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18 SIX4THREE, LLC, a Delaware
19 limited liability company

20 SUPERIOR COURT OF CALIFORNIA
21 COUNTY OF SAN MATEO

22 SIX4THREE, LLC, a Delaware limited
23 liability company,

24 Plaintiff,

25 v.

26 FACEBOOK, INC., a Delaware corporation;
27 MARK ZUCKERBERG, an individual;
28 CHRISTOPHER COX, an individual;
JAVIER OLIVAN, an individual;
SAMUEL LESSIN, an individual;
MICHAEL VERNAL, an individual;
ILYA SUKHAR, an individual; and
DOES 1 through 50, inclusive,

Defendants.

Case No. CIV 533328

Assigned For All Purposes To
Hon. Marie S. Weiner, Dept. 2

**FIFTH AMENDED COMPLAINT OF
PLAINTIFF, SIX4THREE, LLC, FOR
INJUNCTION AND DAMAGES**

HEARING DATE:
HEARING TIME:
DEPARTMENT 2 (Complex Civil)
JUDGE: Hon. Marie S. Weiner
FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019



1 Plaintiff, Six4Three, LLC, alleges as follows:

2 1. This matter concerns a series of fraudulent and anti-competitive schemes designed
3 and effectuated by Facebook Chief Executive Officer Mark Zuckerberg (“Zuckerberg”) with the
4 intention of deliberately misleading tens of thousands of software companies into developing
5 applications that generated substantial user growth and revenues for Facebook to help it grow
6 from 20 million active users in 2007 to over 1.6 billion by 2016. From May 2007 until at least
7 May 2015, Facebook executed an anti-competitive bait-and-switch scheme in which it engaged in
8 a campaign of misrepresentations, partial disclosures, and false enticements to Developers, like
9 Plaintiff Six4Three, LLC (“643”), to induce them to invest capital and resources in building
10 applications on Facebook’s operating system (“Facebook Platform”). These misrepresentations
11 and partial disclosures, made in the form of official statements, announcements, videos and
12 policies announced by Zuckerberg and other Facebook executives and which Facebook posted on
13 its official website, as well as training sessions, conferences, hackathons and other events,
14 represented that Developers would have the opportunity to build a business and distribute their
15 applications organically; to compete on a level and fair playing field; and to access the data
16 offered in Facebook Platform on terms equal to all other companies and to Facebook itself. These
17 representations and partial disclosures around equal access and a level playing field were made
18 repeatedly over seven years in private and public settings, such as official press releases and
19 announcements on Facebook’s website, Developer training sessions managed by Facebook
20 employees, and conferences, such as Facebook’s annual Developer conference, F8. These
21 representations and partial disclosures were widely known in the software community, and 643
22 relied upon them when deciding whether to build a business on Facebook Platform.

23 2. These misrepresentations and partial disclosures fraudulently induced tens of
24 thousands of software companies, including 643 (“Developers”), to enter into identical adhesion
25 contracts with Facebook that placed a host of costly obligations and conditions on Developers in
26 exchange for access to Facebook Platform’s social data (known as the “Graph API,” “Open
27 Graph,” or “Social Graph”). Access to the Graph API enabled Developers to build more useful

1 applications that generated increased user engagement and revenues for both Developers and
2 Facebook, as well as the opportunity for Developers to grow their applications organically due to
3 features Facebook offered that made Facebook users prospective customers of Developer
4 applications without requiring that the Developer purchase advertisements. Upon information and
5 belief, Facebook at no time provided access to the Graph API on an equal basis, but rather offered
6 large companies unfair competitive advantages and special access to data in exchange for
7 unrelated advertising purchases or other in-kind consideration at the expense of small or new
8 companies attempting to compete in Facebook's operating system.

9 3. Upon information and belief, at Zuckerberg's personal direction, Facebook used
10 its Platform as a weapon to gain leverage against competitors in a host of ways, threatening to
11 shut down access to publicly available data to any company that crossed Facebook's radar in a
12 wide range of circumstances, including threats to shut down data access: unless the company sold
13 to Facebook for a purchase price below their fair market value; unless the company purchased
14 large amounts of unrelated advertising with Facebook; unless the company transferred intellectual
15 property over to Facebook; or unless the company fed all of its data back to Facebook, where it
16 would then be available to the company's competitors, placing the company's business at great
17 risk. Upon information and belief, at the personal direction of Zuckerberg, Facebook took full
18 advantage of its incentives in serving as both the referee of and largest participant in one of the
19 world's largest software economies and, consequently made a series of partial disclosures and
20 misrepresentations that irreparably damaged tens of thousands of software applications and
21 businesses to unjustly enrich Facebook and its executives.

22 4. Further, upon information and belief, in 2012, Zuckerberg decided that it would be
23 in Facebook's best interest to no longer compete with many Developers and to shut down their
24 businesses by restricting their access to dozens of APIs containing the most valuable Graph API
25 data, including the full friends list, friends permissions, newsfeed APIs, and other data types
26 ("Graph API Data") upon which 643's business depended. Upon information and belief, working
27 in concert with other Facebook executives and employees and other large companies that were
28

1 close partners, Zuckerberg implemented a plan to deny access to many applications on Facebook
2 Platform on the primary or exclusive basis that these applications were competitive with current
3 or future products offered by Facebook or Facebook's close partners. Upon information and
4 belief, Defendants' anti-competitive conduct was undertaken in concert with other large
5 companies to oligopolize various software markets that Defendants continued to represent would
6 operate on fair and equal terms.

7 5. Upon information and belief, Zuckerberg and other Facebook executives and
8 employees actively, intentionally, recklessly, maliciously, oppressively, fraudulently and/or
9 negligently concealed this decision to restrict Graph API Data from Developers, the public and
10 internal employees while continuing to make misrepresentations and partial disclosures that
11 enticed Developers to make investments in Facebook Platform until at least April 30, 2014 and, in
12 643's case, until January 20, 2015, notwithstanding that Facebook had a duty to disclose this
13 material fact that applications relying on Graph API Data would no longer function and that any
14 investments made by Developers in such applications after the middle of 2012 would be
15 irreparably damaged.

16 6. Facebook had a duty to disclose for a number of independent reasons, including:
17 its standard adhesion contract which it enters into with all users and Developers (the "SRR" or
18 "Agreement") and which specifies the commercial terms of a Developer's integration; the fact
19 that Facebook and Developers shared confidential and highly sensitive and private personal
20 information of consumers under the Agreement; the fact that Developers were required to share
21 their source code and other confidential intellectual property with Facebook at Facebook's
22 request under the Agreement; and the fact that Facebook made partial disclosures of fact to the
23 public and Developers regarding how it collects, stores, and transmits user data while omitting
24 material facts that would undermine and often contradict its partial disclosures. Facebook's duty
25 to disclose also arises out of the fact that the Agreement is the single most entered-into contract in
26 human history, with over 2 billion people and tens of millions of businesses entrusting Facebook
27

1 to manage their confidential, personal and private information under the terms of the Agreement,
2 and therefore greatly implicates the public interest.

3 7. Upon information and belief, beginning in 2012 and continuing until 2015, at
4 Zuckerberg's personal direction, Facebook executives instructed their subordinates to identify
5 categories of applications that would be considered competitive and to develop a plan to remove
6 access to critical data necessary for these applications to function, thereby eliminating
7 competition across entire categories of software applications, including photo-sharing
8 applications like the one 643 had begun building in December 2012, after Zuckerberg had already
9 decided to restrict access to the Graph API Data necessary for 643's technology to function.

10 8. Upon information and belief, Facebook actively, maliciously, oppressively and
11 fraudulently concealed the fact had that it would be restricting access to the Graph and continued
12 to entice Developers to make such investments for at least two years and potentially longer. Had
13 Facebook disclosed this fact within a reasonable time after making its decision, 643 would never
14 have made investments of capital and resources in Facebook Platform. Instead, Facebook unjustly
15 enriched itself through this fraudulent and anti-competitive conduct by enticing investments that
16 generated revenues for Facebook with full knowledge that those investments would be irreparably
17 damaged.

18 9. Further, upon information and belief, while actively suppressing this material
19 information and continuing to entice companies to invest in building applications for Facebook
20 Platform, Zuckerberg instructed certain Facebook executives to require or encourage their
21 subordinates to engage in a number of collusive and anti-competitive schemes with other large
22 companies. The schemes involved Facebook offering these companies unfair advantages via
23 special data access in various software markets in exchange for unrelated advertising payments
24 and/or other forms of cash or in-kind consideration that benefited Facebook. In doing so,
25 Facebook and these other large companies held hostage data that Facebook previously promised
26 would be available to all companies on neutral and equal terms to the systematic disadvantage of
27 small or new companies, including 643, that had been competing in Facebook's purportedly fair

1 and neutral operating system. Smaller companies like 643 could no longer participate in one of
2 the largest application and advertising economies globally, providing an immense advantage to
3 large companies that combined and conspired with Facebook to control Graph API data that
4 Facebook for years promised would be accessible on equal terms. Upon information and belief,
5 certain Facebook executives actively encouraged their subordinates to conspire with large
6 companies to offer them special access to data in exchange for unrelated cash payments in
7 advertising expenditures or other in-kind consideration of financial benefit to Facebook. Upon
8 information and belief, the conduct of the Facebook executives who participated in these schemes
9 was undertaken in combination and concert with other large companies who benefited from the
10 decision to restrict data access and eliminate competition in various software markets.

11 10. Finally, upon information and belief, beginning in 2013 and coalescing around
12 February 2014, Zuckerberg concocted and disseminated a completely fabricated narrative to mask
13 the deceptive and anti-competitive schemes that Zuckerberg and the other Facebook executives
14 had decided upon and begun implementing in 2012. This fabricated narrative centered on the fact
15 that the data being shut off to tens of thousands of smaller software companies was rarely used
16 and/or violated user trust and control over their data. Upon information and belief, these
17 fabricated reasons for shutting off data critical to the functioning of tens of thousands of
18 applications played no role in the actual decisions made by Zuckerberg and ratified and
19 implemented by other Facebook executives.

20 11. Further, once 643 entered into the Agreement with Facebook, Facebook had a duty
21 to disclose material information, including the fact that Zuckerberg had already decided to shut
22 down data access before 643 raised capital or entered into the Agreement with Facebook.
23 Facebook provided notices to 643 via email many dozens of times between December 2012 and
24 January 2015, and yet not a single communication from Facebook put 643 on notice of this
25 material information that had already by 2012 made it impossible for 643 to recoup its
26 investment. Upon information and belief, Facebook intentionally withheld and actively concealed
27 this information and only made partial disclosures of this information to which it had exclusive
28

1 knowledge in order to unjustly enrich Facebook and its executives, mitigate potential legal
2 liability and avoid negative press. Facebook's partial disclosures of material information
3 exclusively in its own possession fraudulently induced 643 to enter into contract with Facebook
4 and build its business on Facebook Platform.

5 12. Upon information and belief, Facebook, at Zuckerberg's personal direction,
6 deliberately suppressed material information and shared only partial information in Zuckerberg's
7 April 30, 2014 F8 announcement, causing further harm to 643, in a malicious and fraudulent
8 attempt to cover up the bait-and-switch schemes. For instance, Zuckerberg partially disclosed
9 that Facebook was removing the Graph API Data, but failed to share the material fact that the
10 data was not in fact being removed to everyone but was instead being privatized and made
11 available to certain companies at the great expense of all others.

12 13. Upon information and belief, Zuckerberg and certain other Facebook executives
13 conspired with and instructed their subordinates to conspire with other companies to engage in
14 fraudulent bait-and-switch schemes and repeatedly acted negligently, fraudulently and
15 maliciously in violation of California law to the detriment of consumers and tens of thousands of
16 small software companies, whose investments unjustly enriched Facebook, Zuckerberg and the
17 Facebook executives who conspired and actively participated in these schemes. The alleged
18 conduct of Zuckerberg and the other Facebook executives amounts to a classic bait-and-switch
19 tactic barred by California's Unfair Competition Law.

20 14. Around the time Zuckerberg made this decision to engage in the alleged fraudulent
21 and anti-competitive schemes, Facebook's stock price had dropped by more than half from its
22 initial IPO in May 2012, reaching a low of \$37 billion in September 2012. Zuckerberg personally
23 lost approximately \$10 billion in the period during which he decided to implement the fraudulent
24 and anti-competitive schemes. After Zuckerberg decided upon and implemented the alleged
25 fraudulent and anti-competitive schemes, the downward trajectory of Facebook's stock reversed
26 course and began its rapid climb to a \$400 billion market capitalization as of March 10, 2017, a
27 ten-fold increase from the low it had reached prior to Zuckerberg engaging in the alleged conduct.

1 Upon information and belief, Zuckerberg and certain other Facebook executives were greatly
2 enriched as a result of the alleged conduct on the order of millions or billions of dollars. The
3 alleged conduct was a substantial factor in the turnaround of Facebook's stock price and the
4 growth of its business.

5 15. Upon information and belief, Mark Zuckerberg was the Chief Executive Officer of
6 Facebook, Inc. during the time over which the alleged conduct occurred and personally made the
7 decisions comprising the alleged conduct, including: (1) the decision to use Facebook Platform as
8 a weapon of leverage in various bait-and-switch schemes to unjustly enrich Facebook and certain
9 of its executives; (2) the decision to fraudulently, negligently, intentionally, maliciously and
10 oppressively misrepresent Facebook's plans regarding Facebook Platform before and after
11 Facebook had already decided to restrict Graph API Data around in 2012; (3) the decision to
12 actively conceal material information and make only partial disclosures of material facts to tens
13 of thousands of companies, including 643, for almost two years, and potentially longer,
14 notwithstanding that Facebook was under a duty to disclose other material facts that entirely
15 undermined and contradicted its partial disclosures; (4) the decision to conspire with large
16 companies to restrict access to data that Facebook promised for seven years would be available to
17 all companies on neutral and equal terms in exchange for large cash payments in advertising
18 and/or other in-kind consideration that greatly benefited Facebook; and (5) the decision in 2013
19 and early 2014 to concoct an entirely fabricated narrative in order to mask Facebook's true
20 intentions around its deceptive and anti-competitive schemes.

21 16. Upon information and belief, Christopher Cox was the VP Product and/or Chief
22 Product Officer of Facebook, Inc. during the period in question and was responsible for deciding
23 upon and implementing key components of Zuckerberg's fraudulent and anti-competitive
24 schemes. Cox actively approved, participated, ratified, directed and acquiesced in the conspiracies
25 and schemes alleged herein, including directing subordinates to increasingly expand the definition
26 of competitive applications whose access to data would be removed.

1 PARTIES

2 21. Plaintiff 643 is a Delaware Limited Liability Corporation with a principal place of
3 business at 535 Mission Street, 14th Floor, San Francisco, California.

4 22. Upon information and belief, Defendant Facebook, Inc., is a Delaware Corporation
5 with a principal place of business at One Hacker Way, Menlo Park, California.

6 23. Upon information and belief, Defendant Mark Zuckerberg was the Chief
7 Executive Officer of Facebook, Inc. during the time over which the alleged conduct occurred and
8 personally made the decisions comprising the alleged conduct, including: (1) the decision to use
9 Facebook Platform as a 'bait and switch' scheme to unjustly enrich Facebook and the individual
10 Defendants; (2) the decision to fraudulently, negligently, intentionally, maliciously and
11 oppressively misrepresent Facebook's plans regarding Facebook Platform before and *after*
12 Facebook had already decided to restrict Graph data around the middle of 2012; (3) the decision
13 to actively conceal material information to tens of thousands of companies, including 643, for
14 almost two years, and potentially longer, notwithstanding that Facebook was under a duty to
15 disclose such information; (3) the decision to conspire with large companies to restrict access to
16 data that Facebook promised for seven years would be available to all companies on neutral and
17 equal terms in exchange for large cash payments in advertising and/or other in-kind consideration
18 that greatly benefited Facebook; and (4) the decision in late 2013 and early 2014 to concoct an
19 entirely fabricated narrative in order to mask Facebook's true intentions around its deceptive and
20 anti-competitive schemes. Upon information and belief, Zuckerberg made and directed Facebook
21 employees to make false statements and to maliciously suppress material facts from at least 2009
22 through 2015 regarding Facebook's management of Facebook Platform with the intention of
23 inducing investment from software companies to build applications on Facebook Platform
24 notwithstanding that Zuckerberg knew these investments would be irreparably damaged. Upon
25 information and belief, Zuckerberg was aware these statements were false at the time they were
26 made and that the facts suppressed would have materially qualified the partial disclosures he
27 authorized or personally made. Upon information and belief, Zuckerberg engaged in this

1 wrongful and malicious conduct precisely in order to damage (and with full knowledge of the
2 proximate damage to) these 40,000 or more software applications, including Plaintiff's
3 application ("App"), to fulfill his primary goals of removing competitive threats to Facebook's
4 planned products and propping up Facebook's mobile advertising business by holding software
5 companies hostage. Upon information and belief, Zuckerberg was aware that these 40,000 or
6 more software applications, including Plaintiff's App, had contracts with their end users that
7 would be breached or otherwise interrupted by Zuckerberg's intentional, wrongful, malicious,
8 oppressive, fraudulent and negligent conduct because the adhesion contract software companies,
9 including Plaintiff, entered into with Facebook required them to maintain such contracts with
10 their end users.

11 24. Upon information and belief, Defendant Christopher Cox was the VP Product
12 and/or Chief Product Officer of Facebook, Inc. during the period in question and was responsible
13 for deciding upon and implementing key components of Zuckerberg's fraudulent and anti-
14 competitive schemes. Cox actively approved, participated, ratified, directed and acquiesced in the
15 conspiracies and schemes alleged herein, including directing subordinates to increasingly expand
16 the definition of competitive applications whose access to data would be removed. Upon
17 information and belief, Cox made and directed Facebook employees to make false statements and
18 to maliciously suppress material facts from at least 2009 through 2015 regarding Facebook's
19 management of Facebook Platform with the intention of inducing investment from software
20 companies to build applications on Facebook Platform notwithstanding that Cox knew these
21 investments would be irreparably damaged. Upon information and belief, Cox was aware these
22 statements were false at the time they were made and that the facts suppressed would have
23 materially qualified the partial disclosures he authorized or personally made. Upon information
24 and belief, Cox engaged in this wrongful and malicious conduct precisely in order to damage (and
25 with full knowledge of the proximate damage to) these 40,000 or more software applications,
26 including Plaintiff's App, to fulfill his primary goals of removing competitive threats to
27 Facebook's planned products and propping up Facebook's mobile advertising business by holding
28

1 software companies hostage. Upon information and belief, Cox was aware that these 40,000 or
2 more software applications, including Plaintiff's App, had contracts with their end users that
3 would be breached or otherwise interrupted by Cox's intentional, wrongful, malicious,
4 oppressive, fraudulent and negligent conduct because the adhesion contract software companies,
5 including Plaintiff, entered into with Facebook required them to maintain such contracts with
6 their end users.

