experienced in  
12 handling class actions and actions involving unlawful commercial practices. Neither  
13 Plaintiff nor her counsel has any interest that might cause them not to vigorously pursue  
14 this action.  
15

16 26. Certification of a plaintiff class under Fed. R. Civ. P. 23(b)(3) is appropriate in that  
17 Plaintiff and the Class members seek monetary damages, common questions predominate  
18 over any individual questions, and a plaintiff class action is superior for the fair and  
19 efficient adjudication of this controversy. A plaintiff class action will cause an orderly  
20 and expeditious administration of the Class members' claims and economies of time,  
21 effort and expense will be fostered and uniformity of decisions will be ensured.  
22 Moreover, the individual Class members are unlikely to be aware of their rights and not in  
23 a position (either through experience or financially) to commence individual litigation  
24 against the likes of the defendants.  
25  
26

27 27. Alternatively, certification of a plaintiff class under Fed. R. Civ. P. 23(b)(1) is  
28

1 appropriate in that inconsistent or varying adjudications with respect to individual  
2 members of the Class would establish incompatible standards of conduct for the  
3 defendants or adjudications with respect to individual members of the Class as a practical  
4 matter would be dispositive of the interests of the other members not parties to the  
5 adjudications or would substantially impair or impede their ability to protect their  
6 interests.  
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9 **COUNT I**  
10 **(Violation of the Wiretap Act)**

11 28. Plaintiff and Class members incorporate all preceding paragraphs as though fully set forth  
12 herein.

13 29. As described herein, Facebook intentionally intercepted and collected wire or electronic  
14 communications from its users.

15 30. At times, Facebook intercepted and collected information from its users without their  
16 consent while the users were not logged-in to Facebook.

17 31. The transmission of data between Plaintiff's computer and the Internet constitute  
18 "electronic communication" within the meaning of 18 U.S.C. § 2510(12).  
19

20 32. Facebook's data collection practices as described herein constitute "interceptions" within  
21 the meaning of § 2510(4).  
22

23 33. As a direct and proximate result of such unlawful conduct, Defendants violated 18 U.S.C.  
24 § 2511 in that the Defendants:

- 25 a. Intentionally intercepted, endeavored to intercept, or procured another person  
26 to intercept wire and/or electronic communications of the Plaintiff and Class  
27 members;  
28



1 b. Upon belief predicated upon further discovery, intentionally disclosed or  
2 endeavored to disclose to another person the contents of Plaintiff's and Class  
3 members' wire or electronic communications, knowing or having reason to  
4 know that the information was obtained through the interception of wire or  
5 electronic communications in violation of 18 U.S.C. §2511(1)(a).  
6

7 c. Upon belief predicated upon further discovery, intentionally used or  
8 endeavored to use the contents of Plaintiff's and Class members' wire or  
9 electronic communications, knowing or having reason to know that the  
10 information through the interception of wire or electronic communications in  
11 violation of 18 U.S.C. §2511(1)(a).  
12

13 34. Facebook's actions described in ¶33 occurred without the consent of Plaintiff or Class  
14 members and violated Facebook's own Privacy Policy per the following promises it made  
15 to users:

16 a. "We receive data whenever you visit a...website that uses Facebook  
17 Platform or visit a site with a Facebook feature....This may include the date  
18 and time you visit the site; the web address, or URL, you're on; technical  
19 information about the IP address, browser and the operating system you  
20 use; and, if you are logged in to Facebook, your User ID." Facebook Data  
21 Use Policy, available at [http://www.facebook.com/full\\_data\\_use\\_policy](http://www.facebook.com/full_data_use_policy) as  
22 of October 4, 2011 and last updated September 23, 2011.

23 b. "Does Facebook use cookies if I don't have an account or have logged out  
24 of my account? When you log out of Facebook, we remove the cookies that  
25 identify your particular account, but we do use other cookies primarily to  
26 help keep you and others on Facebook safe and secure. For example, we  
27 use cookies to identify and disable the accounts of spammers and phishers,  
28 to prevent people who are underage from signing up with a false birth date,  
to help you recover your account if you lose access to it or it's  
compromised, to power our opt-in security features like Login  
Notifications and Login Approvals, and to help identify public computers  
so that we can discourage people from using "Keep me logged in." We  
may also use anonymized or aggregate information to improve our  
products. We also use cookies if you don't have a Facebook account, but

1 have visited facebook.com. Again, these cookies help us protect Facebook  
2 and the people who use it from malicious activity. For example, they help  
3 us detect and prevent denial-of-service attacks and the mass creation of  
4 fake accounts. We do not use these cookies to create a profile of your  
5 browsing behavior on third-party sites. *Facebook Frequently Asked*  
6 *Questions*, available at permalink:  
[https://www.facebook.com/help/?faq=239530772765713#Does-Facebook-](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?)  
7 [use-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?)  
8 on October 4, 2011; and

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

18 35. Facebook’s actions described in ¶33 occurred without the consent of Facebook-affiliated  
19 websites, including, for example, the websites for the New York Times and Washington  
20 Post newspapers, in that:

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

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

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

[http://www.nytimes.com/content/help/rights/privacy/highlights/privacy-](http://www.nytimes.com/content/help/rights/privacy/highlights/privacy-highlights.html)  
[-highlights.html](http://www.nytimes.com/content/help/rights/privacy/highlights/privacy-highlights.html)

- b. The interception and collection of information described in this paragraph

1 caused the Washington Post to violate its own Privacy Policy for its websites,  
2 including [www.washingtonpost.com](http://www.washingtonpost.com), which informs readers:

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

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

15 <http://www.washingtonpost.com/wp-srv/interact/longterm/talk/members.htm>

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

- 21 a. Intrusion upon Plaintiff's and Class members' seclusion;
- 22 b. Trespass to personal property;

23 37. As a result of the above violations and pursuant to 18 U.S.C. § 2520, Defendants are liable  
24 to Plaintiff and the Class members in the sum of statutory damages consisting of the  
25 greater of \$100 for each day each of the Class members' data was wrongfully obtained or  
26 \$10,000.00 per violation; injunctive and declaratory relief; punitive damages in an amount  
27 to be determined by a jury, but sufficient to prevent the same or similar conduct by  
28 Facebook in the future, and a reasonable attorney's fee and other litigation costs

1 reasonable.

