

1 Eric H. Gibbs (SBN 178658)
Andre Mura (SBN 298541)
2 Aaron Blumenthal (SBN 310605)
3 **GIBBS LAW GROUP LLP**
505 14th Street, Suite 1110
4 Oakland, CA 94612
Telephone: (510) 350-9700
5 Facsimile: (510) 350-9701
ehg@classlawgroup.com
6 amm@classlawgroup.com
ab@classlawgroup.com
7

8 *Counsel for Plaintiff and Proposed Class*

9
10 **UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA**

11 Patricia King, on behalf of herself and all
12 others similarly situated,

13 Plaintiff,

14 v.

15 Facebook, Inc.; Cambridge Analytica LLC,

16 Defendants.
17

Case No. 18-cv-02276

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

I. INTRODUCTION

1
2 1. Facebook is a social networking platform that engages in surveillance capitalism: It
3 monetizes personal and behavioral data which it acquires through real-time surveillance of Facebook
4 users.¹

5 2. This practice of deriving profits from the surveillance, analysis, and modification of
6 behavior happens without the consent or knowledge of Facebook users.

7 3. Public outcry over Cambridge Analytica’s use of Facebook data in election campaigns
8 confirms that Facebook has not adequately informed its members that their behaviors, social
9 relationships, and intimate details are being used in contexts and for purposes completely different from
10 those for which this information is provided. As widely reported, Cambridge Analytica targeted voters
11 with personalized messages shaped by a prediction of personality traits derived from Facebook data,
12 and it did so without Facebook users’ knowledge or consent.

13 4. But this exploitation of Facebook data is not limited to elections or one actor. These
14 technologies are also applied in commercial marketing, including by Facebook. The company regularly
15 uses its surveillance platform “to figure out your personal psychological susceptibilities and then
16 charge(s) advertisers to exploit them.”²

17 5. The seemingly unrestricted surveillance and analysis of daily interactions and behaviors
18 on the Facebook platform far exceeds user expectations of how personal data is used. Users are not
19 adequately informed that Facebook regularly runs experiments on them. Nor are they adequately told
20 that seemingly innocuous interactions on the platform, such as “liking” content, can be used to predict
21 highly sensitive information with great accuracy, including sexual orientation, ethnicity, political or
22 religious views, or drug use. Nor are users clearly told that, although they may set privacy settings
23 which control the sharing of certain data on an interpersonal level, “what users cannot adjust with
24 Facebook’s privacy settings is how the platform *itself* takes advantage of the rich digital profiles it
25 stores about users.”³ The full extent of Facebook’s surveillance capitalism remains secret.

26 6. Plaintiff Patricia King is among the reportedly 87 million persons in the United States

27 ¹ Shoshana Zuboff, *Big Other: Surveillance Capitalism and the Prospects of an Information Civilization*, 30 J. Info. Tech.
28 75 (Apr. 4, 2015), available at <http://ssrn.com/abstract=2594754>.

² <http://www.nybooks.com/daily/2018/04/12/reining-in-big-datas-robber-barons/>.

³ p. 7, https://crackedlabs.org/dl/CrackedLabs_Christl_DataAgainstPeople.pdf.

1 whose Facebook data Cambridge Analytica obtained in order to build psychographic profiles for voter
2 micro-targeting. She files this class action complaint seeking to change Facebook’s business practices,
3 for breach of contract, and for violations of federal and state law.

4 **II. PARTIES**

5 7. Patricia King is a resident and citizen of South Carolina.

6 8. On April 10, 2018, she received a notification from Facebook saying that one of her
7 friends had used the application “This Is Your Digital Life,” which may have shared “some of [her]
8 Facebook information” with Cambridge Analytica. Facebook said the following information was likely
9 shared: public profile, Likes, birthday, and current city of residence.

10 9. Defendant Facebook, Inc., is incorporated in Delaware, and its principal place of
11 business is in Menlo Park, California.

12 10. Defendant Cambridge Analytica LLC is a Delaware limited liability company with
13 headquarters in New York, New York.

14 **III. JURISDICTION**

15 11. This Court has subject-matter jurisdiction over this action under 28 U.S.C. § 1332(d)(2)
16 because this is a class action wherein the amount in controversy exceeds the sum or value of
17 \$5,000,000, exclusive of interest and costs, there are more than 100 members in the proposed class, and
18 at least one member of the class of plaintiffs is a citizen of a state different from a defendant.

19 12. This Court has personal jurisdiction over Defendant Facebook, Inc., because Facebook,
20 Inc. is headquartered in California, and conducts business in the state of California.

21 13. This Court also has personal jurisdiction over Defendant Cambridge Analytica LLC
22 because it conducts business in California, and the challenged acts and practices occurred or were
23 otherwise facilitated in California.

24 14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part
25 of the events or omissions giving rise to the claims occurred in, were directed to, and/or emanated from
26 this District. Venue is also proper because Facebook’s terms of service require that claims be resolved
27 “exclusively in the U.S. District Court for the Northern District of California.”
28

1 **IV. INTRADISTRICT ASSIGNMENT**

2 15. Assignment to the San Francisco division is proper because Facebook is headquartered
3 in San Mateo County, and a substantial part of the events or omissions which give rise to the claims
4 occurred there.

5 **V. FACTUAL ALLEGATIONS**

6 16. Facebook has operated www.facebook.com since at least 2004. This social networking
7 platform allows users to create online profiles with personalized content such as their name, photos,
8 videos, messages, comments, names of other users they consider to be “friends,” and interest groups.
9 Users can interact with each other or the platform in a variety of ways, including by posting comments,
10 sharing photos or video, chatting, using apps, playing online games, taking personality quizzes, or
11 “liking” content by pressing a thumbs-up icon.

12 17. In the past decade, Facebook’s user-base has grown exponentially. It is currently the
13 world’s largest social networking platform, with about 2.2 billion active users.⁴ In the United States,
14 about 214 million persons—two-thirds of the population—use Facebook.⁵

15 18. Through this platform, Facebook has amassed a massive amount of highly personalized
16 data about its users. This includes data required by the platform, such as name, gender, e-mail address,
17 and birthday; optional data such as hometown, interests, relationship status, education, work, and
18 political or religious views; and data derived through behavioral or predictive analytics. Using this data,
19 Facebook may suggest connections, guide the presentation of information on the platform, and publish
20 targeted ads.⁶

21 19. Facebook’s ability to access information about users and their tastes and preferences is
22 key to its business model. For example, when a user “likes” a comment, article, or video, this generates
23 information about the user. Facebook is then able to help advertisers target—or exclude—users based
24 on their tastes and preferences.