7 25. Upon information and belief, Defendant Javier Olivan was the Vice President of
8 Growth of Facebook, Inc. during the period in question and was responsible for deciding upon
9 and implementing key components of Zuckerberg's fraudulent and anti-competitive schemes.
10 Olivan actively approved, participated, ratified, directed and acquiesced in the conspiracies and
11 schemes alleged herein, including directing subordinates to increasingly expand the definition of
12 competitive applications whose access to data would be removed. Upon information and belief,
13 Olivan repeatedly required the Facebook Platform team to shut down applications on the
14 exclusive basis that they were competitive with Facebook and further required the Platform team
15 to re-architect the APIs Facebook made available to make it more difficult for other software
16 companies to compete with Facebook on a level playing field, including removal of the friends
17 list API, friends permissions APIs, newsfeed APIs, user ID APIs, and others. Upon information
18 and belief, Olivan directed numerous projects at Facebook that intentionally violated user privacy
19 in order to give Facebook's products an unfair competitive advantage relative to other Platform
20 apps. Upon information and belief, Olivan made and directed Facebook employees to make false
21 statements and to maliciously suppress material facts from at least 2009 through 2015 regarding
22 Facebook's management of Facebook Platform with the intention of inducing investment from
23 software companies to build applications on Facebook Platform notwithstanding that Olivan
24 knew these investments would be irreparably damaged. Upon information and belief, Olivan was
25 aware these statements were false at the time they were made and that the facts suppressed would
26 have materially qualified the partial disclosures he authorized or personally made. Upon
27 information and belief, Olivan engaged in this wrongful and malicious conduct precisely in order

1 to damage (and with full knowledge of the proximate damage to) these 40,000 software
2 applications, including Plaintiff's App, to fulfill his primary goals of removing competitive
3 threats to Facebook's planned products and propping up Facebook's mobile advertising business
4 by holding software companies hostage. Upon information and belief, Olivan was aware that
5 these 40,000 or more software applications, including Plaintiff's App, had contracts with their
6 end users that would be breached or otherwise interrupted by Olivan's intentional, wrongful,
7 malicious, oppressive, fraudulent and negligent conduct because the adhesion contract software
8 companies, including Plaintiff, entered into with Facebook required them to maintain such
9 contracts with their end users. Upon information and belief, Zuckerberg directed Olivan (along
10 with Lessin) to oversee Vernal's Platform team to make sure Facebook properly executed its goal
11 of removing thousands of competitive threats by privatizing Graph API.

12 26. Upon information and belief, Defendant Samuel Lessin was the Director of
13 Product and/or Vice President of Product Management of Facebook, Inc. during the period in
14 question and was responsible for deciding upon and implementing key components of
15 Zuckerberg's fraudulent and anti-competitive schemes. Lessin actively approved, participated,
16 ratified, directed and acquiesced in the conspiracies and schemes alleged herein, including
17 directing subordinates to increasingly expand the definition of competitive applications whose
18 access to data would be removed. Upon information and belief, in the summer and fall of 2012,
19 Lessin worked with Zuckerberg and other Facebook executives like Sheryl Sandberg, Andrew
20 Bosworth and Dan Rose to weaponize developers' reliance on Facebook Platform by threatening
21 to break many software applications unless the developer made significant purchases in unrelated
22 advertising using Facebook's new mobile advertising product. Upon information and belief,
23 Lessin was instrumental in developing the plan whereby Facebook approached companies to buy
24 advertising under the threat that if they did not do so, Facebook would break their applications by
25 removing access to public Platform data. Upon information and belief, Lessin made and directed
26 Facebook employees to make false statements and to maliciously suppress material facts from at
27 least 2009 through 2015 regarding Facebook's management of Facebook Platform with the

1 intention of inducing investment from software companies to build applications on Facebook
2 Platform notwithstanding that Lessin knew these investments would be irreparably damaged.
3 Upon information and belief, Lessin was aware these statements were false at the time they were
4 made and that the facts suppressed would have materially qualified the partial disclosures he
5 authorized or personally made. Upon information and belief, Lessin engaged in this wrongful and
6 malicious conduct precisely in order to damage (and with full knowledge of the proximate
7 damage to) these 40,000 software applications, including Plaintiff's App, to fulfill his primary
8 goals of removing competitive threats to Facebook's planned products and propping up
9 Facebook's mobile advertising business by holding software companies hostage. Upon
10 information and belief, Lessin was aware that these 40,000 or more software applications,
11 including Plaintiff's App, had contracts with their end users that would be breached or otherwise
12 interrupted by Lessin's intentional, wrongful, malicious, oppressive, fraudulent and negligent
13 conduct because the adhesion contract software companies, including Plaintiff, entered into with
14 Facebook required them to maintain such contracts with their end users. Upon information and
15 belief, Zuckerberg directed Lessin (along with Olivan) to oversee Vernal's Platform team to make
16 sure Facebook properly executed its goal of propping up its mobile advertising business by
17 privatizing Graph API.

18 27. Upon information and belief, Defendant Michael Vernal was the Vice President of
19 Engineering of Facebook, Inc. during the period in question and was charged with direct
20 oversight of Facebook Platform. As such, Vernal was responsible for deciding upon and
21 implementing key components of Zuckerberg's fraudulent and anti-competitive schemes. Vernal
22 actively approved, participated, ratified, directed and acquiesced in the conspiracies and schemes
23 alleged herein, including architecting and overseeing the implementation plan to cause tens of
24 thousands of software applications to cease functioning in order to oligopolize various software
25 markets for the benefit of Facebook and Facebook's close partners. Upon information and belief,
26 Zuckerberg directed Vernal to be the front man internally for this bait and switch scheme with
27 full responsibility for its design and implementation such that many employees at Facebook were
28

1 for years under the impression that the API restrictions were Vernal's idea. Upon information and
2 belief, Vernal made and directed Facebook employees to make false statements and to
3 maliciously suppress material facts from at least 2009 through 2015 regarding Facebook's
4 management of Facebook Platform with the intention of inducing investment from software
5 companies to build applications on Facebook Platform notwithstanding that Vernal knew these
6 investments would be irreparably damaged. Upon information and belief, Vernal was aware these
7 statements were false at the time they were made and that the facts suppressed would have
8 materially qualified the partial disclosures he authorized or personally made. Upon information
9 and belief, Vernal engaged in this wrongful and malicious conduct precisely in order to damage
10 (and with full knowledge of the proximate damage to) these 40,000 software applications,
11 including Plaintiff's App, to fulfill his primary goals of removing competitive threats to
12 Facebook's planned products and propping up Facebook's mobile advertising business by holding
13 software companies hostage. Upon information and belief, Vernal was aware that these 40,000 or
14 more software applications, including Plaintiff's App, had contracts with their end users that
15 would be breached or otherwise interrupted by Vernal's intentional, wrongful, malicious,
16 oppressive, fraudulent and negligent conduct because the adhesion contract software companies,
17 including Plaintiff, entered into with Facebook required them to maintain such contracts with
18 their end users.

19 28. Upon information and belief, Defendant Ilya Sukhar was the Vice President of
20 Developer Products of Facebook, Inc. during the period in question and was responsible for
21 deciding upon and implementing key components of Zuckerberg's fraudulent and anti-
22 competitive schemes. Sukhar actively approved, participated, ratified, directed and acquiesced in
23 the conspiracies and schemes alleged herein, including architecting and overseeing the plan to
24 achieve support among Facebook employees and Developers around the fabricated narrative
25 Zuckerberg manufactured to conceal his various anti-competitive schemes. Upon information and
26 belief, Zuckerberg directed Sukhar in the second half of 2013 and early 2014 to serve as the front
27 man externally for the bait and switch scheme in light of Sukhar's respected reputation among the
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1 software developer community. Upon information and belief, Sukhar made and directed
2 Facebook employees to make false statements and to maliciously suppress material facts from at
3 least 2013 through 2015 regarding Facebook's management of Facebook Platform with the
4 intention of inducing investment from software companies to build applications on Facebook
5 Platform notwithstanding that Sukhar knew these investments would be irreparably damaged.
6 Upon information and belief, Sukhar was aware these statements were false at the time they were
7 made and that the facts suppressed would have materially qualified the partial disclosures he
8 authorized or personally made. Upon information and belief, Sukhar engaged in this wrongful and
9 malicious conduct precisely in order to damage (and with full knowledge of the proximate
10 damage to) these 40,000 software applications, including Plaintiff's App, to fulfill his primary
11 goals of removing competitive threats to Facebook's planned products and propping up
12 Facebook's mobile advertising business by holding software companies hostage. Upon
13 information and belief, Sukhar was aware that these 40,000 or more software applications,
14 including Plaintiff's App, had contracts with their end users that would be breached or otherwise
15 interrupted by Sukhar's intentional, wrongful, malicious, oppressive, fraudulent and negligent
16 conduct because the adhesion contract software companies, including Plaintiff, entered into with
17 Facebook required them to maintain such contracts with their end users. Upon information and
18 belief, Sukhar worked with Zuckerberg directly to concoct a fabricated narrative around user trust
19 in late 2013 and early 2014 that intentionally and maliciously concealed critical facts related to
20 Facebook's anti-competitive data restrictions in order to avoid legal and public relations
21 ramifications for Zuckerberg's bait and switch scheme.

22 29. Plaintiff is ignorant of the true names and capacities of the Defendants sued herein
23 as Does 1 through 50, inclusive, and each of them, and therefore sues said Defendants by such
24 fictitious names. Plaintiff will amend this complaint when the true names and capacities of said
25 Defendants have been ascertained. Plaintiff is informed and believes and thereon alleges, that
26 Defendants Does 1 through 50, inclusive, and each of them, are legally responsible in some
27 manner for the events and happenings referred to herein and proximately caused or contributed to
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1 the injuries to Plaintiff as hereinafter alleged. Wherever in this complaint any Defendant is the
2 subject of any charging allegation by Plaintiff, it shall be deemed that said Defendants Does 1
3 through 50, inclusive, and each of them, are likewise the subjects of said charging allegation.

4 30. Plaintiff is informed and believes, and thereon alleges, that at all times herein
5 mentioned, each of the Defendants was the agent and employee of each of the remaining
6 Defendants and, in doing the things herein alleged, was acting within the course and scope of said
7 agency and employment.

8 FACTS

9 31. 643 is an image pattern recognition and media sharing (e.g. photo, video) startup
10 company. 643's principals are users of Facebook and subject to Facebook's Statement of Rights
11 and Responsibilities ("SRR").

12 32. Facebook operates a social networking service that enables users to connect and
13 share information with their friends and family.

14 33. Facebook refers to the network of relationships among its users and the associated
15 data elements as the "Graph," "Open Graph" or the "Social Graph."

16 34. The Facebook Developer Platform (also called "Facebook Platform") enables
17 Developers to make applications and other services available to Facebook users using data from
18 the Graph via the Graph API, similar to how software companies can build applications on
19 Windows or Mac operating systems except with the advantage of using Facebook's inherently
20 social data. The Facebook Platform is one of the world's largest software economies globally and
21 the economic activity it generates is larger than the GDP of many sovereign nations.

22 **I. ZUCKERBERG LAUNCHES FACEBOOK PLATFORM IN MAY 2007,** 23 **PROMISING EQUAL ACCESS AND A LEVEL PLAYING FIELD TO ALL** 24 **MARKET PARTICIPANTS**

25 35. At 3PM PDT on May 24, 2007, Mark Zuckerberg, Facebook Founder and CEO,
26 made a self-described revolutionary announcement to a crowded room of software developers in
27 San Francisco. Zuckerberg announced the launch of Facebook Platform, which he had described
28 weeks earlier in an interview with Fortune magazine as "the most powerful distribution

1 mechanism that's been created in a generation.¹ He went on in the Fortune interview to describe
2 the motivation for creating Facebook Platform in this way: "We want to make Facebook into
3 something of an operating system so you can run full applications," specifying that this
4 development was the internet-equivalent to what Microsoft did with Windows, which allowed
5 other developers to build applications for PCs. (See
6 <http://archive.fortune.com/2007/05/24/technology/facebook.fortune/index.htm>.)

7 36. In fact, Zuckerberg's first demonstration of Facebook Platform was purportedly to
8 Bill Gates in early May 2007. Microsoft and Facebook had reached an agreement for Microsoft to
9 purchase banner ads on Facebook in which Microsoft had guaranteed Facebook a minimum of
10 \$100 million per year through 2011. Facebook Platform was positioned by Facebook to Microsoft
11 as the driving force behind meeting Facebook's ambitious growth metrics. At the time of this
12 announcement, Facebook had just exceeded 20 million active users and had raised only \$37.7
13 million in venture capital investment. Even at this modest point in Facebook's growth, its photo
14 sharing application was the largest photo application on the Internet, and according to Facebook's
15 own internal statistics, drew more than twice the traffic of the next three photo sites combined at
16 the time of the May 24, 2007 announcement of Facebook Platform.

17 37. Zuckerberg announced that the three key elements of Facebook Platform were
18 "deep integration, mass distribution, and new opportunity." These were three key themes he
19 would repeat throughout the day and for years to come in numerous public conversations and
20 presentations. (See <https://gigaom.com/2007/05/24/live-at-the-facebook-launch/>.)

21 38. Thus, Zuckerberg made three distinct representations of fact: (1) Developers
22 would have deep integration with Facebook's social graph; (2) Developers would have
23 Facebook's support in achieving mass distribution of their applications; and (3) Developers
24 would have an opportunity to build a business on Facebook.

25
26
27 ¹ In the quoted text here and elsewhere in the Fourth Amended Complaint, representations by
28 Facebook or its employees have been underlined for emphasis.

1 43. Zuckerberg then announced that Facebook had been working with over 70
2 developers in anticipation of the launch of Facebook Platform, including Amazon, Forbes, iLike,
3 Lending Club, Microsoft, Obama for America, Photobucket, Red Bull, Twitter, Uber, Virgin
4 Mobile USA, Warner Bros, Washington Post and many others. (See live blog of F8 event from
5 leading Internet blogger, Mashable, at [http://mashable.com/2007/05/24/facebook-f8-](http://mashable.com/2007/05/24/facebook-f8-live/#CIfbgFfPV5q0)
6 [live/#CIfbgFfPV5q0](http://mashable.com/2007/05/24/facebook-f8-live/#CIfbgFfPV5q0).)

7 44. Around 4PM during Zuckerberg's presentation, he announced 5 case studies from
8 these early developer partners aimed at showing how easy it was for all developers to integrate
9 with Facebook Platform. Zuckerberg distributed case studies from Red Bull, Box.net, Lending
10 Club, Microsoft and Slide.com. Zuckerberg continued to emphasize during this public, annual
11 keynote to Developers that Facebook Platform is the single biggest and most revolutionary
12 change to Facebook since its inception, stating: "Every once in a while a platform comes along
13 that allows people to build a completely new application—sometimes even start new industries."
14 (See <https://gigaom.com/2007/05/24/live-at-the-facebook-launch/>.)

15 45. GigaOm, a leading Internet blogger, live blogged the event and further quoted
16 Zuckerberg as saying: "With photo-sharing, he explained, 'it's not just the photos that spread, it's
17 the whole photos application'. Third-party applications won't be treated like second-class citizens
18 on Facebook, he says; users can add them to their profiles and drag them and drop them to their
19 content. Applications can use Flash, JavaScript, and Silverlight if a user approves them. Outside
20 applications can issue unlimited notifications to users, and fit into the Facebook environment by
21 accessing a 'friend selector' that spits out each user's connections. Now Zuckerberg says you can
22 serve ads on your app pages and keep all the revenue, sell them yourselves or use a network, and
23 process transactions within the site, keeping all the revenue without diverting users off
24 Facebook." (See <https://gigaom.com/2007/05/24/live-at-the-facebook-launch/>.)

25 46. Zuckerberg thus represented that (1) developer applications won't be "second class
26 citizens"; (2) developer applications can access a user's connections and related user data made
27
28

1 available in the social graph; and (3) developer applications can sell ads through the Facebook
2 Platform.

3 47. This grandiose language from Zuckerberg sparked substantial questions from the
4 Developer community so by 4:20 p.m. pacific (1 hour and 20 minutes after the keynote had
5 started), Facebook released the official "Facebook Platform FAQ", which was being circulated
6 across the Internet and available on Facebook's official website to educate developers on this
7 announcement. The Facebook Platform FAQ was an official document released by Facebook to
8 address material facts that enabled Developers to make an informed decision around whether to
9 invest capital and resources in building applications for Facebook Platform (See Exhibit 1,
10 Facebook F8 and Platform FAQ.) The Facebook Platform FAQ states, among other things:

11 **What is Facebook Platform?** Facebook Platform is a development system that enables
12 companies and developers to build applications for the Facebook website, where all of
13 Facebook's 24 million active users can interact with them. Facebook Platform offers deep
14 integration in the Facebook website, distribution through the social graph and an
15 opportunity to build a business.

16 * * *

17 **What's new in Facebook Platform?** We've been adding functionality since Facebook
18 Platform first shipped in beta in August 2006. With the latest evolution of Facebook
19 Platform however, third-party developers can now create applications on the Facebook
20 site with the same level of integration as applications built by internal Facebook
21 developers. Now developers everywhere have the ability to create Facebook applications
22 that deeply integrate into the Facebook site, as well as the potential for mass distribution
23 through the social graph and new business opportunities.

24 * * *

25 **Why did Facebook launch Facebook Platform?** Our engineers have created great
26 applications for Facebook, but we recognized that third-party developers can help us make
27 Facebook an even more powerful social utility. Facebook Platform gives developers
28

1 everywhere the tools to create applications that we just wouldn't have the resources to
2 build in-house, and those applications make Facebook an even better way for our users to
3 exchange information. Developers also benefit from the Facebook Platform as it gives
4 them the potential to broadly distribute their applications and even build new business
5 opportunities.

6 * * *

7 **What kinds of applications can be built on Facebook Platform?** The kinds of
8 applications developers can build on Facebook Platform are limited only by their
9 imaginings. Because applications are based on the Facebook social graph they can be
10 more relevant to users, keeping people in touch with what and whom they care about.
11 We've already seen a variety of applications built by our developer partners, including
12 those for sharing media files, book reviews, slideshows and more. Some of the
13 possibilities of Facebook applications are illustrated in the Facebook Platform Application
14 Directory, available at <http://facebook.com/apps>.

15 * * *

16 **Are there any restrictions on what developers can build?** Developers are encouraged
17 to exercise their creativity when building applications. Of course, all applications are
18 subject to the Terms of Service that every developer agrees to, which include basic
19 requirements such as not storing any sensitive user information, not creating any offensive
20 or illegal applications, and not building anything that phishes or spams users. And users
21 will always have the power to report any applications that compromise Facebook's trusted
22 environment, keeping our users' information safe.

23 * * *

24 **How will Facebook deal with applications that compete with one another or even**
25 **compete with Facebook-built applications?** We welcome developers with competing
26 applications, including developers whose applications might compete with Facebook-built
27 applications. Many applications are likely to offer similar features. We've designed

1 Facebook Platform so that applications from third-party developers are on a level playing
2 field with applications built by Facebook. Ultimately, our users will decide which
3 applications they find most useful, and it is these applications that will become the most
4 popular.

5 * * *

6 **Can Facebook applications include ads?** We want to enable developers to build a
7 business on their Facebook applications, so we're giving developers the freedom to
8 monetize their applications as they like. Developers can include advertising on their
9 applications' canvas pages, though no advertising will be allowed within the application
10 boxes that appear within user profiles.

