

EXHIBIT B

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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SANTA CLARA

12 RYAN UNG, CHI CHENG, and
13 ALICE ROSEN, on Behalf of Themselves and
All Others Similarly Situated,

14 Plaintiffs,

15 v.

16 FACEBOOK, INC.

17 Defendant.
18
19

Case No. **112C V 217244**

CLASS ACTION COMPLAINT

COMPLAINT FOR:

VIOLATION OF ARTICLE I, SECTION 1
OF THE CALIFORNIA CONSTITUTION
(PRIVACY), UNJUST ENRICHMENT,
VIOLATION OF CAL. PENAL CODE
SECTION 631 ET SEQ., AND
NEGLIGENCE PER SE

JURY TRIAL DEMANDED

ENDORSED

2012 JAN 24 A 8:50

David H. ...
County of Santa Clara, California

L. Valenzuela
Deputy Clerk

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1 consented to this. If given the choice, Mr. Ung would have utilized a username as opposed to his
2 real name in connection with his Facebook account.

3 5. Plaintiff Chi Cheng resides in San Francisco. Mr. Cheng is a non-Facebook
4 member who visited a website in the Facebook Connect network and subsequently visited a
5 website displaying the Facebook “Like” button. Facebook used the Like Button and Facebook
6 Connect to collect his browsing history and personally identifiable information without his
7 consent using Facebook’s “datr tracking cookie,” which was found on Mr. Cheng’s computer.
8 Mr. Cheng was not aware that Facebook was collecting his personal information and browsing
9 history and, had he been aware, would not have consented to this.

10 6. Plaintiff Alice Rosen resides in Sunnyvale, California. Ms. Rosen is a non-
11 Facebook member who visited websites in the Facebook Connect network including HSN.com,
12 MSN.com, QVC.com, and ABC.com, and subsequently visited websites displaying the Facebook
13 “Like” button or Facebook Connect including HSN.com, MSN.com, QVC.com, and ABC.com.
14 Facebook used the Like Button and Facebook Connect to collect her browsing history and
15 personally identifiable information without her consent using Facebook’s “datr tracking cookie,”
16 which was found on Ms. Rosen’s computer. Ms. Rosen was not aware that Facebook was
17 collecting his personal information and browsing history and, had he been aware, would not have
18 consented to this.

19 7. Defendant Facebook (“hereinafter “Facebook”) is a Delaware Corporation that
20 maintains its headquarters in Santa Clara County, California. Facebook conducts business
21 throughout California, the nation, and internationally.

22 **STATEMENT OF FACTS:**
23 **About Facebook, Its “Like” Button, and Facebook Connect**

24 **Facebook**

25 8. Facebook is the world’s largest social networking website with more than 500
26 million registered users worldwide.

1 9. Facebook requires that Facebook registrants provide their actual names, rather
2 than merely create a “screen name” or “user name” as is commonplace with other, non-social
3 networking website registrations. Facebook then assigns each Facebook member a user ID
4 number that uniquely identifies that member.

5 **The Facebook “Like” Button**

6 10. The Facebook “Like” button is an image displaying a thumbs-up symbol
7 accompanied by the word “Like.” Facebook promotes the “Like” button to website owners as
8 follows:

9 The Like button lets a user share your content with friends on Facebook. When
10 the user clicks the Like button on your site, a story appears in the user’s friends’
11 News Feed with a link back to your website.

12 11. Anyone can implement the “Like” button on their website by adding a computer
13 code, which is available for free and provided by Facebook.

14 12. Website owners have a substantial financial incentive to include the “Like” button
15 on their websites because it tends to increase traffic to the website and thereby increase the
16 amount the website owner can charge for displaying advertising on the website. Indeed, more
17 than 2.5 million websites have integrated the Facebook “Like” button. According to comScore,
18 those 2.5 million websites include all of the top ten sports sites, nine of the top ten news sites,
19 nine of the top ten entertainment sites, and 18 of the top 25 retails sites. Overall, 80% of the
20 United States’ comScore top websites are fully integrated. Every day, 10,000 more websites add
21 the “Like” button. The “Like” button has become so deeply embedded in our societal
22 consciousness that we sometimes do not even realize how much it has permeated our culture. It
23 is an indelible part of the “online experience.”

24 **Facebook Connect**

25 13. Facebook Connect enables Facebook members to log onto third-party websites,
26 applications, mobile devices, and gaming systems with their Facebook identity. While logged
27 on, users can connect with friends via these media and post information and updates to their
28 Facebook profile. Within a year of its launch in December 2008, Facebook Connect was on

1 almost 1 million websites, and in March 2009 more than 40 million unique visitors of Facebook
2 Connect implementations were counted.