25
26 ⁴ <https://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/> (last accessed Mar. 28, 2018)

27 ⁵ <https://www.statista.com/statistics/398136/us-facebook-user-age-groups/> (last accessed Mar. 28, 2018) (Facebook has 214 million active users in the U.S.); the total U.S. population is 325.7 million.

28 ⁶ <https://www.wired.com/insights/2014/03/facebook-decade-big-data/>.

1 20. While Facebook “does not directly, for the most part, sell or share their detailed digital
2 consumer profiles to third parties, at least not in the form of unified dossiers,” it allows other companies
3 to “utilize” the data “without fully transferring it.”⁷ Facebook also allows other companies to use its
4 infrastructure to collect more data.

5 21. As persons share information with friends or family through the Facebook platform, the
6 data generated is used for ad targeting and generates massive revenue for Facebook—\$40 billion just
7 last year.

8 **A.**

9 22. Since 2004, Facebook has made several important adjustments to its platform that alter
10 the way it uses, or allows others to use, personal data.

11 23. When Facebook launched its ad platform in 2007, it allowed advertisers to target users
12 based on information they volunteered in their profiles.

13 24. In 2009, Facebook added the “Like” button and allowed advertisers to target users based
14 on their Likes. In addition, Facebook added a feature that allowed advertisers to target the Facebook
15 friends of people who had Liked or otherwise interacted with their brand.

16 25. In 2012, Facebook created a feature that allowed companies to upload their own lists of
17 e-mail addresses and phone numbers and have Facebook match this information to the customers’
18 Facebook accounts. Companies could then target, or exclude, subsets of these individuals based on
19 other information in Facebook’s possession. “Today companies can capture information about very
20 particular activities – such as specific webpage activities, swipes in a smartphone app, or types of
21 purchases – in real-time and tell Facebook to immediately find and target the persons who performed
22 these activities.”⁸

23 26. In 2014, Facebook started allowing advertisers to target users based on their behavior on
24 other websites. Facebook tracks users across any website that contains a “Like” button (e.g. “Click here
25 to Like us on Facebook”). If, for example, someone was, reading reviews about tents, Facebook would
26

27
28 ⁷ p. 11, http://crackedlabs.org/dl/CrackedLabs_Christl_CorporateSurveillance.pdf (italics removed).

⁸ p. 47, http://crackedlabs.org/dl/CrackedLabs_Christl_CorporateSurveillance.pdf.

1 let advertisers target that person as someone “interested in camping.”⁹

2 27. Around the same time, Facebook started allowing advertisers to target people based on
3 “Ethnic Affinity,” which can be used as a proxy for race.¹⁰ Individuals who “Like” numerous rap artists
4 might be “categorized as African-American.”¹¹

5 28. Beginning in 2013, Facebook partnered with several data brokers, including Acxiom and
6 companies later acquired by Oracle. By 2017, six data brokers provided Facebook with “audience
7 data,” the better to categorize and segment users.¹² Then, in 2018, after Cambridge Analytica’s use of
8 Facebook data was widely publicized, Facebook severed ties with data brokers.

9 **B.**

10 29. The Harvard academic Shoshana Zuboff has coined the term “surveillance capitalism” to
11 describe the “monetization of free behavioral data acquired through surveillance and sold on to entities
12 with an interest in your future behavior.”¹³ Under this form of capitalism, companies engage in
13 pervasive real-time surveillance and, “[b]ased on data-driven predictive analytics, personalization,
14 measurement, and testing, they aim to influence behavior at scale. In the background, consumers are
15 constantly evaluated, sorted, categorized, and ranked in order to treat them on a case-by-case basis as
16 best fits a company’s business interests.”¹⁴ “This personalized and dynamic form of behavioral nudging
17 gives surveillance corporations repeated opportunities to manipulate user behavior.”¹⁵

18 30. Unbeknownst to most Facebook users, predictive analysis can reveal previously
19 unknown information from seemingly impersonal data. According to a 2013 study by Cambridge
20 University’s Psychometrics Centre, an analysis of only Facebook Likes could predict a user’s skin color
21 (with 95% accuracy), sexual orientation (with 88% accuracy), and whether they were a Democrat or
22 Republican (with 85% accuracy). With a “high degree of accuracy,” researchers were also able to make
23 predictions about the person’s intelligence, and physical and mental health.¹⁶ Researchers could more
24

25 ⁹ <https://www.nytimes.com/interactive/2018/04/11/technology/facebook-sells-ads-life-details.html>.

26 ¹⁰ Id.

27 ¹¹ Id.

28 ¹² <https://www.facebook.com/business/a/facebook-partner-categories>.

¹³ <https://amp.theguardian.com/technology/2016/may/02/google-microsoft-pact-antitrust-surveillance-capitalism> (citing Shoshona Zuboff, *The Secrets of Surveillance Capitalism*, Frankfurter Allgemeine (May 3, 2016).

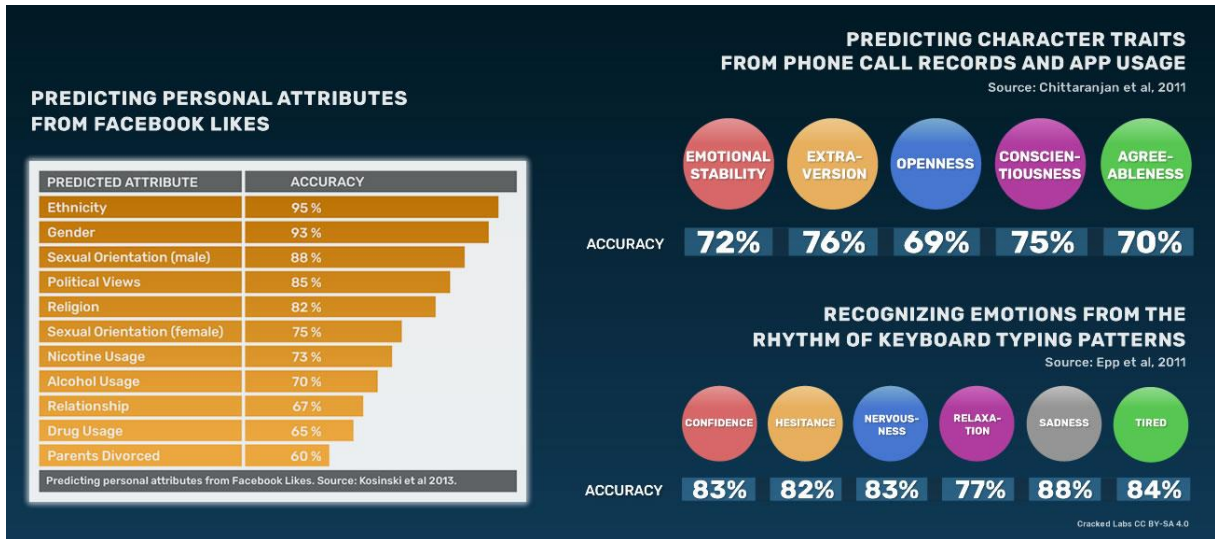
¹⁴ http://crackedlabs.org/dl/CrackedLabs_Christl_CorporateSurveillance.pdf.