11 * * *

12 **Are you going to share revenue with developers?** While revenue sharing is not
13 available at launch, we are looking into ways to share advertising revenue with
14 developers. The version of Facebook Platform already lets developers monetize their
15 applications as they like, whether they choose to offer it for free or to build a business on
16 their application.

17 48. In sum, these representations by Facebook reflected the following explicit
18 promises to Developers:

- 19 a. Developers would have "deep integration";
- 20 b. Developers would have access to the "social graph";
- 21 c. Developers would have "an opportunity to build a business."
- 22 d. Developers would have the same level of integration and ability to develop apps in
- 23 the same manner as internal Facebook employees;
- 24 e. Facebook will provide adequate tools necessary for Developers to build their
- 25 applications;
- 26 f. Facebook will help Developers achieve broad distribution of their applications;
- 27 g. so long as applications abide by Facebook's Terms of Service, Developer Policies
- 28 and other binding commitments Developers make in order to participate in

1 Facebook Platform, Facebook will remain neutral as to the applications built on its
operating system;

- 2 h. any application that does not violate its agreement with Facebook, phish or spam
3 users, contain offensive material, or break the law shall be accepted in Facebook
Platform;
- 4 i. competing applications are welcome on Facebook's operating system;
- 5 j. Facebook will remain neutral among competing applications;
- 6 k. Facebook will remain neutral among its own applications and those of developers
7 regardless of whether they compete or not;
- 8 l. applications similar in purpose and content will be allowed to compete on a "level
9 playing field"
- 10 m. "level playing field" constitutes a definition of fairness in market competition, and
11 that definition of fairness means that ultimately users will decide which
applications win the market, not Facebook or other third parties;
- 12 n. implicit in this definition of fairness based on user decision is the necessary
13 consequence that Facebook shall take no actions to promote its own applications
or preferred applications from companies that have a special relationship with
14 Facebook in order to slant this playing field in a manner that makes it less likely
for users ultimately to decide the winner;
- 15 o. Facebook will enable Developers to build businesses on their operating system by
16 directly monetizing their applications on Facebook;
- 17 p. Developers will be able to sell ads on their application pages; and
- 18 q. Developers will have a choice as to whether they monetize their application on
19 Facebook's operating system.

20 **II. DEVELOPERS RESPONDED ENTHUSIASTICALLY TO THE LAUNCH OF**
21 **FACEBOOK PLATFORM**

22 49. The blogging community went into an immediate and prolonged frenzy over this
23 announcement. Paul B. Allen, founder of Ancestry.com and well-known Internet blogger,
24 summed up the general sentiment expressed by countless bloggers when he wrote that same day,
25 "I saw history in the making today...I was lucky enough to be in San Francisco for the Facebook
26 F8 Platform launch event. This announcement was at least an 8.0 on the Richter scale. It was a
27 whopper.... A huge new opportunity was presented to the few hundred people in the room,
28 including 65 companies that have spent the last few weeks developing applications for the launch

1 of Facebook Platform. Facebook is inviting anyone to develop applications for their users on top
2 of what Mark calls their “social graph” – the core of their service which basically keeps track of
3 real people and their real connections to each other.... [Facebook’s] growth will be dramatically
4 accelerated by the Platform announcement. If Facebook is adding 100,000 new users per day with
5 its own few simple applications (like its photo sharing, a very simple service that has given
6 Facebook twice as many photos as all other photo sharing sites combined), what will happen
7 when thousands or tens of thousands of developers start building apps in Facebook and marketing
8 them to more users? Facebook will reach 50 million, then 100 million, then 200 million users, and
9 beyond. Rather than continue to try to develop features within its own proprietary, closed
10 network, basically keeping all of its users to itself...Facebook intuitively gets the concepts that
11 are so brilliantly discussed in Wikinomics (which are so non-intuitive to old school business
12 types), and has chosen to open up its network for all to participate in...Application developers
13 can now have access to core Facebook features, such as user profiles and user connections, and
14 even publishing to the News Feed, all with the control and permission of Facebook users...When
15 Facebook has 100 million users, in the not too distant future, having the ability to develop an App
16 in their system will almost be like being able to get a link on Google’s own home page.” (See
17 <http://www.paulallen.net/prediction-facebook-will-be-the-largest-social-network-in-the-world/>.)

18 50. To Developers, Facebook Platform represented not just an entirely new operating
19 system, but an economy that could reorganize the entire Internet (potentially replacing Google as
20 the dominant form of organizing the world wide web). The sentiment among Developers, as
21 widely held throughout the industry and reported by popular sites like TechCrunch and the Wall
22 Street Journal, was that if you aren’t building for Facebook Platform, you will be left behind
23 ([http://techcrunch.com/2007/05/24/facebook-launches-facebook-platform-they-are-the-anti-](http://techcrunch.com/2007/05/24/facebook-launches-facebook-platform-they-are-the-anti-myspace/)
24 [myspace/](http://www.wsj.com/public/article/SB117971397890009177-wjdKPMjAqS_9ZZbwiRp_CoSqvWQ_20070620.html)) ([http://www.wsj.com/public/article/SB117971397890009177-](http://www.wsj.com/public/article/SB117971397890009177-wjdKPMjAqS_9ZZbwiRp_CoSqvWQ_20070620.html)
25 [wjdKPMjAqS_9ZZbwiRp_CoSqvWQ_20070620.html](http://www.wsj.com/public/article/SB117971397890009177-wjdKPMjAqS_9ZZbwiRp_CoSqvWQ_20070620.html)).

26 51. Facebook and the Developers who were selected to participate in the private beta
27 of Facebook Platform quickly set out to make Developers comfortable with this grandiose vision
28

1 and create a level of comfort to entice them to participate in this entirely new industry. For
2 instance, on May 29, 2007, just five days after Zuckerberg's announcement of Facebook
3 Platform, Venture Beat, the popular tech blog, did a Q&A with iLike founder, Ali Partovi, who
4 was also an early advisor and shareholder of Facebook. iLike was the first successful application
5 on Facebook Platform and for quite some time was the largest music application on the Facebook
6 Platform. iLike was purchased by MySpace in 2009.

7 Tell me about your experiences with Platform so far. You've been working on putting
8 iLike on Facebook for several months now. Yet on the integration since Friday morning,
9 there have been bugs and other issues on iLike's end. What's the status?

10 Partovi: So, first to give you the back-story on how we got involved. Over the past several
11 months, we've pushed and pushed with Facebook asking for some sort of exclusive
12 relationship. They repeatedly said they won't do an exclusive relationship but would
13 rather create a level playing field where we could compete with other third parties. We
14 then gave up a bit, and we were actually a bit late to the game learning about the platform
15 in detail. But when we finally did get access, our President, Hadi Partovi (my twin
16 brother) took very little time to decide this was a huge strategic priority. That was a month
17 ago. We re-prioritized everything else, and started moving our people off other projects
18 onto this. First two or three people, then a few more, and by the end it was a huge group of
19 engineers pulling back-to-back all-nighters for a week-long sprint to the launch.

20 What made iLike think that Facebook Platform would be a big deal? What stood out about
21 it?

22 Hadi has a strong background in the concept of platforms...at 24 he became the head of
23 product management in the IE group at Microsoft, and was a key player in the browser
24 wars. A month ago, even though the Facebook Platform wasn't fully fleshed out, he saw
25 just from the early beginnings of it that this could redefine web development. What he
26 said was, 'in the history of computing, there was the personal computer, there was
27 Windows, there was the web, and now the Facebook Platform'. You can imagine that I
28

1 and most our company was pretty skeptical. But he makes these calls so we followed him.
2 As to what stood out, it's a combination of three things: (1) the technology itself –
3 Facebook Platform, like any platform, offers the developer building blocks to build apps
4 faster than they could if they were starting from scratch, and to tap into a rich source of
5 data & capabilities that would never otherwise be available; (2) the potential for viral
6 spread – due to the way the Facebook news feed works, an app can spread across the
7 community entirely by viral spread, as friends get notified when one person adopts
8 it...this essentially bypasses the idea of trying to make your app 'viral' as a standalone,
9 because Facebook is itself naturally viral; (3) the rhetoric from the Facebook management
10 team, starting from the CEO himself, made it clear that they have a long-term
11 commitment to a level playing field. For example, they absolutely refused to give us any
12 special advantage, insisting that the market needs to see a level playing field...we offered
13 them ownership in our company, money, etc. – but they had no interest. Furthermore, they
14 built and launched their own 'video' app, but left it to 'compete' on its own merits
15 alongside other third-party apps rather than making it 'pre-installed' for all Facebook
16 users.¹ So #1 and #2 made this something we had to jump on, and #3 made us comfortable
17 with the long-term strategic implications. (See [http://venturebeat.com/2007/05/29/qa-](http://venturebeat.com/2007/05/29/qa-with-ilikes-ali-partovi-on-facebook/)
18 [with-ilikes-ali-partovi-on-facebook/.](http://venturebeat.com/2007/05/29/qa-with-ilikes-ali-partovi-on-facebook/))

19 52. Partovi's comments immediately following Zuckerberg's announcement serve
20 both to reflect the general sentiment held by Developers – that Facebook had made clear its long-
21 term commitment to a level playing field and equal access to data for all Developers – and to
22 show how Facebook's allies (Partovi was an early advisor and shareholder after all), were
23 committed to helping Facebook grow its new operating system quickly and induce developers to
24 participate with large investments of capital. After all, iLike saw massive growth in the two years
25 following its decision to build on the Facebook Platform and was ultimately acquired by
26 MySpace in 2009 in large part due to that growth.

1 53. Three days after Partovi’s Q&A with Venture Beat, on June 1, 2007 Facebook
2 released its own statement further clarifying its intentions with Facebook Platform, entitled
3 “Platform is Here”.

4 “Last Friday, we promised more information, so here it is.... With this evolution of
5 Facebook Platform, we’ve made it so that any developer can build the same applications
6 that we can. And by that, we mean that they can integrate their application into
7 Facebook—into the social graph—the same way that our applications like Photos and
8 Notes are integrated.” (See [https://www.facebook.com/notes/facebook/platform-is-](https://www.facebook.com/notes/facebook/platform-is-here/2437282130/)
9 [here/2437282130/](https://www.facebook.com/notes/facebook/platform-is-here/2437282130/))

10 54. Thus, Facebook promised that developers will be able to build applications in the
11 same way that Facebook can by accessing the social graph.

12 55. As recently as March 7, 2017, this official statement remained available on
13 Facebook’s official website.

14 56. Throughout the summer of 2007 Facebook remained on the offensive about its
15 long-term commitment to developers on Facebook Platform. Facebook held numerous
16 Hackathons and Developer Meetups in various cities to introduce new developers to Facebook
17 Platform, it launched a Developer Feed and Wiki on its website to educate the Developer
18 community on the benefits of Facebook Platform and help them more seamlessly invest their
19 capital and resources towards building applications on the Facebook Platform. Facebook also held
20 contests with prizes for developers. Zuckerberg continued to emphasize the revolutionary impact
21 Facebook Platform would have on the Internet as a whole during this time. For instance, on July
22 17, 2007, Zuckerberg was interviewed by Time Magazine:

23 **Time:** the frenzy surrounding Facebook seems to have intensified quite dramatically over
24 the past several months. What do you think is behind the company’s newfound cachet?

25 **Zuckerberg:** I think the most recent surge, at least in the press, is around the launch of
26 Facebook Platform. For the first time we’re allowing developers who don’t work at
27 Facebook to develop applications just as if they were. That’s a big deal because it means
28

1 that all developers have a new way of doing business if they choose to take advantage of
2 it. There are whole companies that are forming whose only product is a Facebook
3 Platform application. That provides an opportunity for them, it provides an opportunity for
4 people who want to make money by investing in those companies, and I think that's
5 something that's pretty exciting to the business community." (See
6 <http://content.time.com/time/business/article/0,8599,1644040,00.html>)

7 57. In these public statements to Time Magazine, Zuckerberg made at least four
8 distinct promises: (1) Facebook would allow developers to build applications as if they were
9 developers employed by Facebook; (2) Facebook would offer developers on Facebook Platform a
10 new way of doing business; (3) Facebook would support an ecosystem where entire companies
11 could be formed whose sole business activity was within the Facebook Platform ecosystem; (4)
12 Facebook would support an ecosystem where investors could reasonably rely on Facebook to
13 make money by investing in companies solely devoted to the Facebook Platform ecosystem.

14 58. Then on September 17, 2007, Facebook went even further by setting up a \$10
15 million fund exclusively devoted to providing grants to developers to build on Facebook
16 Platform. Facebook and its partners in the fund would not even take equity in the developer; they
17 were offering free money to build applications on Facebook Platform with the only commitments
18 being that the grantee use the money to build on Facebook Platform and that Facebook's partners
19 would have the opportunity to invest first if they were interested in doing so. When asked why
20 Facebook was forming this fund, it replied: "We are forming this fund to help grow the Facebook
21 application ecosystem. By decreasing the barrier to start a company, we hope to entice an even
22 larger group of people to become entrepreneurs and build a compelling business on Facebook
23 Platform. We hope this is also a funding model that other venture capitalists will follow." (See
24 <http://500hats.typepad.com/500blogs/2007/09/facebook-announ.html>.)

25 59. Facebook's conduct in providing free money to developers to build applications on
26 Facebook Platform implies a specific promise that it will support developers' opportunity to
27 "build a compelling business on Facebook Platform" and that it is committed long-term to the
28

1 stability of Facebook Platform as an ecosystem that can support substantial investment and where
2 investors who participate in that ecosystem can expect a level playing field upon which to
3 generate a return on that investment.

4 60. Indeed, others were quick to follow Facebook's lead in making investors
5 comfortable with supporting this new industry with large sums of capital. Numerous venture
6 capital firms or funds were soon established that invested solely in Facebook applications. In
7 September 2007, Wired Magazine reported the following: "And by turning itself into a platform
8 for new applications, Facebook has launched a whole new branch of the software development
9 industry, just like Bill Gates did with MS-DOS in the 1980s. By allowing developers to charge
10 for their wares or collect the advertising revenue they generate, Zuckerberg set up a system for
11 every programmer to get paid for their efforts. Now venture capitalists like Bay Partners are
12 scrambling to fund almost anyone who has an idea for a Facebook application." (See
13 https://archive.wired.com/techbiz/startups/news/2007/09/ff_facebook?currentPage=all.)

14 61. As a result of Facebook and its partners' tremendous efforts in inducing
15 Developers to build applications on Facebook Platform and promising them access to the Graph
16 on neutral and equal terms, Facebook Platform quickly became, in the words of AdWeek, "the
17 most viral software distribution system ever". The overall traffic to Facebook increased by 33%
18 within three weeks of the announcement. By December, the Facebook user base had grown from
19 24 million at the time of the announcement to 58 million, a 141% increase. Where Facebook had
20 been adding about 100,000 new users per day prior to Facebook Platform, it was now adding
21 more than 250,000 users per day. (See <http://www.adweek.com/socialtimes/top-10-facebook-stories-of-2007/211540>.)

22
23 62. While it touted Facebook Platform to Developers around the world, Facebook did
24 not state or imply that access to Facebook Platform might later be rescinded or provided on an
25 unequal basis. In fact, Facebook repeatedly promised that access would be provided on an equal
26 basis relative to Facebook and other developers. Upon information and belief, during this time,
27 Facebook in fact provided special, unequal access to the Graph to large companies who were
28

1 close partners of Facebook and made substantial unrelated advertising payments to Facebook to
2 the systematic disadvantage of smaller companies. This fact was not made known to or
3 reasonably discoverable by the Developer community at large, including 643, at the time
4 preferential access was being given.

5 63. By the end of 2009, in large part due to Facebook Platform's success in inducing
6 developers to make investments in this new ecosystem, Facebook's user growth had skyrocketed
7 from 24 million active users at the time of the announcement of Facebook Platform in May 2007
8 to over 350 million users in December 2009.

9 64. In late 2009, Facebook released a document "A Look Back on the App Economy
10 of Facebook in 2009," in which it cited numerous success stories. For instance, Facebook app
11 Playfish was acquired by Electronic Arts that year for no less than \$275 million. Watercooler, a
12 leading fantasy sports application on the Facebook Platform, successfully raised \$5.5 million to
13 fuel its growth. Weardrobe was acquired by Like.com for an undisclosed sum. The document,
14 published by the Director of the Facebook Developer Network, ended: "We'd like to say thank
15 you to the developers and entrepreneurs who make up the Facebook Platform ecosystem and
16 congratulations on your accomplishments in 2009." (See
17 [http://web.archive.org/web/20091223055629/http://developers.facebook.com/news.php?blog=1&](http://web.archive.org/web/20091223055629/http://developers.facebook.com/news.php?blog=1&story=351)
18 [story=351.](http://web.archive.org/web/20091223055629/http://developers.facebook.com/news.php?blog=1&story=351))

19 **III. FACEBOOK LAUNCHED GRAPH API IN 2010 TO IMPROVE THE**
20 **RELIABILITY OF DATA ACCESS FOR DEVELOPERS**

21 65. On or about April 21, 2010, Facebook announced the launch of Graph Application
22 Programming Interface ("Graph API") as a key new component of Facebook Platform at its
23 developer conference. Graph API streamlined and formalized the process whereby Developers,
24 with the consent of Facebook users, could read data from and write data to the Graph.

25 66. Developers could only access Facebook content (referred to as "endpoints") with
26 explicit permission from Facebook users. Examples of endpoints include a user's birthdate,
27 favorite songs, or photos.

1 67. Graph API also permitted access to endpoints regarding a user's friends, requiring
2 both the friend's and the user's consent. One such endpoint was the set of photos that a user's
3 friends had chosen to share with that user (the "Friends' Photos Endpoint"). A user's friends
4 could control access to their photos and other endpoints by Developers even if they were not
5 users of the Developer's application simply by clicking a check box on the main Facebook
6 privacy page. The interface and process for users to manage these privacy settings is virtually
7 identical today as it was during this time when Graph API was launched.

8 68. By granting Developers access to the Friends' Photos Endpoint, Facebook allowed
9 Developers to build applications that enabled a Facebook user to search the user's friends' photos
10 via a Facebook Platform application, assuming the user's friend approved of such access. For
11 avoidance of doubt, a user's friend had complete control over the permission settings and under
12 no circumstance could a user view information in a third-party application that the user could not
13 also view on Facebook itself.

14 69. During the announcement of Graph API, Facebook touted several features of
15 Graph API in order to increase its appeal to Developers such as 643.

16 70. Specifically, at the F8 Conference 2010, Zuckerberg announced: "The open graph
17 puts people at the center of the web – it means that the web can become a set of personally and
18 meaningfully semantic connections between people... Three years ago at our first F8 we launched
19 Facebook Platform, and together we all started an industry... We think what we have to show you
20 today will be the most transformative thing we've ever done for the web... Use the open graph to
21 make it so that people can have instantly social and personalized experiences everywhere they go.
22 We're gonna be announcing a few pieces of new technology that make this possible – the first is
23 the Graph API – makes it completely simple to read connections to Facebook's map of the
24 graph... implemented on top of an open standard." (See
25 <https://www.youtube.com/watch?v=4SOcRKINiSM>.)