3 **Facebook Uses the “Like” button and Facebook Connect To Track Facebook Members**
4 **and Non-Members**

5 14. Unbeknownst to Internet users, Facebook uses the “Like” button to track Internet
6 users as they browse the web and thereby collects private and, in some cases, sensitive
7 information about them. Facebook follows Facebook members and, in some cases, non-
8 members as they browse the Internet, linking their record of each new page visited to Facebook’s
9 records of all the “Like” button- or Facebook Connect-affiliated pages that the user has visited in
10 the previous minutes, months, and years. It may thereby construct and update long-term profiles
11 of what particular users are doing with their web browsers. Anyone who has used the Internet to
12 seek advice about hemorrhoids, sexually transmitted diseases, abortion, drug rehabilitation,
13 dementia — the list goes on and on — can be reasonably certain that Facebook has tracked at
14 least some of those visits and, in many cases, identified them with a particular individual, such
15 that the information can easily be incorporated into a personal profile for use in Facebook’s sale
16 of advertising space to marketers of all sorts, or to be put at the disposal of the United States or
17 state government agencies. The information is collected *even if the website visitor does not*
18 *click on the “Like” button*. This practice was brought to light by Arnold Roosendaal, whose
19 work in progress, *Facebook Tracks and Traces Everyone: Like This!*, is available at
20 <http://www.ssrn.com/abstract=1717563>. Mr. Roosendaal’s research uncovers Facebook’s use of
21 the “datr tracking cookie” to record web browsing of its members and non-members whenever
22 they visit web pages enabled with the Like button or Facebook Connect.

23 15. Following Roosendaal’s research, other researchers have reported similar
24 instances of Facebook’s tracking. For example, Nik Cubrilovic has reported that Facebook
25 collects Facebook members’ web browsing data, even after they have logged out of Facebook,
26 by placing cookies on their computer and sharing their browsing data whenever the user visits a
27 Facebook-enabled webpage.

1 16. The tracking mechanism differs depending on whether the Internet user is a
2 Facebook member or not.

3 **Facebook Members:** Upon registration, Facebook implants tracking cookies, including
4 the “datr tracking cookie” on the members’ computers. Each time the member visits a site
5 displaying the Facebook “Like” button, the updated Facebook cookie information, including the
6 member’s most recent browsing history, is sent to Facebook. Facebook can then link the cookie
7 information with the member’s unique Facebook identifier, thereby associating the personally
8 sensitive information with the particular user and his account information. This occurs
9 regardless of whether the Facebook member clicks the “Like” button.

10 If a Facebook member deactivates his or her account through the process Facebook
11 provides, the entire account is nevertheless kept by Facebook, which can continue to link data to
12 the account just as when the account was active. If a user wishes to delete her account entirely,
13 such that Facebook no longer has access to her personal data, the user must make a specific
14 request to Facebook that takes two weeks to process.

15 **Non-Facebook Members:** Facebook implants tracking cookies, including the “datr
16 tracking cookie,” on the computers of non-Facebook members when the non-Facebook member
17 visits one of the million websites in the Facebook Connect network. Thereafter, Facebook’s data
18 profile of the non-member is updated each time the non-Facebook member visits a site
19 displaying the Facebook “Like” button, even if the non-member does not click the “Like” button.
20 The data profile is anonymous unless the non-member subsequently joins Facebook, at which
21 point Facebook can associate the previously anonymous “file” with the member and his or her
22 account information, which includes, at a minimum, the member’s name and address(es).
23 Facebook thus tracks and collects extensive information about non-Facebook members — *i.e.*
24 individuals who consciously choose not to participate in Facebook. If a non-member
25 subsequently opens an account on Facebook, all of the previously compiled information can be
26 linked to her Facebook account, and, from that time on, all subsequent requests for Facebook
27 content are accompanied by the Facebook identifier unique to the user.

1 17. The personal information collected by Facebook is an asset of the sort that is
2 priced, bought, and sold in discrete units for marketing and other purposes. “Websites and stores
3 can . . . easily buy and sell information on valued visitors with the intention of merging
4 behavioral with demographic and geographic data in ways that will create social categories that
5 advertisers covet and target with ads tailored to them or people like them.” Joseph Turow,
6 Jennifer King, Chris Jay Hoofnagle, Amy Bleakley & Michael Hennessy, *Americans Reject
7 Tailored Advertising and Three Activities that Enable It* (Sept. 29, 2009),
8 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1478214. The more information that is
9 known about a consumer, the more a company will pay to deliver a precisely targeted
10 advertisement to him or her. See Federal Trade Commission (FTC), Protecting Consumer
11 Privacy in an Era of Rapid Change, Preliminary Staff Report (Dec. 2010) (“FTC Report”), at 24.

12 18. Personal data is viewed as currency. “In many instances, consumers pay for free
13 content and services by disclosing their personal information,” according to former FTC
14 commissioner Pamela Jones Harbour. FTC Roundtable Series 1 on: Exploring Privacy (Matter
15 No. P095416) (Dec. 7, 2009), at 148, available at [http://www.ftc.gov/bcp/
16 workshops/privacyroundtables/PrivacyRoundtable_Dec_2009_Transcript.pdf](http://www.ftc.gov/bcp/workshops/privacyroundtables/PrivacyRoundtable_Dec_2009_Transcript.pdf). In *Property,
17 Privacy, and Personal Data*, Professor Paul M. Schwartz wrote:

18 Personal information is an important currency in the new millennium. The
19 monetary value of personal data is large and still growing, and corporate America
20 is moving quickly to profit from this trend. Companies view this information as a
corporate asset and have invested heavily in software that facilitates the collection
of consumer information.