¹⁵ <http://www.nybooks.com/daily/2018/04/12/reining-in-big-datas-robber-barons/>.

¹⁶ <http://www.pnas.org/content/110/15/5802>.

1 accurately predict a user’s personality than could a user’s Facebook friends or family, although the
 2 algorithm was slightly less accurate than users’ spouses.

3 *Analyzing Facebook likes, phone data, and typing patterns*



Source: <http://crackedlabs.org/en/corporate-surveillance>

15 31. Another study by Sandra Matz, a professor at Columbia Business School, used
 16 psychographic targeting on 3.5 million Facebook users. Matz analyzed users’ Facebook Likes to
 17 determine whether they were extraverted or introverted. Matz targeted extraverts on Facebook with an
 18 advertisement for makeup showing a woman at a crowded party, with the message “dance like no one
 19 is watching (but they totally are).”¹⁷ And she targeted introverts with an ad showing only a makeup
 20 brush, with the caption “beauty doesn’t have to shout.”¹⁸ The Facebook ads that used psychographic
 21 targeting got 40 percent more clicks and resulted in 50 percent more purchases.

22 32. Facebook has long understood, but has never adequately disclosed to users, that the data
 23 it collects through its platform allows it “to figure out your personal psychological susceptibilities and
 24 then charge advertisers to exploit them.”¹⁹ In fact, Facebook itself has regularly experimented on users.

25 33. In 2012, Facebook secretly manipulated the news feeds of 1.9 million users during the

26
 27 ¹⁷ <https://www.theverge.com/2018/3/20/17138854/cambridge-analytica-facebook-data-trump-campaign-psychographic-microtargeting>.

28 ¹⁸ Id.

¹⁹ <http://www.nybooks.com/daily/2018/04/12/reining-in-big-datas-robber-barons/>.

1 2012 United States congressional elections. It found that showing more “hard” news instead of personal
2 posts, such as baby photos, increased voter turnout.²⁰

3 34. That same year, Facebook conducted a “mood experiment” on almost 700,000 users that
4 “manipulat[ed] the amount of emotionally positive and negative posts in the users’ news feeds, which
5 influenced how many emotionally positive and negative messages the users posted themselves.”²¹

6 35. More recently, in 2017, “a leaked internal Facebook document revealed how the
7 platform provides an advertiser the opportunity to target 6.4 million young Australians in ‘moments
8 when young people need a confidence boost’ such as when they felt, ‘worthless,’ ‘insecure,’ ‘stressed,’
9 ‘defeated,’ ‘anxious,’ or like a ‘failure’ based on ‘internal Facebook data’ such as posts and photos.”²²

10 Although Facebook says this research was never used to target ads, it is reportedly building a
11 neuroscience lab, and it has publicly touted research about neuroscience and the ability of marketers to
12 “‘capitalize’ on ‘very important, highly personal and uniquely relevant moments’ of users.”²³

13 **C.**

14 36. These tactics have also been used in election campaigns. Most prominently, Cambridge
15 Analytica has used Facebook data to construct psychographic profiles of millions of people in the
16 United States without their consent or knowledge.

17 37. According to documents provided by whistleblower Christopher Wylie, Cambridge
18 Analytica first began to use Facebook data to build psychological profiles of users in 2014, with the aid
19 of Aleksandr Kogan, a professor of psychology in the U.K.²⁴ Kogan’s contract with Cambridge
20 Analytica says that Kogan will perform “data harvesting,” using “a pre-existing application functioning
21 under Facebook’s old [API] because “[n]ew applications are not able to access friend” data.²⁵

22 38. Kogan used his application, a personality quiz called “thisisyourdigitallife,” to collect
23 “data about the 270,000 people who installed it, along with data about their Facebook friends,” totaling

24 ²⁰ <https://www.motherjones.com/politics/2014/10/can-voting-facebook-button-improve-voter-turnout/>.

25 ²¹ <http://crackedlabs.org/en/corporate-surveillance>.

26 ²² p. 41, https://crackedlabs.org/dl/CrackedLabs_Christl_DataAgainstPeople.pdf.

27 ²³ Id.

28 ²⁴ p. 69, <https://www.parliament.uk/documents/commons-committees/culture-media-and-sport/Chris%20Wylie%20Background%20papers.pdf>; <https://techcrunch.com/2018/03/29/heres-cambridge-analyticas-plan-for-voters-facebook-data/>.

²⁵ p. 40, 84, <https://www.parliament.uk/documents/commons-committees/culture-media-and-sport/Chris%20Wylie%20Background%20papers.pdf>.

1 87 million people in all.²⁶

2 39. During the collection process, *The Guardian* reports, “[t]he scale of the data collection
3 ... was so large it triggered an automatic shutdown of the app’s ability to harvest profiles.”²⁷ But Kogan
4 had inside contacts at Facebook because he co-authored a study with two Facebook employees.²⁸
5 Kogan “spoke with an engineer” at Facebook and had his app up and running again “within a day or
6 two,” says *The Guardian*.²⁹

7 40. Christopher Wylie said that Cambridge Analytica “exploited Facebook to harvest
8 millions of people’s profiles. And [it] built models to exploit what [it] knew about them and target their
9 inner demons. That was the basis the entire company was built on.”³⁰ Cambridge Analytica used its
10 newly acquired Facebook data to construct psychological profiles on tens of millions of Americans,
11 giving them labels such as “neurotic introvert,” “religious extrovert,” “fair-minded liberal,” or “fan of
12 the occult.”³¹ “Those were among the psychological traits the firm claimed would provide a uniquely
13 powerful means of designing political messages.”³²