26 71. After Zuckerberg completed his keynote at F8 2010, Bret Taylor, a Facebook
27 employee, further explained what Graph API meant for Developers: "With Graph API every
28

1 object in Facebook has a unique ID, whether that object is a user profile, event, etc....you just
2 need to download an object with a new ID or download a connection with a new name. So to
3 download my friends you just need to download /btaylor /friends... And this applies for every
4 single object in Facebook. So let's say Facebook launches a new feature next year. We're not
5 gonna make you download a new SDK. You just need to download an object with a new ID or
6 download a connection with a new name. All of the code you already wrote will continue to work
7 perfectly. This is a really significant change for our new platform that I'm sure you can
8 appreciate. For the first time via the search capability of the Graph API, we're giving developers
9 the capability to search over all the public updates on Facebook. I think this is gonna lead to a
10 bunch of cool new applications and I'm really excited to see where people go with this.... We've
11 built our core of the Facebook Platform from the ground up with simplicity, stability, and the
12 graph in mind. This graph that for the first time we're building together." (See
13 [https://www.youtube.com/watch?v=4SOcRKINiSM.](https://www.youtube.com/watch?v=4SOcRKINiSM))

14 72. Facebook's employee Bret Taylor thus promised that: (1) Developers could access
15 Graph API objects in a simple manner ("you just need to download an object with a new ID"); (2)
16 the accessible objects were ubiquitous ("this applies for every single object in Facebook"); (3) the
17 access would be sustained and could be relied upon by developers ("All of the code you already
18 wrote will continue to work perfectly... We're not gonna make you download a new SDK") (a
19 Software Development Kit (or "SDK") is a set of software development tools that allows for the
20 creation of applications for a particular operating system); (4) Developers could search over all
21 objects for all public updates on Facebook; and (5) Facebook Platform guaranteed simplicity,
22 stability and the ability to access and help build the Graph with Facebook.

23 73. The software industry uses a common and well-known convention of referring to
24 software by version number (e.g., version 1.0, 2.0, etc.) to signify the existence of separate
25 versions of software and to identify a particular version of the software. When Facebook
26 announced the launch of Graph API, it did not refer to Graph API as having different versions
27 and did not specify a term for the availability of Graph API. Facebook did not specify a version or
28

1 term for Graph API in order to give Developers the impression that it would remain available to
2 them to build a viable business, which takes many years to do in the software industry. Facebook
3 thereby signified that Graph API's open, equal and neutral nature would not change. This
4 representation was of course a deliberate decision on Facebook's part to continue to entice
5 developers by conveying a sense of security around investing time, money and effort building
6 applications on its revolutionary platform.

7 74. Facebook did not represent that it had reserved the right to terminate access to all
8 of the social data in its Social Graph or that it could provide such access on unequal or anti-
9 competitive terms. In fact, Facebook repeatedly represented that the unique value of its operating
10 system relative to Microsoft or Apple was that it was inherently social and open. The idea that
11 Facebook in the future would remove the "social" part of the Social Graph or the "open" part of
12 the "Open Graph" could not have been reasonably anticipated by 643 as such a decision would
13 and did hollow out the entire premise of Graph API. Quite to the contrary, Facebook repeatedly
14 expressed its long-term commitment to Graph API and repeatedly expressed that it would provide
15 data on a level playing field with equal terms to all Developers, relative both to one another and
16 to Facebook itself.

17 75. This extension of the Facebook Platform ecosystem to further expand its
18 reorganization potential for the entire Internet contributed even further to Facebook's meteoric
19 rise and induced even more investors and Developers to participate in the economy Facebook had
20 created. By way of example, on October 21, 2010, Facebook partnered with Kleiner Perkins
21 Caufield & Byers, Zynga and Amazon to launch a \$250 million fund to invest in new apps on the
22 Facebook Platform. By September 19, 2011, Facebook Platform had created over 182,000 jobs
23 and \$12.19 billion in value to the U.S. economy. Facebook now boasted over 850 million users as
24 of late 2011. Upon information and belief, Facebook would later conspire with Zynga and
25 Amazon to ensure their continued access to Graph data after the data had been shut off to other
26 companies like 643.

1 76. On September 24, 2011, Facebook further extended its long-term commitment to
2 Facebook Platform by expanding Open Graph to accelerate its reorganization of the disparate
3 content on the Internet. (See [http://mashable.com/2012/05/24/facebook-developer-platform-](http://mashable.com/2012/05/24/facebook-developer-platform-infographic/#fDCxuACag5qr)
4 [infographic/#fDCxuACag5qr](http://mashable.com/2012/05/24/facebook-developer-platform-infographic/#fDCxuACag5qr).) In his keynote address at F8 2011 on September 24, 2011,
5 Zuckerberg stated to a packed auditorium of developers: “The next era is defined by the apps and
6 depth of engagement that is now possible now that this whole network has been established... In
7 2007 in our very first F8 I introduced the concept of the social graph, all of the relationships
8 between people in the world. Last year we introduced the concept of the open graph as not only
9 the map of all the relationships but all of the connections in the world.... This year, we’re taking
10 the next step: we’re going to make it so that you can connect to anything you want in any way
11 you want.... Sometimes I think about what we’re doing with the open graph is helping to define a
12 brand new language for how people connect...every year we take the next step and make some
13 new social apps possible. Open graph enables apps that focus primarily on two types of things:
14 the first is filling out your timeline, and the second is helping you discover new things through
15 your friends.”

16 77. Facebook thus made at least four distinct representations of fact in this September
17 24, 2011 announcement: (1) Facebook has a long-term commitment to the Facebook Platform and
18 ensuring a fair playing field for developers and has had such a commitment for over four years
19 now; (2) Facebook is committed to extending the Facebook Platform to provide developers with
20 more ways to innovate and build businesses; (3) in keeping with this long term commitment,
21 Facebook will continue to help make new kinds of social apps possible; and (4) Facebook is in
22 particular focused on helping you discover new things through your friends and Facebook
23 Platform will enable developers seeking to do so.

24 78. Facebook stated that the extension of the Graph API at F8 2011 was simply the
25 next step in Facebook’s long-term commitment to serve as a platform for other developers, a
26 commitment that every statement and action it took since May 2007 (a period of well over 4
27 years) reaffirmed without a shadow of a doubt. The extension of the Facebook Platform continued
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1 to accelerate the massive economy Facebook had built. By January 2012, Facebook Platform had
2 created 232,000 jobs in the EU alone, amounting to \$15.3 billion of value to the European
3 economy. By February 2012, 250 million people were playing games on Facebook Platform each
4 day (that is 12 times more people than the average viewership of American Idol, the highest-rated
5 TV show in the history of television). By April 2012, 7 of the 10 highest grossing apps in the
6 Apple App Store were built on Facebook Platform. (See
7 <http://mashable.com/2012/05/24/facebook-developer-platform-infographic/#fDCxuACag5qr>.) It
8 should be noted, in large part due to its long-term commitment to Facebook Platform, Facebook
9 exceeded 1 billion users in 2012.

10 **IV. THE FTC ORDERED FACEBOOK NOT TO MISREPRESENT THE MANNER**
11 **IN WHICH FACEBOOK COLLECTS, STORES OR TRANSMITS USER DATA**

12 79. On or about July 27, 2012, the United States Federal Trade Commission (“FTC”)
13 entered a Decision and Order (the “FTC Order”) against Facebook.

14 80. The FTC Order entered following a consent agreement between FTC and
15 Facebook.

16 81. The FTC noted in the FTC Order that the FTC had reason to believe Facebook has
17 violated the Federal Trade Commission Act.

18 82. The FTC Order provided, among other things, that Facebook and its
19 representatives “shall not misrepresent in any manner, expressly or by implication, the extent to
20 which it maintains the privacy or security of covered information. . . .”

21 83. The FTC Order defined “covered information” to include an individual
22 consumer’s photos, among other things.

23 84. The FTC Order also provided that Facebook and its representatives “shall not
24 misrepresent in any manner, expressly or by implication...the extent to which [Facebook] makes
25 or has made covered information accessible to third parties.”
26
27
28

1 **V. IN 2012, ZUCKERBERG DECIDED TO REMOVE ACCESS TO FACEBOOK'S**
2 **DATA TO ALL POTENTIALLY COMPETITIVE APPLICATIONS UNLESS**
3 **THEY PROVIDED SUBSTANTIAL FINANCIAL OR OTHER CONSIDERATION**
4 **TO JUSTIFY CONTINUED ACCESS.**

5 85. Upon information and belief, from 2011 through 2015, Zuckerberg held
6 discussions and meetings with Defendants Cox, Oliven, Lessin, Vernal and Sukhar (the
7 "Conspiring Facebook Executives") to design and implement the alleged bait and switch scheme.
8 Upon information and belief, beginning in 2011 and 2012, Zuckerberg held discussions with
9 Defendants Cox, Oliven, and Lessin (in addition to other Facebook executives like Sheryl
10 Sandberg, Daniel Rose, and Andrew Bosworth) where Zuckerberg communicated his decision to
11 shut down access to Graph API data to applications that were competitive with current Facebook
12 products and with products Facebook may choose to launch in the future, even if Facebook had
13 not begun working on such products. Upon information and belief, this plan to weaponize and
14 restrict Facebook Platform was communicated to, discussed with and ratified by the Facebook
15 Board of Directors in the summer of 2012. Upon information and belief, Zuckerberg then brought
16 Vernal directly into the discussions in late 2012 in order to oversee and implement the bait and
17 switch plan. Upon information and belief, Vernal planned a public announcement of this decision
18 at the end of 2012 but Zuckerberg prohibited the announcement. Upon information and belief,
19 Facebook instead made in January 2013 a partial disclosure of the decision that suppressed
20 material facts at Zuckerberg's request under an announcement regarding a vaguely defined
21 "Reciprocity Policy"
22 (<https://web.archive.org/web/20130125212302/https://developers.facebook.com/blog/post/2013/01/25/clarifying-our-platform-policies/> and
23 <https://web.archive.org/web/20130216042126/https://developers.facebook.com/policy/>). Upon
24 information and belief, from that time on, the Conspiring Facebook Executives actively concealed
25 material facts, made only partial disclosures, and made materially false statements regarding the
26 decisions Zuckerberg had in fact made in late 2012 concerning the Reciprocity Policy. Upon
27 information and belief, the Conspiring Facebook Executives began enforcing all aspects of
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1 Zuckerberg's decision notwithstanding that Facebook only announced certain aspects of the
2 decision and maliciously withheld others. Upon information and belief, the Defendants' conduct
3 in this regard was undertaken in concert with other large companies who would benefit from such
4 changes. Upon information and belief, in mid-2013, Zuckerberg, Vernal and Facebook Director
5 of Engineering Doug Purdy, aggressively sought to make Defendant Sukhar the front man
6 externally for this bait and switch scheme, which Sukhar resisted until late 2013 because he knew
7 the conduct was wrongful and malicious. However, in late 2013, Sukhar conceded and from that
8 time on actively ratified, acquiesced in and advanced key components necessary to the
9 implementation of the fraudulent and anti-competitive scheme in 2014 and 2015.

10 86. Upon information and belief, during these discussions and meetings, Zuckerberg
11 communicated to the Conspiring Facebook Executives his decision to require that any company
12 that wishes to continue to access the Graph API data that Facebook previously promised on
13 neutral and equal terms would be required to provide substantial financial consideration to
14 Facebook, and even then, only companies that were not directly competitive would be permitted
15 to do so.

16 87. Upon information and belief, during these discussions and meetings, Zuckerberg
17 and the Conspiring Facebook Executives discussed large companies with which to conspire
18 around this effort at the expense of other companies that represented competitive threats to
19 Facebook. Further, upon information and belief, Zuckerberg sought the guidance and active
20 assistance of the Conspiring Facebook Executives around the companies with which Facebook
21 would conspire and how to develop a plan to do so.

22 88. Upon information and belief, during these discussions and meetings, Zuckerberg
23 sought the guidance and active assistance of the Conspiring Facebook Executives to execute key
24 components of this bait-and-switch scheme. Upon information and belief, Zuckerberg tasked
25 Vernal with implementing an engineering plan to remove data access to tens of thousands of
26 potentially competitive applications. Upon information and belief, Zuckerberg tasked Lessin, Cox
27 and Olivan with engaging other departments at Facebook around executing this plan to show
28

1 which categories of applications were competitive with Facebook's current or future products in
2 an effort to expand the extent to which Facebook could consider a broad range of applications to
3 be directly competitive with Facebook and Facebook's close partners. Upon information and
4 belief, Zuckerberg tasked Sukhar and Vernal with developing a plan to communicate and mask
5 this fraudulent scheme to Facebook employees and, eventually, Developers and the public. Upon
6 information and belief, the Conspiring Facebook Executives then tasked various other Facebook
7 employees to accomplish a wide range of tasks, including: to analyze the revenue impact of this
8 bait-and-switch scheme; to audit and categorize applications so as to determine which ones to
9 restrict data access and which ones to permit special access; to proactively reach out to certain
10 companies to provide advance notice and set financial terms to conspire around restricting this
11 data access to the benefit of both Facebook and these large partner companies and at the expense
12 of all other market participants; and to engage in a wide range of other tasks related to executing
13 this scheme and avoiding any public relations or legal ramifications for it.

14 89. Upon information and belief, in mid-to-late 2012, the Conspiring Facebook
15 Executives began communicating to various Facebook employees that data access would be
16 severely restricted to many companies that built applications related to contacts and calendar
17 management, messaging, photo sharing, video sharing and streaming, online dating, lifestyle,
18 games, news, books, fitness and various utility applications. Upon information and belief, the
19 companies that were exempted from these data restrictions were those that provided substantial
20 financial consideration to Facebook or had held discussions with Facebook around long-term
21 strategic partnerships that provided significant value to Facebook in other areas of its business.

22 90. Upon information and belief, the Conspiring Facebook Executives actively
23 encouraged and even required other Facebook employees to expand the definition of a
24 competitive application in order to restrict data access to as many software companies as possible.
25 Upon information and belief, the Conspiring Facebook Executives even encouraged Facebook
26 employees, including their direct subordinates, to take action against certain direct competitors in
27 advance of Facebook's notice to Developers restricting Graph API data access. Upon information
28

1 and belief, the Conspiring Facebook Executives provided notice to Developers on different
2 timeframes as part of a strategy to mitigate negative legal or public relations impacts.

3 91. Upon information and belief, the primary or exclusive criterion the Conspiring
4 Facebook Executives used when deciding which applications or categories of applications to shut
5 down was the competitive nature of such applications relative to current or future products from
6 Facebook and close partners with which Facebook combined and conspired to oligopolize various
7 markets in exchange for unrelated cash or in-kind consideration.

8 **VI. IN DECEMBER 2012, PLAINTIFF 643 ENTERED INTO AN AGREEMENT TO**
9 **DEVELOP ON FACEBOOK PLATFORM NOT KNOWING THAT**
10 **ZUCKERBERG HAD ALREADY DECIDED TO RESTRICT ACCESS TO THE**
11 **DATA UPON WHICH 643 RELIED.**

12 92. 643 was an image pattern recognition and photo analysis company founded in
13 December 2012. 643 developed a unique automated image classification capability that could
14 automatically sort photos based on certain criteria. 643 had developed technology that could be
15 applied to categorize photos based on the presence of certain logos, brands, individuals, or
16 environments (e.g. indoors, ocean, beach, forest, etc.) without the need for a human to review the
17 photos. For instance, 643's technology could be applied to find all the photos that contain New
18 York Yankees logos. 643's technology required access to a large number of photos in order to
19 train the algorithms to properly identify and sort images. 643 determined that Facebook Platform
20 was the only repository of photos that met the criteria 643 required in order to be able to develop
21 its technology and build a viable business. In reliance upon numerous public representations
22 made by Zuckerberg and Facebook from 2007 through 2012 regarding Platform being a level
23 competitive playing field, 643 determined it would be reasonable to build its business on
24 Facebook Platform and obtained commitments in excess of \$200,000 in seed capital to build a
25 business on Facebook Platform. 643's decision was based in significant part on Facebook's
26 representations that any friends of Facebook users who entered into contract with 643 would
27 become qualified leads with a strong likelihood of becoming 643's customers as well. Facebook's
28 representations gave 643 a reasonable objective belief that it was highly probable that certain of

1 Facebook's users (those who were friends with 643's users) would generate economic benefit for
2 643 in the future.

3 93. On December 11, 2012, 643 entered into Facebook's Statement of Rights and
4 Responsibilities ("SRR" or "Agreement"). The SRR is the "terms of service that governs
5 [Facebook's] relationship with users and others who interact with Facebook. By using or
6 accessing Facebook, [643] agree[d] to this Statement...." (FB_0000006, FB_0000017). Further,
7 since 643 had "a principal place of business in the US or Canada, this Statement is an agreement
8 between [643] and Facebook, Inc." (FB_0000015, FB_0000025).

9 94. The primary consideration offered by Facebook is described as follows in the
10 Agreement: "We give you all rights necessary to use the code, APIs, data, and tools you receive
11 from us." (FB_0000010, FB_0000021). In exchange, 643 gave Facebook various rights and other
12 forms of valuable consideration, including, for instance, the right to issue "a press release
13 describing [Facebook's] relationship with [643]," the "right to analyze [643's] application,
14 content, and data for any purpose, including commercial" purposes like targeting advertisements.
15 (FB_0000010, FB_0000021). In other words, 643 gave Facebook the right to leverage the user
16 engagement from 643's App to increase Facebook's advertising revenues.

17 95. In consideration of the rights to access Facebook's data, 643 also committed to a
18 wide range of obligations around which it incurred substantial cost, such as ensuring that 643
19 would "provide customer support for its application," "make it easy for users to contact" 643 or
20 "remove or disconnect" 643's App (FB_0000010, FB_0000021). A small sample of the
21 additional requirements Facebook placed on 643, many of which required incurring costs, are
22 listed below:

- 23 a. You will not collect users' content or information, or otherwise access Facebook,
24 using automated means (such as harvesting bots, robots, spiders, or scrapers)
without our prior permission.
- 25 b. You will not engage in unlawful multi-level marketing, such as a pyramid scheme,
26 on Facebook.
- 27 c. You will not upload viruses or other malicious code.