21 Paul M. Schwartz, *Property, Privacy, and Personal Data*, 117 Harv. L. Rev. 2055, 2056-57
22 (2004).

23 19. On February 28, 2011, the *Wall Street Journal* published an article under the
24 headline “Web’s Hot New Commodity: Privacy,” in which it highlighted a company called
25 “Allow Ltd.,” one of nearly a dozen companies that offers to sell people’s personal information
26 on their behalf and gives them 70% of the sale. An Allow Ltd. customer received a payment of
27 \$8.95 for letting Allow tell a credit card company he is shopping for a new credit card. *Id.*

1 (e) whether Facebook was unjustly enriched by the unauthorized acquisition
2 of Plaintiffs' personally identifiable information; and

3 (f) whether Facebook violated Cal. Penal Code § 631 *et seq.*

4 25. Plaintiffs will fairly and adequately represent the Class. Plaintiffs are committed
5 to prosecuting this action and has retained competent counsel experienced in litigation of this
6 nature. Plaintiffs' claims are typical of the claims of other members of the Class and Plaintiffs
7 have the same interests as the other members of the Class.

8 26. Plaintiffs anticipate no difficulty in the management of this litigation.

9 27. Defendants have acted in a manner that affects Plaintiffs and all Class members
10 alike, thereby making appropriate injunctive, declaratory, and other relief appropriate with
11 respect to the Class as a whole.

12 28. The prosecution of separate actions by individual members of the Class would
13 create a risk of inconsistent or varying adjudications with respect to individual members of the
14 Class, establish incompatible standards of conduct for defendants or adjudications with respect to
15 individual members of the Class, and could be dispositive of the interests of other members or
16 substantially impair or impede their ability to protect their interests.

17 **FIRST CAUSE OF ACTION**
18 **(Violation of Article 1, Section 1 of the California Constitution)**

19 29. Plaintiffs incorporate each and every allegation above as if fully set forth herein.

20 30. Article I, Section 1 of the California Constitution states that "All people are by
21 nature free and independent and have inalienable rights. Among these are enjoying and
22 defending life and liberty, acquiring, possessing, and protecting property, and pursuing and
23 obtaining safety, happiness, and privacy." Cal. Const. art. I, § 1.

24 31. Plaintiffs had a legally protected interest in their personal Internet browsing
25 history.

26 32. Plaintiffs reasonably expected that their browsing history would remain
27 anonymous.

1 of California and while they were being sent from or received at a place within California in
2 violation of California Penal Code § 631.

3 44. Facebook willfully, intentionally, and without the consent of Plaintiffs, or any
4 party to the communications, and in an unauthorized manner using an unauthorized connection,
5 obtained, read, attempted to read and learned, and attempted to learn the contents of such
6 electronic communications of Plaintiffs while they were in transit in or through California in
7 violation of California Penal Code § 631.

8 45. Facebook used and communicated such illegally obtained electronic
9 communications of Plaintiffs in violation of California Penal Code § 631.

10 46. Facebook agreed with and conspired with third-party websites to unlawfully
11 obtain Plaintiffs' communications with the third-party websites in violation of California Penal
12 Code § 631 and aided and abetted and caused the informant to do such acts in violation of
13 California Penal Code § 631.

14 47. As a direct and proximate result of the above-described conduct by Facebook,
15 Plaintiffs have suffered, and, unless such conduct is enjoined, will continue to suffer, damages in
16 an amount to be proven at trial.

17 48. Plaintiffs are entitled to recover three times their actual and/or statutory damages
18 from Facebook, for such conduct, pursuant to California Penal Code § 637.2.

19 49. Facebook's conduct is causing, and unless enjoined will continue to cause,
20 Plaintiffs great and irreparable injury that cannot be fully compensated for or measured in
21 money. Plaintiffs have no adequate remedy at law and are entitled to preliminary and permanent
22 injunctions prohibiting further use and communication of their unlawfully obtained information,
23 pursuant to California Penal Code § 637.2(b).

24 **FOURTH CAUSE OF ACTION**
25 **(Negligence *per se*)**

26 50. Plaintiffs incorporate each and every allegation above as if fully set forth herein.

27 51. Defendant's violation of California Penal Code § 631 resulted in injury to
28 Plaintiffs and the Class.

1 G. Awarding Plaintiffs and the Class their reasonable litigation expenses and
2 attorneys fees; and

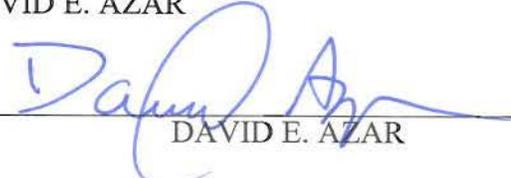
3 H. Awarding such other and further relief as equity and justice may require.
4

5 **DEMAND FOR JURY TRIAL**

6 Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

7 DATED: January 23, 2012

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