14 41. In 2015, *The Guardian* reported that “Ted Cruz’s presidential campaign is using
15 psychological data based on research spanning tens of millions of Facebook users, harvested largely
16 without their permission... As part of an aggressive new voter-targeting operation, Cambridge
17 Analytica ... is now using so-called ‘psychographic profiles’ of US citizens in order to help win Cruz
18 votes.”³³

19 42. In 2016, Cambridge Analytica began working for the Trump campaign.³⁴ Until the
20 hiring of Cambridge Analytica, *Vice* says, “Trump’s digital campaign had consisted of more or less one
21 person: Brad Parscale, a marketing entrepreneur and failed start-up founder who created a rudimentary
22 website for Trump for \$1,500.”³⁵ Cambridge Analytica helped turn digital marketing into what 60

23 ²⁶ <https://www.nytimes.com/2018/03/19/technology/facebook-data-sharing.html>; <https://www.wired.com/story/facebook-exposed-87-million-users-to-cambridge-analytica/>.

24 ²⁷ <https://www.theguardian.com/technology/2018/mar/17/facebook-cambridge-analytica-kogan-data-algorithm>.

25 ²⁸ <http://www.kbtx.com/content/news/Israel-investigating-Facebook-over-data-case-477645443.html>.

26 ²⁹ <https://www.theguardian.com/technology/2018/mar/17/facebook-cambridge-analytica-kogan-data-algorithm>.

27 ³⁰ <https://www.theguardian.com/news/2018/mar/17/cambridge-analytica-facebook-influence-us-election>.

28 ³¹ <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html>.

³² <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html>.

³³ <https://www.theguardian.com/us-news/2015/dec/11/senator-ted-cruz-president-campaign-facebook-user-data>.

³⁴ <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html>.

³⁵ https://motherboard.vice.com/en_us/article/mg9vvn/how-our-likes-helped-trump-win.

1 *Minutes* calls Trump’s “secret weapon.”³⁶

2 43. According to former Trump campaign officials, Cambridge Analytica “performed a
3 variety of services” for the campaign, including “designing target audiences for digital ads and fund-
4 raising appeals, modeling voter turnout, buying \$5 million in television ads and determining where Mr.
5 Trump should travel to best drum up support.”³⁷ Alexander Nix, CEO of Cambridge Analytica, says,
6 “Pretty much every message that Trump put out was data-driven.”³⁸ *Vice* reports that in the run-up to
7 the third presidential debate, “Trump’s team tested 175,000 different ad variations for his arguments ...
8 all via Facebook.”³⁹

9 44. Starting in July 2016, says *Vice*, “Trump’s canvassers were provided with an app with
10 which they could identify the political views and personality types of the inhabitants of a house. ...
11 Trump’s people only rang at the doors of houses that the app rated as receptive to his messages. The
12 canvassers came prepared with guidelines for conversations tailored to the personality type of the
13 resident.”⁴⁰ Cambridge Analytica used “psychometric profiling” to divide the “US population into 32
14 personality types,” reports *Vice*, and they “focused on just 17 states” that had swing voters most
15 receptive to Trump’s messaging.⁴¹ For example, Cambridge Analytica “discovered that a preference for
16 cars made in the US was a great indication of a potential Trump voter.”⁴² Cambridge Analytica also
17 helped Trump tailor his messages to find what “worked best and where,” which influenced “[t]he
18 decision to focus on Michigan and Wisconsin in the final weeks of the campaign.”⁴³

19 45. After Trump’s electoral victory, Cambridge Analytica’s CEO, Alexander Nix, boasted,
20 “We did all the research, all the data, all the analytics, all the targeting, we ran all the digital campaign,
21 the television campaign and our data informed all the strategy.”⁴⁴ And “another senior executive says
22

23 ³⁶ https://motherboard.vice.com/en_us/article/mg9vvn/how-our-likes-helped-trump-win;
24 <https://www.cbsnews.com/news/facebook-embeds-russia-and-the-trump-campaigns-secret-weapon/>.

25 ³⁷ <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html>.

26 ³⁸ https://motherboard.vice.com/en_us/article/mg9vvn/how-our-likes-helped-trump-win.

27 ³⁹ https://motherboard.vice.com/en_us/article/mg9vvn/how-our-likes-helped-trump-win.

28 ⁴⁰ https://motherboard.vice.com/en_us/article/mg9vvn/how-our-likes-helped-trump-win.

⁴¹ https://motherboard.vice.com/en_us/article/mg9vvn/how-our-likes-helped-trump-win.

⁴² https://motherboard.vice.com/en_us/article/mg9vvn/how-our-likes-helped-trump-win.

⁴³ https://motherboard.vice.com/en_us/article/mg9vvn/how-our-likes-helped-trump-win.

⁴⁴ <https://www.npr.org/sections/thetwo-way/2018/03/21/595470164/in-hidden-camera-expose-cambridge-analytica-executives-boast-of-role-in-trump-wi>.

1 the ‘defeat crooked Hillary’ advertising campaign was the brainchild of the firm.”⁴⁵ *Vice* says, “The
2 fact that Trump spent so little money may also be explained by the effectiveness of personality-based
3 advertising.”⁴⁶

4 46. During this time, Facebook failed to take appropriate corrective action, despite being
5 aware that Cambridge Analytica was using Facebook data in this manner. Although Facebook appears
6 to have corresponded with Cambridge Analytica and asked it to cease using the data, Facebook failed to
7 undertake an audit of Cambridge Analytica during these election campaigns.⁴⁷

8 47. Facebook’s failure to take action was typical, according to a former Facebook privacy
9 officer.⁴⁸ Sandy Parakilas, who worked at Facebook in 2011 and 2012, says he “led the team
10 responsible for data policy violations on Facebook App Platform.”⁴⁹ Parakilas says, “The company
11 cared little about protecting users’ data then, and the Cambridge Analytica story shows that hasn’t
12 changed.”⁵⁰

13 48. “At the time that Kogan was gathering data on behalf of Cambridge Analytica,”
14 Parakilas explains, “Facebook also allowed developers to access your friends’ data, even though those
15 friends had never agreed to connect to the app.”⁵¹ But “once the data passed from Facebook’s servers to
16 the developer, Facebook lost all insight into or control over how the data was used.”⁵² “To prevent
17 abuse, Facebook created a set of platform policies that forbade certain kinds of activity.”⁵³ But
18 Facebook’s enforcement was “lax.”⁵⁴ According to Parakilas, the reason was that “Facebook didn’t
19 want to make the public aware of huge weaknesses in its data security.”⁵⁵

20 49. Parakilas points out that Facebook didn’t even ban Cambridge Analytica or Aleksandr

21 ⁴⁵ <https://www.npr.org/sections/thetwo-way/2018/03/21/595470164/in-hidden-camera-expose-cambridge-analytica-executives-boast-of-role-in-trump-wi>.