- 1 d. You will not solicit login information or access an account belonging to someone
else.
- 2 e. You will not bully, intimidate, or harass any user.
- 3 f. You will not post content that: is hate speech, threatening, or pornographic; incites
4 violence; or contains nudity or graphic or gratuitous violence.
- 5 g. You will not develop or operate a third-party application containing alcohol-
6 related, dating or other mature content (including advertisements) without
appropriate age-based restrictions.
- 7 h. You will follow our Promotions Guidelines and all applicable laws if you
8 publicize or offer any contest, giveaway, or sweepstakes (“promotion”) on
Facebook.
- 9 i. You will not use Facebook to do anything unlawful, misleading, malicious, or
10 discriminatory.
- 11 j. You will not do anything that could disable, overburden, or impair the proper
12 working or appearance of Facebook, such as a denial of service attack or
interference with page rendering or other Facebook functionality.
- 13 k. You will not facilitate or encourage any violations of this Statement or our
14 policies.
- 15 l. You will only request data you need to operate your application.
- 16 m. You will have a privacy policy that tells users what user data you are going to use
17 and how you will use, display, share, or transfer that data and you will include
your privacy policy URL in the Developer Application.
- 18 n. You will not use, display, share, or transfer a user’s data in a manner inconsistent
19 with your privacy policy.
- 20 o. You will delete all data you receive from us concerning a user if the user asks you
21 to do so, and will provide a mechanism for users to make such a request.
- 22 p. You will not include data you receive from us concerning a user in any advertising
creative.
- 23 q. You will not directly or indirectly transfer any data you receive from us to (or use
24 such data in connection with) any ad network, ad exchange, data broker, or other
advertising related toolset, even if a user consents to that transfer or use.
- 25 r. You will not sell user data. If you are acquired by or merge with a third party, you
26 can continue to use user data within your application, but you cannot transfer user
27 data outside of your application. (FB-0000007, FB_0000010, FB_0000018,
28 FB_0000020-FB_0000021)

1 96. 643 was further required to commit to all obligations under the Facebook Platform
2 Policies, Advertising Policies and Facebook Developer Payment Terms, all of which were
3 incorporated by reference into the Agreement. These additional commitments included, for
4 instance, requirements around implementing policies, tools and safeguards to ensure that “a user’s
5 friends’ data can only be used in the context of the user’s experience on your application” and to
6 ensure 643 did not “directly or indirectly transfer any data” to “any ad network, data broker or
7 other advertising toolset...even if the user consents to such transfer or use.” (FB_0000028). Each
8 of these conditions required writing software that costs time and money.

9 97. The terms of the Agreement between 643 and Facebook required that the two
10 parties share and maintain highly confidential, private and sensitive information of consumers,
11 including personally identifiable information. This confidential and sensitive data includes the
12 name, phone device ID, email address, private profile information, data uploaded to the Facebook
13 site like photos and videos, location. Further, under the Agreement, 643 was required to share
14 with Facebook its confidential and proprietary source code, including the inner workings and
15 unique intellectual property behind its technology at any time upon Facebook’s request. Facebook
16 had a duty to disclose material facts affecting its ability to perform under the Agreement,
17 including to continue to provide rights to the data it had been sending to 643 given the Agreement
18 between the parties. Facebook further had a duty to disclose material facts to 643 in light of the
19 confidential information shared between the parties.

20 98. At all times, 643 performed all its obligations under the Agreement and abided by
21 all Facebook policies, terms and conditions. At no time did Facebook ever notify 643 that it
22 believed 643 had violated any term of its Agreement with Facebook or any policies, including
23 those related to user privacy, user trust or user control of data.

24 99. 643 further agreed that Facebook could “create applications that offer similar
25 features and services to, or otherwise compete with, [643’s] application”; that Facebook Platform
26 may not always be free to use; and that Facebook could limit access to data or impose additional
27 data-throttling restrictions if 643’s user base increased substantially (FB_0000010, FB_0000021),
28

1 After careful review of the Agreement, 643 reasonably concluded that these requirements meant
2 that 643 in the future may be charged a fee to access data, which would be charged consistently
3 across all other companies, and that the amount of data 643 could access at any time may be rate-
4 limited to assist Facebook in managing its costs in maintaining the API. Rate-limiting is common
5 across most software APIs to ensure that an API user can only access a certain amount of data
6 over a specified period of time. This assists the API provider, in this case Facebook, to manage
7 costs associated with maintaining the API. Further, 643 understood Facebook to mean that
8 Facebook could compete with 643 on a level playing field where the consumer decides which
9 products succeed in the market. However, upon information and belief, Zuckerberg and the
10 Conspiring Facebook Executives took active, malicious, fraudulent and oppressive measures to
11 ensure that consumers had less choice and control over the products available to them, ensuring
12 that Facebook and those Developers who agreed to provide Facebook with cash or in-kind
13 payments win the market by not having to compete with applications from other Developers.

14 100. Nowhere in the Agreement did Facebook state that access to data could be
15 provided on an unequal basis or that Facebook reserved its rights to provide data on an unequal,
16 privileged or arbitrary basis. Nowhere in the Agreement did Facebook state that it reserved its
17 rights to remove entirely the social data in the Social Graph, the core data that defined Facebook
18 Platform for over seven years and incentivized Developers to build applications on Facebook
19 Platform instead of other operating systems like Windows or Macintosh. Facebook's conduct for
20 seven years affirmed the reasonableness of 643's interpretation of its Agreement with Facebook.
21 As the Agreement was drafted entirely by Facebook, if Facebook had intended by its terms to
22 convey that it could provide access to data on unequal, privileged or arbitrary terms, or that it
23 could shut down entirely access to entire categories of social data representing the most
24 commonly used data under Graph API, it could have done so with much clearer language.

25 101. As of March 1, 2017, Facebook's Platform Policies still include obligations around
26 social data, stating that Developers can "Only use friend data (including friends list) in the
27 person's experience in your app." (See developers.facebook.com/policy, Section 3.3). This
28

1 demonstrates that some Developers who have entered into special agreements with Facebook still
2 have access to this social data notwithstanding that the data has been restricted to all other
3 Developers. Upon information and belief, many Developers with close relationships to Facebook
4 and who paid Facebook substantial sums of cash or other financial consideration continue to
5 access this data in some form, notwithstanding that it has been restricted to all other software
6 companies.

7 102. Before and during the time 643 was considering investing in Facebook Platform,
8 Facebook repeatedly stated that it intended to have an open governance process around its terms
9 of use and that Developers would participate in the evolution of their agreements with Facebook.
10 For instance, on April 22, 2009, Zuckerberg released a video to Developers and users in which he
11 stated that a community as “large and engaged [as Facebook] needs a more open process, and a
12 voice in governance. That’s why a month ago, we announced a more transparent and democratic
13 approach to governing the Facebook site. Since that time, users and experts from around the
14 world have read and offered comments on the documents that we’ve proposed, the Facebook
15 Principles and the Statement of Rights and Responsibilities. We’ve read all of these comments
16 and we’ve created new drafts of the documents.... Now we want you to vote and share with us
17 which documents you think should govern Facebook. I hope you take a minute or two to vote and
18 also to fan the Facebook Site Governance Page.”
19 ([https://www.facebook.com/fbsitegovernance/videos/vb.69178204322/718903095373/?type=2&t](https://www.facebook.com/fbsitegovernance/videos/vb.69178204322/718903095373/?type=2&th)
20 heater). These various representations led 643 reasonably to conclude that Facebook intended to
21 be a good actor in enforcing its Agreement with 643.

22 103. In entering into the Agreement, 643 reasonably relied on the various official
23 statements, announcements, policy documents and verbal representations of Facebook employees,
24 and in particular of Zuckerberg, and the Facebook Platform FAQ document Facebook had
25 produced, as well as the experience of thousands of other Developers who had successfully built
26 applications on Facebook Platform. 643 could not have known that Zuckerberg had already
27 decided to restrict access to the data necessary for 643’s technology to work, as Facebook had
28

1 exclusive access to this information and had taken measures to actively conceal this fact from
2 643, other Developers and the public.

3 104. 643 conducted user research to determine how people would like their photos
4 sorted. The user research overwhelmingly concluded that users between the ages of 25 and 45
5 wanted to more easily find photos of their friends in a summer setting. Consequently, 643 decided
6 to test its technology by building an application called Pikinis (“the App”). The App was
7 available for download on any iOS-compatible device, including the iPhone and iPad. The App
8 enabled Facebook users to reduce time spent searching through their photos by automatically
9 finding summer photos that their friends have shared with them through Facebook’s network,
10 assuming their friends permitted 643 to access the photos. This App enabled 643 to more rapidly
11 access large numbers of photos in order to train its technology and develop new and more
12 powerful applications in order to convert prospective customers. 643 also had plans to develop an
13 Android version of the App in order to convert prospective customers who owned Android
14 phones.

15 105. The App required use of Facebook’s Graph API. The App used 643’s image
16 recognition technology to search through shared photos and identify the ones in a summer setting,
17 which included friends at the beach or pool, on a boat, in their bathing suits and the like. 643 had
18 intended to use its technology to build a number of other applications unrelated to the subject
19 matter of the App.

20 106. The App could only access and display photos that Facebook users had chosen to
21 share based on their Facebook privacy settings, even if the Facebook user had never installed
22 643’s App. In other words, the only photos a user could see in the App were ones the user could
23 also see on Facebook. 643’s App had no photos that were not also displayed on Facebook.com.
24 All the photos and all content in the App was subject to and passed Facebook’s own policy,
25 privacy and content reviews. It was not possible for the App to display content that was not
26 subject to and had not passed Facebook’s own policy, privacy and content reviews. Therefore, it
27 was not possible for the App to contain objectionable content as all of the content was subject to
28

1 and controlled by Facebook's own policies, including its manual and automated controls. If a
2 photo were to be removed by Facebook for containing objectionable content, it would have
3 simultaneously and automatically been removed from the App. 643 made this clear to customers
4 and prospective customers of the App.

5 107. 643 conducted initial user research that indicated considerable consumer demand
6 for the App, among both men and women. Facebook never expressed any disapproval of the App
7 as the only content it accessed was content already available on Facebook. The App abided by the
8 Agreement, including all of Facebook's privacy requirements, Terms and Conditions and
9 Developer Policies. The App built in advanced privacy checks at significant engineering expense.
10 The App contained no malicious or inappropriate content, and any Facebook user could remove
11 the App's access to their photos at any time from the main Facebook privacy page.

12 108. 643 made plans to market and promote the App to attract users. 643 engaged at
13 least 20 contractors at significant cost to assist in building a list of prospective customers, mostly
14 students on college campuses. These contractors used publicly available information and/or direct
15 outreach to develop a list of prospective customers with verified unique email addresses in excess
16 of 100,000 prospective customers (approximately 49,000 fraternity members, 23,000 sorority
17 members, and 35,000 female and male college athletes). Further, 643 sent emails to some but not
18 all of these prospective customers. The emails invited these prospective customers to go onto the
19 App's website and sign up to receive a notification once the App launched and was available for
20 them to purchase. These emails were sent in batches that had an average conversion rate of 6%,
21 significantly higher than the industry norm (the lowest conversion rate was approximately 3% and
22 the highest was approximately 13%). Approximately 6,000 people opted-in to receive a
23 notification from 643 when the App was available for them to purchase. In other words, 6,000
24 people took the time to go to the App's website, input their email address and request that they be
25 notified when the App launched. These individuals who signed up to receive a notice when they
26 could purchase the App were qualified prospective customers who had expressed intent to
27 purchase 643's App and had an existing relationship with 643 by signing up to the App's website

1 and becoming subject to the website's terms and conditions. Many of these qualified prospective
2 customers were never able to enter into contract with 643 as a direct result of Facebook's anti-
3 competitive and fraudulent schemes. Further, at least 13,000 prospective customers never
4 received an email from 643 as a direct result of Facebook's anti-competitive and fraudulent
5 schemes. 643 acquired the contact information and made plans to contact these prospective
6 customers at significant cost, but 643 was never able to contact these customers and enter into
7 contract with them as a direct result of Facebook's conduct. 643 had a reasonable expectation of
8 prospective economic advantage and incurred substantial cost in order to identify and engage the
9 6,000 qualified prospective customers and the additional 13,000 prospective customers in 643's
10 marketing plan.

11 109. Further, Facebook represented since 2007, and 643 relied on Facebook's
12 representations since that time, that certain Facebook users were prospective customers of any
13 app built on Platform. This is because a key purpose of Platform was to enable new apps to reach
14 Facebook's users with free, organic distribution through the newsfeed APIs and friends list APIs.
15 Facebook represented for years that this would enable companies like 643 to much more rapidly
16 enter into contracts and secure purchases from new customers since any friend of any existing
17 App user could enter into contract with 643 with a single tap of a button and without 643 having
18 to purchase advertisements. Given that 4,481 users entered into contract with 643, all of the
19 Facebook friends of these 4,481 customers were prospective customers of 643 who could enter
20 into contract with 643 with a single tap on a link sent by their friends. The 4,481 users who
21 entered into contract with 643 had approximately 100,000 friends who were prospective
22 customers of the App and whose friends had a relationship with 643 since they could see on
23 Facebook that their friend had downloaded the App. 643 had a reasonable expectation of
24 prospective economic advantage with these approximately 100,000 prospective customers.

25 110. Finally, 643 engaged in other marketing activities in preparation for a public
26 launch. For instance, 643 purchased advertising from Facebook to test various ad campaigns in
27 Facebook's new mobile advertising product. Facebook confirmed these purchases and ran 643's
28

1 various ad campaigns on its public website. As a result of Facebook's anti-competitive scheme,
2 643's App was prevented from participating in Facebook's advertising market since it had no
3 functioning App to advertise. Upon information and belief, tens of thousands of other software
4 companies were prevented from participating in Facebook's new mobile advertising market as a
5 result of Facebook's anti-competitive scheme.

6 111. During a soft launch or trial period, 643 began selling the App for \$1.99 in Apple's
7 App store. The basic version of the App allowed a user to run a certain number of searches per
8 month. In addition, users could choose to pay for premium access, which allowed unlimited
9 searching. 643 offered different pricing tiers for premium access, ranging from \$1.99 for a
10 monthly subscription, to \$6.99 for 6 months, to \$9.99 for 12 months. The App's license
11 agreement with users was tiered, so users could enter into contract with 643 at no cost or for
12 \$1.99, but then elect to make additional purchases with a single tap. As a result, 643 reasonably
13 expected that users with whom it had an existing contract would generate additional economic
14 benefits to 643 beyond the terms of the then-current contract. In short, existing customers whose
15 contract was set at a lower tier could at any time upgrade their contract tier to generate additional
16 revenues for 643.

17 **VII. FROM THE MIDDLE OF 2012 UNTIL JANUARY 20, 2015, FACEBOOK**
18 **ACTIVELY CONCEALED MATERIAL INFORMATION IT HAD AN**
19 **OBLIGATION TO DISCLOSE WHILE CONTINUING TO MAKE FALSE**
20 **STATEMENTS TO ENTICE 643 AND OTHER COMPANIES TO MAKE**
21 **INVESTMENTS FACEBOOK KNEW TO BE IRREPERABLY DAMAGED.**

22 112. Upon information and belief, Zuckerberg and the Conspiring Facebook Executives
23 requested that Facebook employees actively conceal the decision to restrict data access to
24 competitors from internal employees, Developers and the public. Upon information and belief,
25 the Conspiring Facebook Executives made various layers of management aware of this decision
26 on a need-to-know basis periodically from late 2012 until late 2013 and, at all times, required
27 such employees to actively conceal and/or make only partial disclosures of these material facts.

28 113. During this time, Facebook sent many dozens of communications directly to 643
and hundreds of public communications intended for Developers that informed 643 of material

1 changes to Facebook Platform, many of which enticed 643 to make further investments of capital
2 and resources in building on Facebook Platform. Not a single one of these communications
3 referenced that Facebook was restricting access to data critical to the functioning of 643's App
4 until January 20, 2015.

5 114. Further, during this time, Facebook held numerous meetups, conferences,
6 hackathons and the like in which Facebook employees trained developers like 643 to access data
7 the Conspiring Facebook Executives had already made the decision to restrict, encouraging and
8 enticing Developers to invest time, money and resources in applications Facebook knew would
9 not function based on decisions Zuckerberg had already made. Facebook made some of these
10 training sessions available online for Developers like 643 who could not attend in person. 643
11 relied on these training sessions and other statements in deciding and continuing to invest in its
12 technology. Facebook continued to make the same representations around the benefits of
13 Facebook Platform that it had made since 2007 and acted maliciously, intentionally and
14 recklessly in continuing to make such statements. Further, from 2012 throughout 2014, Facebook
15 issued numerous official statements and announcements that touted the success of Developers on
16 Facebook Platform and further encouraged Developers to invest resources to build applications
17 around data Zuckerberg had already decided to stop providing on fair, equal and neutral terms.

18 115. By way of example, on June 20, 2012, Cox gave a keynote speech at a conference
19 in which he touted the success of a company that accessed friend data when stating: "And on
20 Ticketmaster, rather than trying to remember exactly which night your friends were going to the
21 concert...people can see that right there [on Ticketmaster] and then post back that they're going,
22 which incidentally on average creates six extra dollars of spend on Ticketmaster."

23 (<https://www.youtube.com/watch?v=R2kkaDMAJmA>). Upon information and belief, such
24 statements by Cox were deliberately misleading, reckless and/or negligent in enticing Developers
25 to build similar applications to achieve the kinds of benefits Cox attributed to Ticketmaster since
26 Cox was in discussions with the Conspiring Facebook Executives to restrict this data.

1 116. By way of example, on October 20, 2012, Zuckerberg gave a speech in which he
2 stated that Facebook had “over 300 or 400 million photos shared per day now, which is pretty
3 crazy,” and implied that photo sharing was a huge monetization opportunity on Facebook.
4 Zuckerberg omitted any mention that he had, upon information and belief, already decided to
5 restrict this data to Developers. (<https://www.youtube.com/watch?v=5bJi7k-y1Lo>). Further, on
6 January 15, 2013, Zuckerberg described searching for photos extensively and noted that
7 Facebook had over 240 billion photos, the largest online repository, conveniently omitting that
8 access to such photos would be restricted when enticing listeners around the opportunity of
9 Facebook’s photo platform. (<https://www.youtube.com/watch?v=c-E3cfPHjeY>).

10 117. By way of example, on February 28, 2013, Facebook published a training video on
11 its official Facebook Developer YouTube Channel
12 (<https://www.youtube.com/user/FacebookDevelopers/about>), which has over 80,000 subscribers
13 and 9.8 million views. The training session, “Getting started with Facebook SDK for iOS,” was
14 hosted by Facebook Employee Eddie O’Neil. O’Neil teaches Developers how to build
15 applications that access friend data by building one with the Developers in the audience. He
16 shows how to make a request to “get back photo albums for five friends” and then towards the
17 end shows the finished application, stating: “Here are all my friends...As I scroll here, you see
18 that we haven’t brought all the friend pictures in yet, but as we bring them in we’ll stick them in
19 that cache and hold on to them...when we come back to display this it’s instantaneous,” meaning
20 that the App can show all the friends’ photos in a single request to make it super easy for
21 Developers to use this data in their applications.

22 (<https://www.youtube.com/watch?v=t51FzjDCYM4>). Upon information and belief, Zuckerberg
23 had already decided to restrict access to friend data many months prior, and Mr. O’Neil was
24 aware of this fact at the time he held this training session. As a result, Mr. O’Neil must have
25 known at the time of this training session that he was teaching and encouraging Developers to
26 invest capital and resources in building applications that would soon no longer function. Upon
27 information and belief, the Conspiring Facebook Executives either instructed Mr. O’Neil directly
28

1 or via their subordinates to actively conceal this information from Developers. 643 reasonably
2 relied on this training video and others like it when making decisions to continue its investment in
3 Facebook Platform.