2 **COUNT II**  
3 **(Unjust Enrichment)**

4 37. Plaintiff and Class members incorporate all preceding paragraphs as though fully set forth  
5 herein.

6 38. Plaintiff and Class members conferred a benefit on Defendants without Plaintiff's or Class  
7 members' consent, namely access to her wire or electronic communications over the  
8 Internet.

9  
10 39. Upon information and belief, Defendants realized such benefits through either sales to  
11 third-parties or greater knowledge of its own users' behavior without their consent.

12 40. Acceptance and retention of such benefit without Plaintiff's or Class members' consent is  
13 unjust and inequitable.  
14

15 **COUNT III**  
16 **(Intrusion Upon Seclusion)**

17 41. Plaintiff and Class members incorporate all preceding paragraphs as though fully set forth  
18 herein.

19 42. In intercepting Plaintiff's and Class members' wire and electronic communications on the  
20 Internet, Defendants intentionally intruded upon their solitude or seclusion.

21 43. Plaintiff and Class members did not consent to Defendants' intrusion.

22 44. Defendants' intentional intrusion on Plaintiff's and Class members' solitude or seclusion  
23 without their consent would be highly offensive to a reasonable person.  
24

25 **COUNT IV**  
26 **(Trespass to Personal Property)**

27 45. Plaintiff and Class members incorporate all preceding paragraphs as though set forth  
28 herein.

1 46. Defendants, intentionally and without consent or other legal justification, tracked  
2 Plaintiff's and Class members' activity while the Plaintiff and Class members were  
3 logged-off of the website Facebook.com, and, in the process, connected Plaintiff's and  
4 Class members' personally identifiable information to their specific actions on the  
5 Internet.

6  
7 47. Defendants, intentionally and without consent or other legal justification, placed cookies  
8 on Plaintiff's and Class members' computers which tracked her activity while logged-off  
9 of Facebook.

10 48. Defendants' intentional and unjustified placing of a cookie designed to track Plaintiff's  
11 and Class members' Internet activities while logged-off of Facebook and actual tracking  
12 of Plaintiff's and Class members' activities interfered with Plaintiff's and Class members'  
13 use of the following personal property owned by the Plaintiff and Class members:  
14

- 15 a. Plaintiff's and Class members' computer; and  
16 b. Plaintiff's and Class members' personally identifiable information.  
17

#### 18 **PRAYER FOR DAMAGES**

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

- 21 a) For an order certifying that this action may be maintained as a class action under Fed. R.  
22 Civ. P. 23(b)(3) or, in the alternative, Fed. R. Civ. P. 23(b)(1) and appointing Plaintiff and  
23 her counsel, to represent the Class and directing that reasonable notice of this action be  
24 given to all other members of the Class as necessary and appropriate;  
25  
26 b) For a declaration that the Defendants' actions violated the 18 U.S.C. 2511 *et seq.*;  
27  
28 c) For a declaration that the Defendants, through their actions and misconduct as alleged

1 above, have been unjustly enriched and an order that Defendants disgorge such unlawful  
2 gains and proceeds;

3 d) For a declaration that the Defendants, through their actions and misconduct as alleged  
4 above, have intruded upon Plaintiff's and Class members' seclusion and an order  
5 assessing damages against Defendants for such violations;

6  
7 e) For a declaration that the Defendants, through their actions and misconduct as alleged  
8 above, have committed trespass upon the personal property of Plaintiff and Class  
9 members and an order assessing damages against the Defendants for violations of  
10 Plaintiff's and Class members' personal property rights;

11  
12 f) For all actual damages, statutory damages, penalties, and remedies available for the  
13 defendants' violations of 18 U.S.C. 2511 *et seq.*;

14 g) That judgment be entered against Defendants for statutory damages pursuant to 18 U.S.C.  
15 §2520(c)(2)(B);

16 h) That judgment be entered against Defendants for statutory damages pursuant to 18 U.S.C.  
17 §2520(b)(2);

18  
19 i) That Plaintiff and the Class members recover pre-judgment and post-judgment interest as  
20 permitted by law;

21 j) For an award to Plaintiff and the Class members of their reasonable attorneys fees and  
22 other litigation costs reasonably incurred pursuant to 18 U.S.C. §2520(b)(3);

23  
24 k) That the court enter an order granting Plaintiff and the Class members a preliminary and  
25 permanent injunction restraining and enjoining Defendants from any act to intercept  
26 electronic information from its users when they are not logged in and from disclosing any  
27 of the information already acquired on its servers;

28

1) That the Court grants such other and further relief as may be just and proper.

**JURY DEMAND**

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

Dated this 3 day of April, 2012.

Respectfully submitted,

**BISHOP LONDON & DODDS, PC**

  
\_\_\_\_\_  
Alice London

Texas State Bar No. 15292000

Daniel W. Bishop, II

State Bar No. 02348500

ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document, together with the First Amended Class Action Complaint of Jane Peddicord was served on all counsel who are deemed to have consented to electronic service in each of the cases captioned Local Rule CV 5(a).

  
\_\_\_\_\_  
Alice London