22 ⁴⁶ https://motherboard.vice.com/en_us/article/mg9vvn/how-our-likes-helped-trump-win.

23 ⁴⁷ <https://www.theguardian.com/news/2018/mar/17/cambridge-analytica-facebook-influence-us-election>.

24 ⁴⁸ https://www.washingtonpost.com/opinions/i-worked-at-facebook-i-know-how-cambridge-analytica-could-have-happened/2018/03/20/edc7ef8a-2bc4-11e8-8ad6-fbc50284fce8_story.html.

25 ⁴⁹ https://www.washingtonpost.com/opinions/i-worked-at-facebook-i-know-how-cambridge-analytica-could-have-happened/2018/03/20/edc7ef8a-2bc4-11e8-8ad6-fbc50284fce8_story.html.

26 ⁵⁰ https://www.washingtonpost.com/opinions/i-worked-at-facebook-i-know-how-cambridge-analytica-could-have-happened/2018/03/20/edc7ef8a-2bc4-11e8-8ad6-fbc50284fce8_story.html.

27 ⁵¹ Id.

28 ⁵² Id.

⁵³ Id.

⁵⁴ Id.

⁵⁵ Id.

1 Kogan from the platform until March 16, 2018, “when whistleblowers and news stories forced” its
 2 hand.⁵⁶ And though Facebook maintains that Cambridge Analytica’s use of Facebook data violated its
 3 terms, Kogan disagrees that there was any violation of Facebook’s rules. Instead, he maintains that the
 4 terms of service for “This Is Your Digital Life” put Facebook on notice that this Facebook data could
 5 be sold.⁵⁷

6 **D.**

7 50. To date, Facebook is not able to say that the Cambridge Analytica experience is an
 8 outlier. After the revelations about Cambridge Analytica, according to *CNN*, Facebook CEO Mark
 9 “Zuckerberg said Facebook will review all apps that have been pulling large amounts of data about
 10 users since 2014 and earlier.”⁵⁸ “We’re going to review thousands of apps,” said Zuckerberg.⁵⁹ In
 11 subsequent congressional testimony, Zuckerberg changed the number to “tens of thousands” of apps.⁶⁰
 12 Zuckerberg said that “[t]his is something that in retrospect we clearly should have done, upfront.”⁶¹

13 51. Although Facebook has recently changed privacy settings, those settings control the
 14 sharing of certain data on an interpersonal level. But “what users cannot adjust with Facebook’s privacy
 15 settings is how the platform *itself* takes advantage of the rich digital profiles it stores about users.”⁶²

16 52. Facebook does not inform users of the scope of its personal and behavioral data
 17 analytics. According to *TechCrunch*, Facebook’s terms of service are “too long” and “written in
 18 impenetrable legalese, intentionally vague and hyper-qualified language that’s designed to make it
 19 impossible for you to understand.”⁶³ Facebook’s “Terms of Service” page contains links to 30 other
 20 pages, many of which contain additional terms and conditions.⁶⁴ For example, the “Terms of Service”
 21 page links to Facebook’s “Data Policy,” which itself contains another 22 links.⁶⁵ *TechCrunch* tried to

22 ⁵⁶ Id.

23 ⁵⁷ <http://fortune.com/2018/04/10/facebook-cambridge-analytica-what-happened/>; <https://www.thedailybeast.com/oops-mark-zuckerberg-surprised-to-learn-the-terms-of-service-for-your-digital-life>.

24 ⁵⁸ <http://money.cnn.com/2018/03/21/technology/facebook-changes-data-scandal/index.html?iid=EL>.

25 ⁵⁹ Id.

26 ⁶⁰ <https://nypost.com/2018/04/11/zuckerberg-facebook-auditing-tens-of-thousands-of-apps-after-scandal/>.

27 ⁶¹ <http://money.cnn.com/2018/03/21/technology/facebook-changes-data-scandal/index.html?iid=EL>.

28 ⁶² p. 7, https://crackedlabs.org/dl/CrackedLabs_Christl_DataAgainstPeople.pdf.

⁶³ <https://techcrunch.com/2015/08/21/agree-to-disagree/>.

⁶⁴ https://www.washingtonpost.com/news/the-switch/wp/2018/04/10/transcript-of-mark-zuckerbergs-senate-hearing/?utm_term=.9c5c8e65c15f.

⁶⁵ https://www.washingtonpost.com/news/the-switch/wp/2018/04/10/transcript-of-mark-zuckerbergs-senate-hearing/?utm_term=.9c5c8e65c15f.

1 count the total number of words spread across the various pages, but gave up after the word count hit
2 15,000.⁶⁶

3 53. What’s more, Facebook users do not reasonably expect that Facebook and third parties
4 are engaged in data collection, profiling, behavioral nudging, experimentation, and manipulation.
5 Researchers at *Digital Content Next* recently asked consumers about what types of information they
6 expected Facebook to collect and use in targeting them with advertising. Fifty-six percent said they
7 expected Facebook to collect data about their activities on Facebook and other applications it owns,
8 such as Instagram and WhatsApp.⁶⁷ But 61% said they didn’t expect Facebook “to track a person’s
9 usage of apps that Facebook does not own”; 65% did not “expect Facebook to buy personal information
10 from data companies and merge with a person’s online usage”; and 69% did not expect Facebook “to
11 collect data about a person’s location when a person is not using Facebook.”⁶⁸ When informed of
12 Facebook’s data collection practices, users “do *not* approve” of Facebook collecting this type of data
13 about them.⁶⁹

14 VI. CLASS ALLEGATIONS

15 54. Plaintiff brings this nationwide class action, pursuant to Rule 23(b)(2), 23(b)(3), and
16 23(c)(4) of the Federal Rules of Civil Procedure, individually and on behalf of all members of the
17 following Class:

18 All persons whose information or behavioral data was accessed, directly or indirectly, from the
19 Facebook platform by Cambridge Analytica or other entities without the person’s consent or
20 knowledge.