4 118. By way of example, February 28, 2013, Facebook published another training video
5 on its official Facebook Developer YouTube Channel. This training video was hosted by
6 Facebook employee Simon Cross from the “World Hack Moscow” event. Cross tells Developers
7 that Facebook Platform is not about building apps within Facebook.com but rather integrating
8 Facebook data “into your app on every platform... We’re gonna spend time using our SDKs and
9 APIs and integrating with Facebook at a code level.” Cross then walks Developers step by step
10 through the process of accessing photos (“Now we can go in and get their picture”).

11 (<https://www.youtube.com/watch?v=heTPmGb6jdc>)

12 (<https://www.facebooksappeconomy.com/fullstory>, around 11:00). Upon information and belief,

13 Zuckerberg had already decided to restrict access to friend data many months prior, and Mr.
14 Cross was aware of this fact at the time he held this training session. As a result, Mr. Cross must
15 have known at the time of this training session that he was teaching and encouraging Developers
16 to invest capital and resources in building applications that would soon no longer function. Upon
17 information and belief, the Conspiring Facebook Executives either instructed Mr. Cross directly
18 or via their subordinates to actively conceal this information from Developers. 643 reasonably
19 relied on this training video and others like it when making decisions to continue its investment in
20 Facebook Platform.

21 119. By way of example, on June 20, 2013, Facebook published another training video
22 hosted by Cross on its official Facebook Developer YouTube Channel, “Getting Started with
23 Graph API”. The video included instructions stating that its purpose was to serve as “An
24 introduction to Facebook’s Graph API which is the primary way to programmatically integrate
25 with Facebook – publishing Open Graph stories, reading data about the current user – their
26 details, their likes and interests and friends.” The video documentation further states that it will
27 show Developers “how to build up deep graph queries which dive several layers deep into the

1 Graph.” The instructions also reference Developer documentation that continued to show
2 Developers how to access data that the Conspiring Facebook Executives had already decided to
3 restrict at: <https://developers.facebook.com/docs/graph-api/overview>. Notably, despite this
4 reference by Facebook in June 2013 to this URL, the Wayback Machine has no record of this
5 URL prior to 2015 after Facebook had made public its bait-and-switch schemes. In the video,
6 Cross walks Developers from start to finish through the process of requesting friend data
7 permissions, enticing Developers with statements like the following: “Graph API Explorer makes
8 it really easy to get started...Places, Pages, Photos, Events and Newsfeed stories as well as Users
9 are all considered objects” in the graph... We can go deeper and deeper into the graph. We can
10 also request the picture connection on each returned User object. This would allow me to show
11 the profile picture of each of my friends and to get all of this data in a single request.”
12 (<https://www.youtube.com/watch?v=WteK95AppF4>). Developers watched this video 238,665
13 times as of March 7, 2017. Upon information and belief, Zuckerberg had already decided to
14 restrict access to friend data many months prior, and Mr. Cross was aware of this fact at the time
15 he held this training session. As a result, Mr. Cross must have known at the time of this training
16 session that he was teaching and encouraging Developers to invest capital and resources in
17 building applications that would soon no longer function. Mr. Cross actively concealed and
18 omitted material facts around restrictions on this data that Facebook already decided upon around
19 one year prior. Upon information and belief, the Conspiring Facebook Executives either
20 instructed Mr. Cross directly or via their subordinates to actively conceal this information from
21 Developers. 643 reasonably relied on this training video and others like it when making decisions
22 to continue its investment in Facebook Platform.

23 120. By way of example, on June 26, 2013, Facebook published a “Facebook Platform
24 Case Study – Fab.com” on its official Facebook Developer YouTube Channel. Facebook and its
25 partner Fab.com, an e-commerce app, touted the benefits of building on Facebook’s social
26 operating system. A Fab.com employee stated that with Graph API they can “take everything
27 they have in the catalog and narrowly target to a customer” to “see a product on Facebook and
28

1 then share with their friends.” Facebook entices Developers to access social data in this video but
2 conveniently omits all reference to the fact that the Conspiring Facebook Executives had decided
3 many, many months ago to cease providing this data on fair and neutral terms.

4 (<https://www.youtube.com/watch?v=fEvq5BshZLo>).

5 121. By way of example, on September 18, 2013, Zuckerberg gave a speech during one
6 of Facebook’s Developer Days to over 600 attendees from 17 countries. Facebook published the
7 speech on its official Facebook Developer YouTube Channel. Zuckerberg states: “A lot of people
8 think about Facebook Platform as a way to get distribution for apps that you’ve built. But we
9 want to help you do even more than that. We want to make it simple to build great apps that have
10 identity, friends and all the stuff that you want built in really easily.”

11 (<https://www.youtube.com/watch?v=rnjQpyCJec>). Upon information and belief, Zuckerberg had
12 decided approximately a year earlier to restrict access to friends data, identity data and “all the
13 stuff that you want built in really easily.” Upon information and belief, Zuckerberg intentionally,
14 recklessly and/or negligently made this statement and many others like it during this period of
15 time to induce Developers to build applications that benefited Facebook with full knowledge that
16 Developers’ investments in these applications would be irreparably damaged. Upon information
17 and belief, Zuckerberg actively concealed his decision, made statements that plainly contradicted
18 his decision, and omitted material information regarding his decision. 643 reasonably relied on
19 Zuckerberg’s intentional, reckless and/or negligent false statements and had no other means of
20 identifying this material information that the Conspiring Facebook Executives had been actively
21 concealing even before 643 received its initial investment and began its operations.

22 122. During this time from 2012 throughout 2014, Facebook made many other policy
23 updates and announcements to keep Developers informed of material information, including
24 announcements on its website and in videos, such as the “Facebook Policy Update” by Facebook
25 employee Alison Hendrix published on Facebook’s official YouTube Channel on August 27,
26 2013. (<https://www.youtube.com/watch?v=NRziLMgbbOk>). Even as late as September 2014,
27 Facebook continued to actively conceal material facts related to its photo sharing applications, as

1 evinced in a video published on its official Facebook YouTube Channel, “Facebook Products for
2 Photo Apps,” which makes no mention of the dramatic restrictions on friend data and photos data
3 that, upon information and belief, the Conspiring Facebook Executives had decided to implement
4 more than two years prior. (<https://www.youtube.com/watch?v=R8M4oz1uA3o>).

5 123. Further, upon information and belief, throughout 2013 and 2014, the Conspiring
6 Facebook Executives combined and conspired with other companies to selectively enforce
7 Zuckerberg’s decision to shut down access to Graph data against certain companies that built
8 applications which the Conspiring Facebook Executives considered especially competitive with
9 Facebook’s current or future products. Upon information and belief, the Conspiring Facebook
10 Executives agreed to wait to restrict access to certain other companies and encouraged these
11 companies to continue investing in applications that the Conspiring Facebook Executives knew
12 would not function in the future.

13 **VIII. FROM LATE 2013 TO EARLY 2014, ZUCKERBERG CONCOCTED A**
14 **FABRICATED NARRATIVE TO MASK THE FRAUDULENT AND ANTI-**
15 **COMPETITIVE SCHEMES IN WHICH HE AND THE OTHER DEFENDANTS**
16 **CONSPIRED, SUPPRESSING MATERIAL INFORMATION AND SHARING**
17 **ONLY PARTIAL INFORMATION, WHICH CAUSED FURTHER DAMAGE TO**
18 **643.**

19 124. From late 2013 through early 2014, Zuckerberg worked with the Conspiring
20 Facebook Executives and other companies to construct a fraudulent narrative around ‘user trust’
21 designed to mask the true reasons he decided to close access to Facebook’s allegedly Open
22 Graph. Upon information and belief, Zuckerberg personally decided to announce the closing of
23 Graph API at F8 on April 30, 2014 and personally drafted his speech that actively, maliciously
24 and fraudulently suppressed material information and revealed only partial information.

25 125. Upon information and belief, Zuckerberg personally decided to make user trust
26 and control a theme at F8 and use those themes as pretenses for notifying companies that their
27 access to data would be removed.

28 126. Upon information and belief, Zuckerberg personally decided to mask the true
implications of his decision to restrict data access in his announcement and to suppress material

1 information that made it impossible for 643 and other Developers to understand the impact to
2 their applications based on Zuckerberg's convoluted and contradictory announcement on April
3 30, 2014. Upon information and belief, Sukhar, Vernal and others worked directly with
4 Zuckerberg to suppress this material information in the announcement and to disseminate this
5 fabricated narrative around user trust.

6 127. Upon information and belief, Zuckerberg tasked Sukhar and Vernal, among others,
7 with propagating this fraudulent narrative internally to Facebook employees and externally to
8 Developers and the public. Upon information and belief, Sukhar, Vernal and the other Conspiring
9 Facebook Executives actively participated and conspired in the propagation of this fraudulent
10 narrative.

11 128. Upon information and belief, issues like user trust, user control, privacy and the
12 rare use of certain Graph API data – all of which Zuckerberg and other Facebook employees
13 stated publicly as reasons for restricting data access and breaking tens of thousands of
14 applications – were not in fact the actual reasons for restricting data access at the time Zuckerberg
15 made and the Conspiring Facebook Executives participated in the decision. Upon information and
16 belief, removing potential competitive threats and leveraging Platform to build Facebook's
17 mobile advertising business were the primary or exclusive reasons for closing the Open Graph.
18 Further, upon information and belief, decisions were not made unilaterally but in combination and
19 concert with other large companies and exceptions were made for certain applications that are
20 more susceptible to violating user trust or where user trust is in fact more important than in
21 normal applications, such as applications that require payments. These exceptions demonstrate
22 that user trust could not have been the actual reason for Facebook's decision to restrict Graph API
23 data.

24 129. Upon information and belief, Zuckerberg and the Conspiring Facebook Executives
25 directed their public relations team to feed reporters false information and in certain cases drafted
26 reporters' stories themselves in order to disseminate this fabricated narrative among the public
27 and Developer community.

1 This is something we wanted internally as we build on this platform, so now everything is gonna
2 be versioned so you get to decide which version of the API you get to build against.”

3 133. Accordingly, Zuckerberg made at least four representations of fact: (1) Facebook
4 continued to provide a level playing field to Developers, including the ability to use the same
5 tools as Facebook employees to develop their applications; (2) Facebook continued to be
6 committed to providing developer access “that you can rely on for the long term”; (3) Facebook
7 promised that for all of its Core API endpoints it would guarantee their stability for at least two
8 years going forward; (4) Facebook promised that it would let Developers choose which version of
9 the API they would like to access as it introduces API versioning (“This is something we want to
10 make sure that all the apps we wrote two years ago keep working. This is something we wanted
11 internally as we build on this platform, so now everything is gonna be versioned so you get to
12 decide which version of the API you get to build against.”).

13 134. Because Zuckerberg suppressed material facts in his announcement, many
14 Developers initially applauded the 2-year stability guarantee and the ability to let Developers
15 choose which version of the API to build against. One blogger applauded Facebook’s
16 commitment to Developers in noting: “Facebook co-founder and CEO Mark Zuckerberg
17 announced a two-year stability guarantee for all of the company’s core APIs and platforms. In
18 fact, every API launched by Facebook will now be versioned, and Developers will be able to
19 choose which version to build on.” (See [http://thenextweb.com/facebook/2014/04/30/facebook-](http://thenextweb.com/facebook/2014/04/30/facebook-announces-two-year-stability-guarantee-core-apis-sla-fix-major-bugs-within-48-hours/#gref)
20 [announces-two-year-stability-guarantee-core-apis-sla-fix-major-bugs-within-48-hours/#gref](http://thenextweb.com/facebook/2014/04/30/facebook-announces-two-year-stability-guarantee-core-apis-sla-fix-major-bugs-within-48-hours/#gref).)
21 TechCrunch and many other bloggers also reported on the API Guarantee, stating that Developers
22 “will be able to build with confidence knowing that a Core API will be available for at least two
23 years”. (See <http://techcrunch.com/2014/04/30/facebook-api-guarantee/>.)

24 135. Upon information and belief, Zuckerberg’s announcement contradicted active
25 plans Facebook had been implementing for almost two years at Zuckerberg’s personal direction.
26 At no time in his announcement did Zuckerberg mention that all of the Graph API Data would be
27 removed, notwithstanding that he had made the decision to do so two years prior and had
28

1 personally overseen efforts by dozens of Facebook employees to implement the anti-competitive
2 data restrictions.

3 136. Zuckerberg's statement that Developers, like Facebook employees, would be able
4 to choose which API to use was simply false, and Zuckerberg knew this statement to be false at
5 the time he made it. Upon information and belief, the Conspiring Facebook Executives had
6 instructed their subordinates to implement a Core versus Extended API distinction and to version
7 Graph API precisely to hide both the type of data they intended to restrict while also masking the
8 true anti-competitive motivations for restricting it.

9 137. Zuckerberg's statement and Facebook's subsequent announcement that certain
10 endpoints would be removed because they were rarely used was false, and the Conspiring
11 Facebook Executives knew them to be false at the time they made them. Upon information and
12 belief, certain of the endpoints in question were among the most used data in Graph API.

13 138. Zuckerberg's statement of a two-year stability guarantee was also false, and
14 Zuckerberg knew it to be false at the time he made it. Upon information and belief, Zuckerberg
15 and the Conspiring Facebook Executives had already decided that the social data in the Social
16 Graph would only remain available for one year, not two. In other words, the 2-year stability
17 guarantee turned out not to apply to the original Graph API and only to future APIs, a critical fact
18 that Zuckerberg omitted in his announcement. Thus, Facebook pulled the rug out from under the
19 Developer community and took full economic advantage of the ecosystem Developers had built,
20 but Zuckerberg's keynote address still generated sound bites consistent with his previous
21 representations that Facebook was maintaining a fair and level playing field for Developers.
22 Zuckerberg was forced to make statements he knew at the time to be false precisely because it
23 was obvious to everyone in the Developer community, especially Zuckerberg, that Facebook had
24 for seven years been making clear and unambiguous promises to Developers that they could rely
25 on Facebook Platform over the long term to provide a fair playing field that offers its data on
26 equal and neutral terms.

1 139. Finally, Graph API explicitly removed endpoints that were of high value to
2 Developers, like the ability to access photos, which for years Facebook had touted as one of its
3 most valuable and highly trafficked features in order to entice developers to build applications.
4 Facebook's only justification for removing access to photos at that time was that this endpoint
5 was "rarely used", which contravenes every public statement Facebook had previously stated for
6 over seven years in which Photos were consistently touted as its #1 application and driver of user
7 engagement, an application that captured more photos and traffic than the next three photo sites
8 on the Internet combined. Upon information and belief, these purportedly rarely used endpoints
9 were in fact among the most widely used in Facebook Platform from at least 2012 through 2014.

10 140. Facebook's behavior of intentionally inducing Developers to build Facebook's
11 business and then pulling the rug out from under them is a repeated pattern in Facebook's growth
12 story, further demonstrating the malicious, oppressive and fraudulent nature of Facebook's
13 conduct. The alleged conduct is not an isolated incident simply related to Graph API versioning
14 and the thousands of developers, like 643, whose businesses were destroyed by this bait-and-
15 switch tactic.

16 141. By way of example, Facebook executed another bait-and-switch tactic that caused
17 thousands of Developers to go out of business and lose countless millions of dollars of enterprise
18 value and capital investment. At the same time that Zuckerberg pulled the rug out from
19 Developers using Graph API data at F8 2014, he also announced Facebook's acquisition and
20 reliance on Parse as its new preferred tool for developers to build on Facebook Platform. Parse
21 was a popular development platform for creating applications for Facebook, which handled much
22 of the back-end functionality of such applications, allowing Developers to focus on features that
23 matter to users. Zuckerberg stated in the same keynote where he announced the Graph API 2.0:
24 "One of the things we're really excited about offering is Parse...We make it easy to focus on your
25 app, the thing that will get you users and make you money...and Parse takes care of all the rest."
26 A Facebook employee who followed Zuckerberg on stage went on to note that they had expanded
27 the free tier to make it easier to grow on Parse, giving developers "unlimited requests, unlimited
28

1 recipients, free analytics”. Zuckerberg then finished his thoughts on Parse by saying “We’re
2 excited, we’re aligned with your app, and we hope that it does get huge.”

3 142. As a result of this and many other similar statements and actions by Facebook,
4 hundreds of thousands of Developers began using Parse to build applications on Facebook
5 Platform. Parse’s platform on Facebook states: “From startups to the Fortune 500, hundreds of
6 thousands of developers trust us.”

7 143. Then, abruptly, on January 28, 2016, Facebook announced that Parse would be
8 shutting down: “We have a difficult announcement to make. Beginning today we’re winding
9 down the Parse service, and Parse will be fully retired after a year-long period ending on January
10 28, 2017. We’re proud that we’ve been able to help so many of you build great mobile apps, but
11 we need to focus our resources elsewhere.” The statement continues: “We understand that this
12 won’t be an easy transition... We know that many of you have come to rely on Parse, and we are
13 striving to make this transition as straightforward as possible.”

14 144. Many developers immediately commented on the devastating effect this would
15 have on their app, business and investment in the Facebook Platform. One developer wrote:
16 “@ParseIt Wow... Have spent months optimizing my app with your service to launch soon, and
17 now this... Seems sudden... #utterlydisappointed.” Another: “@ParseIt it would be nice to hear a
18 little bit more about the need to focus your resources elsewhere.” “@ParseIt my app had 2.5M
19 users on your platform...this is sickening.”

20 145. The incident with Parse demonstrates a continued clear pattern on the part of
21 Facebook to make clear and unambiguous representations to developers, to engage in conduct
22 that induces developers to make substantial investments of time and money (all of which helped
23 make Facebook one of the most valuable companies in the world today), and then pull the rug out
24 from under these Developers to reap the financial benefits for itself.

25 146. Upon information and belief, Facebook is currently undertaking another bait-and-
26 switch scheme, this time regarding the Facebook Messenger Platform. Upon information and
27 belief, this scheme was designed by Zuckerberg in 2013, and Facebook is currently in the process
28

1 of baiting developers into helping make Facebook’s messaging service the most popular text
2 messaging service in the world. Facebook made a partial disclosure of its intentions regarding
3 Facebook Messenger Platform, but, upon information and belief, did not fully disclose its
4 intentions regarding Facebook Messenger Platform. Had Facebook disclosed this information in
5 2013 when Zuckerberg decided upon it, then 643 would not have continued to invest in building
6 its business because it would have signaled to 643 that Facebook’s Platform cannot be relied upon
7 to build a viable business. This incident further demonstrates that the practice of baiting and
8 switching Developers to build new lines of business for Facebook was not merely incidental or
9 negligent, but is a key part of Zuckerberg’s standard playbook when entering new markets.

10 **IX. FACEBOOK DID NOT NOTIFY 643 THAT IT WAS REMOVING 643’S ACCESS**
11 **TO CRITICAL DATA NECESSARY FOR ITS APP TO FUNCTION UNTIL**
12 **JANUARY 20, 2015, NOTWITHSTANDING THAT ZUCKERBERG HAD MADE**
13 **THIS DECISION IN 2012 BEFORE 643 WAS ESTABLISHED**

14 147. On January 20, 2015, Facebook sent an email to 643 stating that 643 must
15 “upgrade” the App to Graph API v. 2.0 by April 30, 2015. The email stated that Facebook would
16 end third-party access to the full friends list and friends permissions, including the Friends’
17 Photos Endpoint, on April 30, 2015. The App would not function at all without access to this
18 Graph API Data, so Facebook’s suggestion that 643 “upgrade” the App to Graph API v. 2.0 was
19 not realistic or possible, and Facebook knew it was not realistic or possible.