21 55. Excluded from the Class are the following individuals and/or entities: Defendants and
22 their parents, subsidiaries, affiliates, officers and directors, current or former employees, and any entity
23 in which Defendants have a controlling interest; all individuals who make a timely election to be
24 excluded from this proceeding using the correct protocol for opting out; any and all federal, state or
25 local governments, including but not limited to their departments, agencies, divisions, bureaus, boards,

26 _____
27 ⁶⁶ <https://techcrunch.com/2015/08/21/agree-to-disagree/>.

⁶⁷ <http://www.niemanlab.org/2018/04/jason-kint-here-are-5-ways-facebook-violates-consumer-expectations-to-maximize-its-profits/>.

28 ⁶⁸ Id.

⁶⁹ Id.

1 sections, groups, counsels and/or subdivisions; and all judges assigned to hear any aspect of this
2 litigation, as well as their immediate family members.

3 56. Plaintiff reserves the right to modify or amend the definition of the proposed Class
4 before the Court determines whether certification is appropriate.

5 57. Numerosity. The Class is so numerous that joinder of all members is impracticable.
6 There are more than 166 million Facebook account holders in the United States. As discussed above,
7 the number of individuals whose information or behavioral data was downloaded by third party apps is
8 likely in the tens or even hundreds of millions and is identifiable and ascertainable based on Facebook's
9 records.

10 58. Commonality. There are questions of law and fact common to the Class, which
11 predominate over any questions affecting only individual Class members. These common questions of
12 law and fact include, without limitation:

- 13 a. Whether Facebook represented that it would safeguard Plaintiff's and Class members'
14 personal information and not disclose it without consent;
- 15 b. Whether Facebook was aware of Cambridge Analytica's improper collection of
16 Plaintiff's and Class members' personal information;
- 17 c. Whether Facebook owed a legal duty to Plaintiff and the Class to exercise due care in
18 collecting, storing, safeguarding, and/or obtaining their personal information;
- 19 d. Whether Facebook breached a legal duty to Plaintiff and the Class to exercise due care
20 in collecting, storing, safeguarding, and/or obtaining their personal information;
- 21 e. Whether Facebook's conduct was an unlawful or unfair business practice under Cal.
22 Bus. & Prof. Code § 17200, et seq.;
- 23 f. Whether Defendants intruded upon Plaintiff and Class members' seclusion, or converted
24 their information or behavioral data;
- 25 g. Whether Plaintiff and the Class are entitled to equitable relief, including, but not limited
26 to, injunctive relief and restitution;
- 27 h. Whether Plaintiff and the other Class members are entitled to actual, statutory, or other
28 forms of damages, and other monetary relief.

1 provide any false personal information on Facebook...⁷¹

2 68. In exchange for users' providing real information, Facebook promises to protect their
3 data.

4 a. The SSR says, "You own all of the content and information you post on Facebook, and
5 you can control how it is shared... We require applications to respect your privacy..."⁷²

6 b. The SSR says, "If [developers] collect information from users, [they] will: obtain their
7 consent..."⁷³

8 c. The SSR says, "[Developers] will not directly or indirectly transfer any data [they]
9 receive from us to (or use such data in connection with) any ad network, ad exchange,
10 data broker, or other advertising related toolset, even if a user consents to that transfer or
11 use."

12 d. The Facebook Principles, incorporated by reference in the SSR, say, "People should own
13 their information. They should have the freedom to share it with anyone they want and
14 take it with them anywhere they want, including removing it from the Facebook Service.
15 People should have the freedom to decide with whom they will share their
16 information..."⁷⁴

17 e. Facebook's Platform Policies, incorporate by reference in the SSR, say, "We can audit
18 [a developer's] app to ensure it is safe and does not violate our Terms."⁷⁵

19 69. Plaintiff and Class members did everything required of them under the contract or were
20 excused from doing so, and all conditions for Facebook's performance are met.

21 70. Facebook breached its contract with its users by, among other things: allowing
22 developers to download friends' data without the friend's knowledge or consent; failing to enact proper
23 safeguards to ensure that developers did not share users' data with data brokers or other third parties;
24 failing to audit applications that accessed suspicious amounts of user data; failing to adequately ensure
25 that developers or third parties who violated Facebook's Terms deleted the data they had obtained and
26

27 ⁷¹ <https://web.archive.org/web/20141127001916/https://www.facebook.com/terms.php>.

28 ⁷² <https://web.archive.org/web/20141127001916/https://www.facebook.com/terms.php>.

⁷³ <https://web.archive.org/web/20141127001916/https://www.facebook.com/terms.php>.

⁷⁴ <https://web.archive.org/web/20141127152204/https://www.facebook.com/principles.php>.

⁷⁵

1 were blocked from the Facebook platform; and embedding teams within election campaigns, including
2 in the Trump campaign, to teach them how to influence elections using Facebook.

3 71. Facebook also breached its duty to perform with reasonable care. Facebook failed to
4 implement adequate levels of privacy and security protections to safeguard users' data.

5 72. Facebook also breached its duty of good faith and fair dealing. Facebook failed to make
6 a good faith effort to safeguard users' data and dealt unfairly with Plaintiff and Class members, by
7 inadequately securing their information.

8 73. Facebook users did not receive the bargained-for level of privacy or security.

9 74. As a result of Facebook's breach of contract, Plaintiff and Class members suffered
10 actual damages, including (but not limited to) loss of benefit of the bargain, exposure to a heightened
11 and imminent risk of fraud or identity theft, loss of value of their personal information, and the cost of
12 taking preventative measures.

13 **COUNT II: INTRUSION ON SECLUSION**

14 *(against all Defendants)*

15 75. Plaintiff incorporates all allegations as if fully set forth herein.

16 76. Plaintiff and Class members have reasonable expectations of privacy in their online
17 behavior.

18 77. The reasonableness of such expectations of privacy is supported by Facebook's
19 statements in its SSR and its unique position to monitor Plaintiff's, Class members', and third parties'
20 behavior on its platform. It is further supported by the surreptitious, highly-technical, and non-intuitive
21 nature of the way in which app developers could access and download friends' data, without their
22 knowledge or consent.

23 78. Facebook intentionally intruded on and into Plaintiff's and Class members' solitude,
24 seclusion, and private affairs. Facebook intentionally designed its platform—and established
25 commensurate policies and procedures governing such platform—to enable app developers to access as
26 much user data as possible, without the need for authorization from users. Facebook intended to receive
27 a financial benefit from this broad access. Facebook also intentionally established a pattern and practice
28 of lax enforcement of the policies and procedures governing its platform because it benefited from

1 violators continuing to access the Facebook platform.