20 148. By deciding to end access to the Graph API Data, Facebook made it impossible for
21 643 to continue to operate the App, to abide by the license agreements and purchase terms entered
22 into by 643 with its users, and for 643 to recoup any of its investment of capital, human labor,
23 time, effort and energy. If 643 had known that Facebook had made the decision to remove access
24 to the Graph API data, a decision Facebook made before 643 was even formed as a Delaware
25 limited liability company, then 643 never would have invested capital and resources in building
26 applications on Facebook Platform.

27 149. 643 was not able to execute a public launch of the App as a result of Zuckerberg’s
28 decision to restrict Graph API data access. However, during a soft launch or trial period, 643

1 entered into economic relationships with 4,481 users who downloaded the App in a very short
2 period of time with virtually no marketing budget. A substantial portion of App users subscribed
3 to premium access that began generating monthly revenues for 643.

4 150. Each one of the App users entered into a license agreement with 643.

5 151. Facebook requires Developers to enter into license agreements with users of
6 applications for Facebook. These license agreements must, among other things, require that the
7 users of these applications adhere to Facebook's terms of service.

8 152. Accordingly, Facebook knew, or should have known, about the existence of 643's
9 license agreements with its users, since Facebook required 643 according to the terms of its
10 Agreement to enter into such license agreements with 643's users. Further, upon information and
11 belief, Facebook employees, Zuckerberg and the Conspiring Facebook Executives circulated
12 spreadsheets of businesses who would be severely impacted by the anti-competitive data
13 restrictions. Upon information and belief, 643's App appears in these spreadsheets circulated
14 among Facebook executives, including Zuckerberg. Upon information and belief, the
15 overwhelming majority of the businesses on these spreadsheets were good apps who did not
16 violate user privacy or trust and to which Facebook had never sent a notice of policy violation.

17 153. Had Facebook refrained from restricting Graph API data, 643 could have quickly
18 begun to generate hundreds of thousands of dollars of revenue on a monthly basis. In a survey of
19 its initial trial users, 643 determined that there was overwhelming interest and engagement from
20 users of the App. In response to its survey, 96% of users said the App was easy to use and
21 understand; 75% of users said they were likely to recommend the App to a friend, with 40%
22 saying they already had recommended the App to a friend; 72% said they were happy with the
23 results returned from their searches; 32% said they would use the App every day while 67% said
24 they would use it once in a while; 60% of users said they would pay for the App, with 7% saying
25 they would pay \$2.99, 21% saying they would pay \$1.99, and 32% saying they would pay \$0.99;
26 and 32% said they would pay for an ongoing subscription to run additional searches.

1 Curbs disrupt startups, academic research and even political strategy”, THE WALL STREET J.,
2 Sept. 22, 2015, at B1 (available at
3 <http://www.wsj.com/articles/facebooksrestrictionsonuserdatacastalongshadow1442881332>).

4 167. The Wall Street Journal also reported in the same article that Facebook reached an
5 unspecified compromise with dating app Tinder that permitted some form of access to photos of
6 mutual friends. Upon information and belief, Tinder provided highly valuable unrelated financial
7 consideration to Facebook in exchange for this special access to data.

8 168. Upon information and belief, Facebook entered into agreements with many large
9 companies with the financial wherewithal to make substantial payments in unrelated advertising
10 purchases on Facebook in order to continue to maintain access to data that Facebook promised
11 would be available to all companies on fair and neutral terms. Upon information and belief, these
12 companies combined, conspired and agreed to work with Facebook to restrict access to social
13 data within specific vertical markets within Facebook Platform, such as dating, photo sharing,
14 messaging, lifestyle, news, books, games, videos and e-commerce applications.

15 169. Because 643 is a small business with limited resources, Facebook never offered
16 643 a compromise that would permit the App to function and even if Facebook were to make
17 such an offer, the harm to 643 is irreparable as its team members have moved on to new
18 employment and its code has been fully retired.

19 170. Instead, the only proposed technical “fix” by Facebook was to create an offline,
20 searchable cache of Facebook’s users’ photos. But this solution (1) on its face violates
21 Facebook’s own terms, (2) would not permit the App to function as originally intended and in the
22 same manner it had been, and (3) could result in a grave and substantial abuse of user trust,
23 violate user privacy, and gut the core principle of an individual’s ownership and control of their
24 own data. Facebook only offered this “fix” after multiple communications from 643’s counsel
25 providing notice to Facebook of 643’s intention to commence this litigation.

26 171. Facebook did not restrict Graph API data for the purpose of enhancing user
27 privacy, as users already possessed complete control over such data. Instead, it took these actions

1 for the purpose of improperly oligopolizing for itself and other large companies various attractive
2 software markets. As a result of these actions, users now have less control over this data. They are
3 not permitted to share it with other applications they trust, but only with Facebook and a small
4 group of companies that pay Facebook large sums of money in unrelated advertising purchases or
5 other financial consideration of strategic value to Facebook.

6 172. As set forth above, Facebook and certain of its executives made repeated, clear and
7 unambiguous representations and partial disclosures of fact upon which many Developers,
8 including 643, reasonably relied, over a period of more than seven years. Facebook and certain of
9 its executives knew or should have known these representations were false at the time they made
10 them, but continued to make these representations intentionally, recklessly, maliciously,
11 oppressively and fraudulently with complete disregard for the impact they would have on tens of
12 thousands of businesses and the families that depend upon them.

13 173. As set forth above, Facebook and certain of its executives deliberately withheld its
14 decision to close access to data in its operating system for approximately two years and continued
15 to entice Developers, including 643, to invest capital and resources with the knowledge that such
16 investments would be irreparably damaged.

17 174. As set forth above, Facebook and certain of its executives then combined and
18 conspired with other large companies to oligopolize specific vertical markets by providing
19 unequal access to the Social Graph in exchange for these companies providing unrelated
20 advertising payments or other in-kind consideration to the extreme detriment of all other market
21 participants.

22 175. As set forth above, Facebook and certain of its executives, at the direction of
23 Zuckerberg, then concocted a completely fabricated narrative in order to mask their anti-
24 competitive and deceptive behavior that resulted in tens of thousands of businesses facing
25 financial hardship and in some cases, like 643's case, shutting down.

26 176. Facebook and certain of its executives, in combination and concert with other large
27 companies, deliberately baited, induced and enticed (through countless promises in both official
28

1 statements and policies and in its conduct) Developers to help turn Facebook from a website that
2 had raised \$37 million and secured 24 million users to one of the most valuable enterprises in the
3 world, unjustly enriching Facebook and certain of its executives and their co-conspirators at the
4 expense of small and mid-size companies around the world.

5 **COUNT I: VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200 et seq.**
6 **[Against All Defendants]**

7 177. 643 re-alleges and repleads paragraphs 1 through 176 as though set forth fully
8 herein.

9 178. Facebook's representations and conduct were designed to, and did, entice 643 and
10 other Developers to create applications for Facebook with representations of, among other things,
11 a level playing field, fair competition, and a chance to build a business. Facebook decided to open
12 Graph API and certain types of data, and not others, precisely to induce Developers to build
13 certain types of applications, including advanced photo-searching applications. Facebook
14 represented to Developers that their own advanced photo-searching applications would be treated
15 on a level playing field with any photo-searching applications Facebook decided to launch in the
16 future. Facebook also represented to developers that Facebook was committed over the long term
17 to enable Developers to build businesses using advanced photo-searching applications.

18 179. Facebook caused substantial harm to 643 and other Developers when it then
19 decided to terminate Developers' ability to build advanced photo-searching applications, while
20 retaining the ability to create these kinds of applications for itself and for its close partners,
21 because 643, like other Developers, had invested considerable capital and resources in developing
22 this kind of application for Facebook.

23 180. The efforts by 643 and other Developers helped to drive user adoption of
24 Facebook by enhancing user experience, thus creating substantial additional revenue and user
25 base for Facebook's benefit.

26 181. In addition, Facebook took advantage of the market research and development
27 efforts by 643 and other Developers, which proved that advanced photo-searching applications
28 represented a massive market, perhaps one of the most attractive markets to help Facebook grow

1 its revenues going forward, as evinced by Facebook's recent announcement of "Moments", its
2 own photo searching application (see "Facebook Moments is a Smarter Photo App – Much
3 Smarter, in *Wired Magazine*, June 15, 2015, [http://www.wired.com/2015/06/facebook-
5 moments/](http://www.wired.com/2015/06/facebook-
4 moments/)).

6 182. Facebook's decision to restrict access to Graph API data does not enhance user
7 privacy because the App could only sort through photos that had already been shared with the
8 App user and the App user and the user's friends had full control over which, if any, Developers
9 were permitted to access their photos.

10 183. Instead, by restricting access to Graph API, Facebook has oligopolized for itself
11 and other large companies that entered into special agreements with Facebook the ability to create
12 applications capable of searching or sorting photos and other media, which harms consumers,
13 Developers, and competitors.

14 184. No countervailing benefits to competition or consumers stemming from
15 Facebook's representations and conduct exist.

16 185. The harm to 643 and other Developers by Facebook's representations and conduct
17 outweighs the purported reasons, justifications, or motives for the representations and conduct by
18 Facebook.

19 186. 643 could not have reasonably avoided its injury because Facebook notified 643 it
20 would be restricting data access after 643 had made considerable investment and Facebook had
21 approved the App.

22 187. 643 also requested that Facebook not restrict Graph API data, but Facebook did
23 not change its decision.

24 188. Facebook's actions thus constituted an unfair business practice under California's
25 Unfair Business Practices Act.

26 189. Facebook's decision to restrict Graph API data and provide it on unequal terms
27 was also unlawful.

1 190. Facebook's decision to induce 643 to invest in building the App on top of Graph
2 API when Facebook already knew that it would be restricting access to Graph API was also
3 unlawful.

4 191. In taking the actions alleged herein, Facebook acted with fraud, malice and
5 oppression, and in reckless disregard of the rights of 643.

6 192. 643 suffered substantial injury as a result of Facebook's actions, including the loss
7 of its investment in developing the App, the loss of its enterprise value and the loss of future
8 profits.

9 193. Accordingly, Facebook is liable to 643 for violation of California's Unfair
10 Business Practices Act.

11 194. As a proximate result of the acts and conduct of Facebook herein alleged, 643 has
12 found it necessary to engage attorneys, and incur attorney's fees, and will continue to incur
13 attorney's fees, in an unascertained amount to be established according to proof following the
14 conclusion of trial.

15 **COUNT II: BREACH OF CONTRACT**
16 **[Against Facebook]**

17 195. 643 re-alleges and repleads paragraphs 1 through 194 as though set forth fully
18 herein.

19 196. 643 and Facebook entered into an agreement on December 11, 2012 in which
20 Facebook offered 643 "all rights necessary to use the code, APIs, data, and tools you receive from
21 us." (FB_0000021, Section 9.8). Facebook defined "Platform" as "a set of APIs and services
22 (such as content) that enable [643] to retrieve data from Facebook or provide data to
23 [Facebook]....By 'content' we mean anything...users post on Facebook.... By 'data' or 'user
24 data'...we mean any data, including a user's content or information that you or third parties can
25 retrieve from Facebook or provide to Facebook through Platform.... By 'application' we mean
26 any application or website that uses or accesses Platform." (FB_0000025). In exchange, 643
27 provided a host of rights to Facebook, including but not limited to a right to analyze and generate
28 advertising revenues from 643's application (Section 9.17), place content around 643's

1 application (Section 9.16) and issue press releases around 643's applications (Section 9.12).
2 (FB_0000021). Further, 643 agreed to undertake a host of obligations under the agreement around
3 which it incurred substantial cost. (FB_0000020 - FB_0000021).

4 197. 643 did all or substantially all of the significant things that the contract required it
5 to do. 643 abided by all of its contractual obligations at all times. At no time did Facebook ever
6 contact 643 to notify 643 that Facebook believed 643 was in potential violation of its Agreement
7 with Facebook. 643 met all of the conditions required for Facebook's performance under the
8 agreement.

9 198. Beginning April 30, 2015, Facebook failed to provide 643 with the rights
10 necessary to use Facebook's code, APIs, data, and tools in breach of the agreement and after 643
11 had incurred substantial cost in meeting all of its performance obligations under the Agreement.

12 199. Further, upon information and belief, at all times after entering into the Agreement
13 on December 11, 2012, Facebook failed to provide 643 with access to Facebook's code, APIs,
14 data and tools on terms that were equal and neutral relative to the terms provided to all other
15 Developers in breach of the Agreement.

16 200. Facebook's decision to willfully, intentionally and negligently mislead 643 and
17 tens of thousands of other Developers violated the implied covenant of good faith and fair dealing
18 insofar as Facebook's alleged conduct unfairly interfered with 643's right to receive the benefits
19 of its agreement with Facebook.

20 201. Facebook's decision to willfully, intentionally and negligently mislead 643 and
21 tens of thousands of other Developers violated Facebook's implied duty to perform with
22 reasonable care.

23 202. 643 was harmed by Facebook's conduct and Facebook's breach of its agreement
24 with 643 was a substantial factor in 643's harm. If Facebook had performed and provided 643
25 rights necessary to access Facebook's data, APIs and tools, 643 would not have been harmed.

26 203. Any limitation of liability provided for in Facebook's agreement with 643 is
27 unenforceable in accordance with California Civil Code § 1668, which declares unlawful
28

1 contracts exempting persons from the consequences of their own fraud, willful injury or violation
2 of the law, whether willful or negligent.

3 204. Any limitation of liability provided for in Facebook's agreement with 643 is
4 unenforceable as the limitation of liability clause, as drafted by Facebook, fails to insulate
5 Facebook from liability resulting from Facebook's own negligence.

6 205. Any limitation of liability provided for in Facebook's agreement with 643 is
7 unenforceable as Facebook and 643 had dramatically unequal bargaining strength, the agreement
8 was provided on a "take it or leave it" basis and drafted entirely by Facebook, and greatly affects
9 and implicates the public interest.

10 206. 643 was injured as a result of Facebook's breach of the agreement in an
11 unascertained amount in excess of \$25,000.00, to be established according to proof at trial.
12 Accordingly, Facebook is liable to 643 for damages. 643's damages as a result of the breach of
13 contract include the loss of its investment and time spent in developing its technology in
14 reasonable reliance on its agreement with Facebook, the complete loss of its enterprise value, and
15 its lost future profits in an aggregate amount to be ascertained at trial.

16 **COUNT III: CONCEALMENT**

17 **[Against all Defendants]**

18 207. 643 re-alleges and repleads paragraphs 1 through 206 as though set forth fully
19 herein.

20 208. From 2007 to at least 2015, Facebook, Zuckerberg and the Conspiring Facebook
21 Executives repeatedly made partial disclosures of fact while withholding other material facts that
22 substantially qualified and often directly contradicted the partial disclosures made by Facebook.
23 643 relied on these partial disclosures of fact, had no ability to discover the material facts being
24 withheld, and if 643 had discovered the material facts being withheld, 643 would not have
25 incorporated and raised its seed capital and/or would not have invested in or continued to invest
26 in building its business.

1 209. Upon information and belief, in 2011 and 2012, Zuckerberg held discussions with
2 Facebook executives Cox, Olivan, Lessin, Sheryl Sandberg, Andrew Bosworth and others in
3 which Zuckerberg made a decision to weaponize Facebook Platform using a policy called
4 “Reciprocity,” which included Zuckerberg’s decision to shut down public access to the Graph
5 API Data upon which 643’s business depended. Upon information and belief, Zuckerberg’s
6 motivations for his decision to create a Reciprocity Policy and shut down public access to Graph
7 API data were two-fold: (1) restrain competition in a wide range of software markets to make
8 room for new products from Facebook and its close partners; and (2) shut down all mechanisms
9 for apps to grow organically in order to force apps to prop up Facebook’s new mobile advertising
10 business or else Facebook would shut them down. The first motivation helped ensure that no new
11 competitive threat could ever become as big as Facebook; the second motivation ensured that
12 Facebook could make the transition from desktop to mobile without experiencing a significant
13 drop in revenues in order to turn around the underperforming business. Upon information and
14 belief, the Reciprocity Policy required that a Developer provide to Facebook anything that
15 Facebook in its own discretion deemed valuable, including unrelated advertising purchases,
16 feeding data back to Facebook, ownership interests in the Developer’s company, intellectual
17 property rights, or other valuable but unrelated consideration in order to continue to maintain
18 access to publicly available Graph API Data. Upon information and belief, if companies refused
19 to reciprocate, Facebook would shut off their access to data and/or build its own scraping tools to
20 pull data from the company’s website or app directly. Upon information and belief, the practical
21 effect of the Reciprocity Policy for many companies was that they would be shut out of Facebook
22 Platform, and this was Zuckerberg’s intention in implementing the Reciprocity Policy.

23 210. Facebook published its Reciprocity Policy in 2012 or 2013 on its public website
24 but, upon information and belief, intentionally, maliciously, willfully and negligently opted not to
25 disclose that this policy entailed the privatization of Graph API Data that Facebook for years had
26 represented would be available publicly on equal and fair terms. Facebook further did not disclose
27 when publishing this policy that Facebook had already begun enforcing these anti-competitive
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1 data restrictions and had active plans to expand the data restrictions to many companies, including
2 643. Upon information and belief, Facebook's partial disclosure of its Reciprocity Policy was
3 designed to conceal full disclosure of Facebook's bait-and-switch scheme while enabling
4 Facebook to have a pretext to begin enforcing the scheme. Had Facebook made a full disclosure
5 that the Reciprocity policy entailed removal of the Graph API Data from public Platform, then
6 643 would not have invested in or continued to invest in its business.

7 211. Upon information and belief, once Zuckerberg decided to remove the Graph API
8 Data to competitors, Zuckerberg personally maintained an ever-growing list of competitors that
9 only he could authorize blacklisting from the Graph API Data. Upon information and belief, once
10 a Developer was blacklisted from the Graph API Data, any applications the Developer built could
11 no longer use any of the blacklisted data that Facebook purportedly provided publicly and on fair
12 and neutral terms to all Developers. Upon information and belief, blacklisted data often included
13 the Graph API data, including the full friends list, friends permissions and newsfeed APIs – data
14 types that were among the most popular on Facebook Platform and upon which 643's business
15 and many other businesses depended. Facebook made partial public disclosures that certain
16 blacklisted companies had their data access restricted but claimed these restrictions were due to
17 clear policy violations. Upon information and belief, while some of these restrictions were due to
18 policy violations, in numerous other cases Facebook manipulated its own policy as a pretext to
19 enforce anti-competitive data restrictions while concealing the announcement of these
20 restrictions. Had Facebook made a full disclosure that companies were being blacklisted because
21 Facebook considered them competitive, then 643 would not have invested in or continued to
22 invest in its business.