2 79. Cambridge Analytica also intentionally intruded on and into Plaintiff's and Class
3 members' solitude, seclusion, and private affairs. Cambridge Analytica intentionally gained access to
4 Plaintiff's and Class members information and behavioral data from the Facebook platform, without
5 their knowledge or consent. Cambridge Analytica intentionally used this information to construct
6 psychological profiles, craft and tailor messaging to Plaintiff and Class members, and influence
7 elections.

8 80. These intrusions are unreasonable and highly offensive to a reasonable person. This is
9 evidenced by, among other things, the immense outcry following the revelation of these acts and
10 practices—not only from the public, but also from regulators and legislators. Further, the extent of the
11 intrusion cannot be fully known, as the nature of privacy invasion involves sharing Plaintiff's and Class
12 members' information and behavioral data with potentially countless third parties, known and
13 unknown, for undisclosed and potentially unknowable purposes, in perpetuity. Also supporting the
14 highly offensive nature of Defendants' conduct is the fact that Defendants' principal goal was to
15 surreptitiously share Plaintiff's and Class members' data for their own enrichment, and the length of
16 time before Facebook attempted to notify Plaintiff and Class members that their data had been
17 harvested by third parties.

18 81. Plaintiff and Class members did not consent or invite Defendants' intrusions.

19 82. Plaintiff and Class members were harmed by these intrusions into their private affairs.

20 83. Defendants' actions and conduct complained of herein were a substantial factor in
21 causing the harm suffered by Plaintiff and Class members.

22 84. As a result of Defendants' actions, Plaintiff and Class members seek nominal and
23 punitive damages in an amount to be determined at trial. Plaintiff and Class members seek punitive
24 damages because Defendants' actions—which were malicious, oppressive, and willful—were
25 calculated to injure Plaintiff and made in conscious disregard of Plaintiff's rights. Punitive damages are
26 warranted to deter Defendants from engaging in future misconduct.

27 /

28 /

1 **COUNT III: INVASION OF CONSTITUTIONAL RIGHT OF PRIVACY**

2 *(against Facebook)*

3 85. Plaintiff incorporates all allegations as if fully set forth herein.

4 86. Article I, section 1 of the California Constitution states: “All people are by nature free
5 and independent and have inalienable rights,” including “obtaining safety, happiness, and privacy.”

6 87. “The right to privacy in the California Constitution sets standards similar to the common
7 law tort of intrusion.” *Hernandez v. Hillsides, Inc.*, 47 Cal. 4th 272, 287 (2009). Plaintiff specifically
8 incorporates by reference the allegations in Count II.

9 88. Liability against a private party will lie for invading the constitutional right to privacy
10 where: (1) the plaintiffs “possess a legally protected privacy interest,” such as “conducting personal
11 activities without observation, intrusion, or interference,” as determined by “established social norms”;
12 (2) the plaintiffs had a reasonable expectation of privacy, which rests on “customs, practices, and
13 physical settings surrounding particular activities”; (3) the intrusion is so serious in “nature, scope, and
14 actual or potential impact as to constitute an egregious breach of the social norms.” *Hernandez v.*
15 *Hillsides, Inc.*, 47 Cal. 4th 272, 287 (2009).

16 89. Here, Plaintiff and the Class possess a legally protected privacy interest, including
17 conducting personal activities without observation, intrusion, or interference, whether those activities
18 be interacting with friends or family, writing about one’s innermost thoughts, or sharing intimate
19 photos or information with friends or loved ones.

20 90. Plaintiff and Class members have reasonable expectations of privacy in their online
21 behavior on Facebook. The reasonableness of such expectations of privacy is supported by Facebook’s
22 statements in its SSR and its unique position to monitor Plaintiff’s, Class members’, and third parties’
23 behavior on its platform. It is further supported by the surreptitious, highly-technical, and non-intuitive
24 nature of the way in which app developers could access and download friends’ data, without their
25 knowledge or consent.

26 91. Facebook’s observation, intrusion, and interference with Plaintiff and Class members’
27 activities on the social networking service constitute an invasion of privacy that is so serious in nature,
28 scope, and actual or potential impact that it constitutes an egregious breach of social norms.

1 92. The nature of the intrusion was substantial. Facebook shared intimate details about
2 people’s lives, such as their location, likes, religion, and relationship status, with any application
3 developer who requested access, without even notifying these individuals that the app developer had
4 obtained their information via a friend. When Facebook learned of misuse of its platform and data
5 harvesting, it failed to take reasonable steps to secure users’ information and behavioral data.

6 93. The scope of the intrusion was substantial, affecting 87 million users by Facebook’s
7 estimate and involving up to 14 different Facebook profile elements.

8 94. The actual or potential impact is substantial. People’s Facebook information can be used
9 to create psychographic profiles that can influence elections, be used in credit decisions, or otherwise
10 affect their lives in significant ways. Users who had data harvested also face heightened risk of identity
11 theft, and do not even know how many apps Facebook shared their information with.

12 95. Facebook’s conduct egregiously violated social norms that do not permit one person to
13 share another person’s information or behavioral data without their knowledge or consent.

14 96. Plaintiff and Class members were harmed by these intrusions into their private affairs.

15 97. Facebook’s actions and conduct complained of herein were a substantial factor in
16 causing the harm suffered by Plaintiff and Class members.

17 **COUNT IV: STORED COMMUNICATIONS ACT**

18 *(against all Defendants)*

19 98. Plaintiff incorporates all allegations as if fully set forth herein.

20 99. Plaintiff, individually and on behalf of Class members, asserts violations of the Stored
21 Communications Act, 18 U.S.C. §§ 2702(a), for Defendants’ unlawful gathering and/or disclosure of
22 the content of Plaintiff’s and Class members’ communications to third parties, including but not limited
23 to SCL Group, Cambridge Analytica, Aleksandr Kogan, and Global Science Research.

24 100. The Stored Communications Act (SCA) prohibits a person from intentionally accessing
25 without (or in excess of) authorization a facility through which an electronic communications service is
26 provided and thereby obtaining an electronic communication while it is in “electronic storage.”

27 101. The SCA defines “electronic storage” as “any temporary, intermediate storage of a wire
28 or electronic communication incidental to the electronic transmission thereof; and any storage of such

1 communication by an electronic communication service for purposes of backup protection of such
2 communication.”

3 102. The servers Facebook uses to provide its electronic communications service to Facebook
4 users are a “facility” within the meaning of the SCA.

5 103. Defendants are “persons” within the meaning of the SCA.

6 104. Facebook’s provision of ‘users’ electronic communications, or information derived
7 therefrom, to third parties exceeded authorization.

8 105. Cambridge Analytica’s obtaining users’ electronic communications, or information
9 derived therefrom, exceeded authorization.

10 106. Because of the architecture of Facebook’s servers, the sharing of information among
11 Facebook users results in and constitutes interstate data transmissions.

12 107. Pursuant to 18 U.S.C. § 2707(c), Plaintiff and Class members are entitled to:

- 13 a. minimum statutory damages of \$1,000 per person;
- 14 b. punitive damages;
- 15 c. costs; and
- 16 d. reasonable attorneys’ fees.

17 **COUNT V: NEGLIGENCE**

18 *(against Facebook)*

19 108. Plaintiff incorporates all allegations as if fully set forth herein.

20 109. Facebook owed a duty to Plaintiff and the Class to exercise reasonable care in obtaining,
21 using, and protecting their information, and keeping it from being compromised, lost, stolen, misused,
22 and or/disclosed to unauthorized parties.

23 110. Facebook also owed a duty to Plaintiff and the Class not to use their behaviors, social
24 relationships, and intimate details in contexts and for purposes completely different from those for
25 which this information is provided.

26 111. Facebook knew that the information and behavioral data of Plaintiff and the Class was
27 personal and sensitive information that is valuable, or that its real-time, pervasive surveillance allowed
28 it to determine personal psychological susceptibilities that users had not disclosed.

1 112. Given the nature of the information, Facebook had a special relationship with Plaintiff
2 and the Class. Plaintiff and the Class signed up for Facebook's services and agreed to provide their
3 information with the understanding that Facebook would undertake safeguards, would inform Plaintiff
4 and the Class of any privacy intrusions, and would not use the information beyond its intended purpose.

5 113. Facebook failed to do so by engaging in surveillance, analysis, and modification of
6 behavior; and by allowing Cambridge Analytica and other third parties to, without notice or permission,
7 obtain Plaintiff's and Class members' information.

8 114. Facebook also breached its duties by failing to adopt, implement, and maintain adequate
9 measures to safeguard users' information.

10 115. Lastly, Facebook breached its duty to timely disclose that Plaintiff and the other Class
11 members' information was obtained or used for behavioral and predictive analytics.

12 116. But for Facebook's wrongful and negligent breach of its duties owed to Plaintiff and the
13 Class, their information would not have been improperly used by Facebook or disclosed to Cambridge
14 Analytica and other third parties. Facebook's negligence was a direct and proximate cause of the
15 misuse and disclosure of Plaintiff and Class members' information, resulting in damages.

16 117. The injury and harm suffered by Plaintiff and the Class members was the reasonably
17 foreseeable result of Facebook's failure to exercise reasonable care in collecting and safeguarding
18 Plaintiff's and the other Class members' information.

19 **COUNT VI: CONVERSION**
20 *(against all Defendants)*

21 118. Plaintiff incorporates all allegations as if fully set forth herein.

22 119. Plaintiff and Class members were the owners and possessors of their information and
23 behavioral data. As a result of Defendants' wrongful conduct, Defendants have interfered with the
24 Plaintiff's and Class members' rights to possess and control such property, to which they had a superior
25 right of possession and control at the time of conversion.

26 120. As a direct and proximate result of Defendants' conduct, Plaintiff and Class members
27 suffered injury, damage, loss, or harm, and therefore seek compensatory damages.

28 121. In converting Plaintiff's and Class members' information and behavioral data,

1 Defendants have acted with malice, oppression and in conscious disregard of Plaintiff's and Class
2 members' rights. Plaintiff, therefore, seeks an award of punitive damages on behalf of the Class.

3 **COUNT VII: VIOLATION OF UNFAIR COMPETITION LAW (UCL)**

4 *(against Facebook)*

5 122. Plaintiff incorporates all allegations as if fully set forth herein.

6 123. California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, prohibits "unfair
7 competition," which includes "any unlawful, unfair or fraudulent business act or practice."

8 124. A business act or practice is "unfair" when it offends an established public policy or
9 when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to
10 consumers.

11 125. Facebook engaged in business acts and practices that are immoral, unethical, oppressive,
12 unscrupulous, and substantially injurious to consumers by, among other things: allowing developers to
13 download friends' data without the friend's knowledge or consent; failing to enact proper safeguards to
14 ensure that developers did not share users' data with data brokers or other third parties; failing to audit
15 applications that accessed suspicious amounts of user data; failing to adequately ensure that developers
16 or third parties who violated Facebook's Terms deleted the data they had obtained and were blocked
17 from the Facebook platform; and embedding teams within election campaigns, including in the Trump
18 campaign, to teach them how to influence elections using Facebook. The harms from these business
19 acts and practices outweigh any potential utility.

20 126. Facebook's business acts and practices offend established public policies that are
21 tethered to specific constitutional, statutory, and/or regulatory provisions, such as the goal of protecting
22 privacy in Article I, Section I of the California Constitution, and the legislatively declared policy of
23 protecting data in the Customer Record Act ("CRA"), Cal. Civ. Code § 1798.81.5; Online Privacy
24 Protection Act ("OPPA"), Cal. Bus. & Prof. Code § 22576; and the Information Practices Act ("IPA"),
25 Cal. Civ. Code § 1798, et seq.

26 127. A business act or practice is "unlawful" when it is proscribed by some other statute,
27 regulation, or constitutional provision.

28 128. Facebook engaged in business acts or practices that were proscribed by law, including

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- action;
- c. Appropriate declaratory relief against Defendants;
- d. Preliminary and permanent injunctive relief against Defendants;
- e. An award of all applicable statutory damages;
- f. An award of reasonable attorneys' fees and other litigation costs reasonably incurred;
- and
- g. Any and all other relief to which Plaintiff and the Class may be entitled.

VIII. DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury for all issues so triable.

Dated: April 16, 2018

/s/ Eric H. Gibbs

GIBBS LAW GROUP LLP
Eric H. Gibbs (SBN 178658)
Andre M. Mura (SBN 298541)
Aaron Blumenthal (SBN 310605)
505 14th Street, Ste. 1110
Oakland, CA 94612
Telephone: 510-350-9700
Facsimile: 510-350-9701
ehg@classlawgroup.com
amm@classlawgroup.com
ab@classlawgroup.com