23 212. Upon information and belief, Zuckerberg's blacklist first contained only a handful
24 of large competitors in 2011, but then was quickly expanded in 2012 to include major messaging
25 applications, professional services, and contact management applications. Upon information and
26 belief, by 2013, the blacklist included gifting apps, sharing economy apps, utility apps, file
27 repository apps, payment apps, birthday reminder apps, photo and video apps, calendar apps,
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1 lifestyle apps, and health and fitness apps. Facebook at various times shut down data access to
2 apps in these categories and made partial disclosures that these apps were in violation of policies.
3 However, upon information and belief, many of these apps violated no published policy. Rather,
4 policy was used as a pretext for anti-competitive data restrictions. Had Facebook fully disclosed
5 its reasons for shutting down access to these apps in its public statements, 643 would not have
6 invested in or continued to invest in its business. Facebook's partial disclosures around its reasons
7 for shutting down data access to these app categories at various times from 2012 through 2015
8 greatly enriched Facebook by making room for its own products on mobile phones – as a result,
9 four of the five most popular apps worldwide across all major smartphone platforms are now
10 Facebook-owned apps ([https://thenextweb.com/apps/2017/04/18/facebook-downloaded-app-](https://thenextweb.com/apps/2017/04/18/facebook-downloaded-app-netflix/)
11 [netflix/](https://thenextweb.com/apps/2017/04/18/facebook-downloaded-app-netflix/)).

12 213. During this time Facebook maintained a public “size policy” whereby companies
13 that acquired large numbers of users could be potentially subject to rate limiting or data throttling
14 restrictions, which is standard in the industry. However, upon information and belief, the “size
15 policy” also included an informal but effective component whereby if a company became too
16 large and successful, it would go on Zuckerberg’s blacklist and have their data access shut off.
17 Upon information and belief, the “size policy” published on the Facebook website would have
18 been materially qualified if Facebook had fully disclosed its own internal definition of the “size
19 policy”. Upon information and belief, Facebook employees would even encourage companies to
20 continue to rely on its data or avoid telling the company its data will be shut off in order to induce
21 the company to grow in reliance on Facebook with full knowledge that once the company
22 obtained a certain size, Facebook would shut it down. Facebook thus made a partial disclosure
23 that it was maintaining a fair and neutral platform but failed to qualify this disclosure with
24 material information that the size of a company would affect Facebook’s position on whether to
25 remain fair and neutral. Had Facebook shared all material facts related to its size policy, 643
26 would never have invested or continued to invest in building its business.

1 214. Upon information and belief, starting in mid-to-late 2012 and continuing through
2 mid-2013, Zuckerberg communicated the decision he had already made to restrict Graph API data
3 in order to restrain competition for Facebook's new products and to prop up Facebook's new
4 mobile advertising business to senior executives on the Platform team, including Vernal (VP
5 Engineering for Platform), Sukhar (Head of Developer Products), Doug Purdy (Director of
6 Engineering for Platform), Eddie O'Neil (Product Manager for Platform), and other senior
7 members of the Platform and developer teams. Upon information and belief, starting in late 2012
8 and throughout 2013, at Zuckerberg's instruction, Vernal, Sukhar, Purdy, O'Neil and others
9 began implementing Zuckerberg's decision to restrict data access for anti-competitive reasons
10 under the Reciprocity Policy framework. Upon information and belief, the Platform team,
11 managed by Vernal, was working on a public announcement of these changes to be released
12 before the end of 2012. However, the changes were not publicly disclosed. Had Facebook made
13 the planned public announcement in late 2012, 643 would never have invested in or continued to
14 invest in building its business.

15 215. After Zuckerberg's decision to restrict Graph API Data for anti-competitive
16 reasons, Facebook continued to represent publicly that Facebook Platform was a fair and neutral
17 competitive playing field and that access to this data would remain available without specifying
18 any term. By way of example, Cox's June 20, 2012 speech disclosed that Ticketmaster
19 dramatically increased revenues by incorporating friends data, disclosing that friends data was
20 valuable to businesses, and yet Cox made no mention that Facebook was removing the full
21 friends list and friends data would only apply to existing app users, making it impossible for new
22 companies to build applications that compete with incumbents. This partial representation
23 inducing developers to use friends data would have been materially qualified by the fact that,
24 upon information and belief, Cox already knew that friends data would be severely restricted.

25 216. By way of example, Zuckerberg's October 20, 2012 speech disclosed that
26 Facebook maintained the largest and highest quality photos database on the Internet, implying
27 that this data was extremely valuable to developers, and yet Zuckerberg withheld that he had
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1 already decided to dramatically restrict access to this photos database and had already begun
2 arbitrarily restricting access to this photos database. This partial representation inducing
3 developers to build businesses using Facebook's photos database would have been materially
4 qualified by the fact that, upon information and belief, Zuckerberg already knew (since he made
5 the decision) that this database was going to be severely restricted.

6 217. By way of example, Eddie O'Neil's February 28, 2013 training session teaching
7 developers how to build applications using the full friends list was a partial disclosure of the
8 availability of the full friends list that clearly was intended to induce developers to spend time and
9 money using the full friends list. This partial representation inducing developers to build
10 businesses using the full friends list would have been materially qualified by the fact that, upon
11 information and belief, O'Neil was informed in late 2012 (and therefore already knew) that this
12 database was going to be severely restricted. O'Neil's false statements and partial disclosures
13 were made at the direction of the Conspiring Facebook Executives.

14 218. By way of example, Simon Cross' February 28, 2013 training session teaching
15 developers how to access a user's friends photos and profile pictures was a partial disclosure of
16 the availability of a user's friends photos and profile pictures that clearly was intended to induce
17 developers to spend time and money using friends' photos in their applications. This partial
18 representation inducing developers to build businesses using friends' photos would have been
19 materially qualified by the fact that, upon information and belief, Cross knew or should have
20 known that this database was going to be severely restricted, as his superiors decided to restrict it
21 and began enforcing restrictions of it at least by 2012. Cross' false statements and partial
22 disclosures were made at the direction of the Conspiring Facebook Executives.

23 219. By way of example, Cross' June 20, 2013 training session teaching developers
24 how to access a user's friends photos and profile pictures was a partial disclosure of the
25 availability of a user's friends photos and profile pictures that clearly was intended to induce
26 developers to spend time and money using friends' photos in their applications. This partial
27 representation inducing developers to build businesses using friends' photos would have been
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1 materially qualified by the fact that, upon information and belief, Cross had already been
2 informed by his superiors that the data he was inducing these developers to build businesses
3 around was going to be severely restricted. Cross' false statements and partial disclosures were
4 made at the direction of the Conspiring Facebook Executives.

5 220. By way of example, Zuckerberg's September 18, 2013 speech in which he stated
6 that Facebook wants to "make it simple to build great apps that have identity, friends and all the
7 stuff that you want built in really easily" was a partial disclosure of the availability of friends data
8 and the other valuable Graph API data that clearly was intended to induce developers to spend
9 time and money building their products and businesses around Facebook's friends data and other
10 valuable Graph API data. This partial representation inducing developers to build these
11 businesses using this data would have been materially qualified by the fact that, upon information
12 and belief, Zuckerberg had decided more than a year prior to severely restrict the data he was
13 inducing developers to use to build their businesses.

14 221. Further, upon information and belief, at the F8 on April 30, 2014, Zuckerberg
15 made repeated partial disclosures on stage that would have been materially qualified by facts of
16 which Zuckerberg was already aware. Zuckerberg disclosed that developers would have two
17 years to build against Facebook's current Graph API, but failed to disclose the material fact that
18 this did not apply to the existing Graph API but only to future versions. Zuckerberg disclosed that
19 developers could choose to decide which version of the API to build against, but failed to disclose
20 the material fact that this choice would be time-constrained by Facebook with a time limit set in
21 Facebook's own discretion. Zuckerberg disclosed that certain valuable Graph API data would be
22 removed, but failed to disclose the material fact that this data was not in fact being removed
23 entirely but was simply being privatized for the benefit of companies who paid Facebook
24 substantial advertising fees. Zuckerberg disclosed that certain valuable Graph API data would be
25 removed, but, upon information and belief, failed to disclose the material fact that he had already
26 decided to remove other valuable Graph API data, most importantly the newsfeed APIs.

1 222. These and numerous other partial disclosures that deliberately shared certain facts
2 but withheld other related material facts induced investment by developers, including 643,
3 notwithstanding Facebook's full knowledge that these investments would be irreparably
4 damaged. These partial disclosures were designed to unjustly enrich Facebook and the Conspiring
5 Facebook Executives and were made repeatedly by Facebook and certain of its executives on
6 many occasions from May 2007 until at least January 20, 2015, including on the dates and times
7 alleged herein, and in particular in speeches by Zuckerberg and official statements posted on
8 Facebook's website.

9 223. Facebook, Zuckerberg and the Conspiring Facebook Executives further engaged in
10 partial disclosures of fact related to the fraudulent narrative they fabricated to mask the anti-
11 competitive scheme. Upon information and belief, in early 2014, Zuckerberg directed Sukhar and
12 Vernal to develop a narrative that disclosed that the Graph API Data would be completely
13 removed from Facebook Platform. Upon information and belief, however, this partial disclosure
14 omitted the fact that, although the data was being removed from public view, it was not being
15 removed from Facebook Platform. Upon information and belief, instead of being removed, the
16 data was being privatized. Upon information and belief, Zuckerberg deliberately concealed the
17 fact that the Graph API Data was being privatized in his April 30, 2014 announcement and
18 instead made only a partial disclosure that the information was being removed. Upon information
19 and belief, Facebook had already for over a year or more engaged numerous companies to enter
20 into special whitelist agreements to maintain private access to the data after it was publicly
21 removed. Upon information and belief, the companies who were offered special, whitelist access
22 to the privatized Graph API Data were ones who either agreed to purchase hundreds of thousands
23 of dollars in unrelated mobile ads, were friends of Zuckerberg, Sandberg or other Facebook
24 executives, or provided other valuable consideration, such as intellectual property or data, to
25 Facebook. Had Facebook disclosed at any time in 2012, 2013, or 2014 that the Graph API Data
26 was being privatized in any of its numerous public disclosures regarding Graph API Data, of
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1 which it sent dozens to 643, then 643 would have not invested in or continued to invest in
2 building its business.

3 224. Facebook and certain of its executives had a duty to speak truthfully and to
4 disclose material information concerning the closing of access to data arising from Facebook's
5 Agreement with 643 to be a Developer on Facebook Platform and 643's Agreement to abide by
6 Facebook's policies and procedures, as alleged above. Upon information and belief, Facebook's
7 public justification that it was implementing the anti-competitive Graph API Data restrictions in
8 order to protect user privacy and control only partially disclosed Facebook's justifications. Upon
9 information and belief, Facebook concealed the anti-competitive Graph API Data restrictions
10 behind a revamp of its Login product in order to cloak these changes under a narrative about user
11 control and privacy. The narrative that Facebook removed the Graph API Data to give users more
12 control is directly undermined by the fact that after the changes were implemented, Facebook
13 users could no longer control whether friends could access their information on third party apps.
14 The control users previously had to enable their friends to access data about them from apps other
15 than Facebook was transferred over to Facebook. This meant that only Facebook (and not
16 Facebook's users) could now decide what data a user's friends could see about them on other
17 apps. Had Facebook not concealed its anti-competitive Graph API Data restrictions behind the
18 Login product announcement, 643 would not have continued investing in its business and would
19 have substantially mitigated its damages.

20 225. Further, upon information and belief, Facebook provided full disclosure of these
21 changes to certain Developers throughout 2012, 2013 and 2014 but did not fully disclose the
22 nature of these changes to 643 until January 20, 2015. Had Facebook made full disclosure to 643
23 at the time it made full disclosure to certain other Developers, then 643 would not have invested
24 or continued to invest in building its business.

25 226. Further, Facebook's public disclosure that it made these changes out of respect for
26 user privacy is undermined by numerous Facebook projects that deliberately, willfully,
27 intentionally, recklessly and negligently violated privacy by only making partial disclosures to
28

1 Developers regarding how Facebook collected, stored and transmitted user data. Upon
2 information and belief, beginning at least by 2012, Olivan directed a range of projects under the
3 supervision and direction of Zuckerberg, Cox and Lessin that deliberately, intentionally,
4 maliciously, recklessly and negligently violated user privacy in order to effectuate Facebook's
5 anti-competitive scheme of baiting companies to rely on Facebook Platform only to shut them
6 down in order to restrain competition in a wide range of software markets. At all times, Olivan
7 was acting under the direction and approval of Zuckerberg, Cox and Lessin, who authorized
8 partial disclosures of Facebook's conduct that would have been undermined had Facebook made
9 a full disclosure of material facts. 643 relied on Facebook's partial disclosures that it respected
10 user privacy, as this was a key consideration in whether it was safe to build a business on
11 Facebook's operating system. Had Facebook made full disclosures regarding any of its deceptive
12 projects violating user privacy, 643 would not have felt comfortable continuing to invest in
13 building its business as Facebook's privacy failures directly impact 643 in two key ways: (1)
14 Facebook's privacy failures make it extremely difficult for 643 to establish trust with its own
15 customers; (2) Facebook's unfair competitive advantage gained by information obtained in
16 violation of user privacy makes it extremely difficult for 643 to compete on a level playing field.
17 In short, Facebook deliberately and repeatedly undermining its public commitment to user
18 privacy caused substantial harm to 643's customers and created a risk to 643's business. Had 643
19 been aware of the full scope of any of these projects, 643 could not have proceeded in good
20 conscience with building a business that relied on Facebook.

21 227. By way of example, upon information and belief, as disclosed in an August 2017
22 Wall Street Journal article ([https://www.wsj.com/articles/facebooks-onavo-gives-social-media-](https://www.wsj.com/articles/facebooks-onavo-gives-social-media-firm-inside-peek-at-rivals-users-1502622003)
23 [firm-inside-peek-at-rivals-users-1502622003](https://www.wsj.com/articles/facebooks-onavo-gives-social-media-firm-inside-peek-at-rivals-users-1502622003)), Facebook directed a project to collect certain data
24 from consumers who had downloaded the Onavo app, a virtual private network app downloaded
25 by approximately 30 million people, which Facebook purchased in October 2013. Upon
26 information and belief, before the WSJ article, Facebook failed to disclose that it used Onavo data
27 to measure what people do on their phones beyond Facebook's own suite of apps, including

1 detailed information on things such as which apps people generally are using, how frequently, for
2 how long, and whether more women than men use an app in a specific country. Upon
3 information and belief, Facebook failed to disclose that it used this data for competitive
4 intelligence of numerous apps. Further, upon information and belief, Facebook's decision to
5 purchase a large competitive application (WhatsApp) was heavily influenced by Facebook's
6 ability to obtain this non-public information from Onavo. Upon information and belief, at all
7 times, the employees involved in this project were acting under the direction and approval of
8 Zuckerberg, Cox, Lessin and Olivan. Had Facebook fully disclosed this deceptive practice
9 publicly to users and Developers when it made public disclosures regarding its purchase of Onavo
10 and its update to Onavo's Terms of Service, then 643 would not have invested in or continued to
11 invest in building its business.

12 228. Upon information and belief, at least by 2012 or 2013, Facebook collected various
13 content and metadata regarding communications on Android phones without fully disclosing this
14 to Facebook's users. Upon information and belief, Facebook used this data to give certain
15 Facebook products and features an unfair competitive advantage over other social applications on
16 Facebook Platform. Facebook disclosed publicly that it was reading text messages in order to
17 authenticate users more easily (see, e.g., <https://www.facebook.com/help/210676372433246>).
18 Upon information and belief, this partial disclosure failed to state accurately the type of data
19 Facebook was accessing, the timeframe over which it had accessed it, and the reasons for
20 accessing the data of these Android users. Upon information and belief, Facebook also actively
21 collected information it did not fully disclose from non-Facebook and non-Android users who
22 communicated with Facebook users who owned Android phones. These consumers never
23 consented to have Facebook collect this information. Upon information and belief, at all times,
24 the employees involved in this project were acting under the direction and approval of
25 Zuckerberg, Cox, Lessin and Olivan. Had Facebook fully disclosed its practices regarding
26 collection and use of metadata and content of communications on Android phones, 643 would not
27 have invested in or continued to invest in building its business.

1 229. Further, upon information and belief, Facebook deliberately ignored the privacy
2 settings of a Facebook user's friend list in order to improve a certain prominent feature in the
3 Facebook app and website. Upon information and belief, Facebook made partial public
4 disclosures of this practice while withholding material facts that, if disclosed, would have
5 materially qualified Facebook's public statement (see, e.g., [https://gizmodo.com/facebook-](https://gizmodo.com/facebook-figured-out-my-family-secrets-and-it-wont-tel-1797696163)
6 [figured-out-my-family-secrets-and-it-wont-tel-1797696163](https://gizmodo.com/facebook-figured-out-my-family-secrets-and-it-wont-tel-1797696163)). Upon information and belief, at all
7 times, the employees involved in this project were acting under the direction and approval of
8 Zuckerberg, Cox, Lessin and Olivan. Had Facebook made a full public disclosure regarding
9 whether it respected user privacy settings for *all* Facebook features, then 643 would not have
10 invested in or continued to invest in building its business.

11 230. Further, upon information and belief, Facebook implemented a project to turn on
12 the Bluetooth setting in the background in order to locate users. Upon information and belief,
13 Facebook made partial disclosures regarding how and when it would turn on the Bluetooth
14 feature and collect and store this data. Upon information and belief, Facebook did not fully
15 disclose how this information would be used by Facebook. Upon information and belief, at all
16 times, the employees involved in this project were acting under the direction and approval of
17 Zuckerberg, Cox, Lessin and Olivan.

18 231. Further, upon information and belief, in 2013 and 2014 Facebook deliberately
19 implemented code to have a user's privacy setting lapse after a period of time, requiring the user
20 to go through additional effort in order to have the user's privacy settings respected. Facebook
21 made partial disclosures around this time regarding privacy settings, but did not fully disclose that
22 it had caused certain settings to lapse after a period of time. Upon information and belief, at all
23 times, the employees involved in this project were acting under the direction and approval of
24 Zuckerberg, Cox, Lessin and Olivan. Had Facebook fully disclosed its handling of this and
25 related privacy issues, 643 would not have invested in or continued to invest in building its
26 business.

1 in this project were acting under the direction and approval of Zuckerberg, Cox, Lessin and
2 Olivan.

3 234. Upon information and belief, Facebook engaged in these deceptive projects in
4 order to obtain information that enabled Facebook to identify and restrict data access to apps on
5 Platform that posed a competitive threat and/or to give its own features an unfair competitive
6 advantage relative to comparable features of other social applications on Platform. Facebook
7 made various partial disclosures of these projects since 2013 but in almost all cases failed to fully
8 disclose material information necessary for Developers and users to evaluate their continued use
9 of Facebook and its Platform. At all times, these projects were undertaken with the direction and
10 approval of Zuckerberg, Cox, Lessin and Olivan. Had Facebook fully disclosed any of these
11 practices, these full disclosures would have been important information to 643 that would have
12 caused it to terminate its relationship with Facebook as building a business on top of a ticking
13 time bomb of privacy violations would not have been reasonable.

14 235. Facebook's duty to speak truthfully and to disclose material information
15 concerning its handling of user data in these various projects, its 2011 or 2012 decision regarding
16 the anti-competitive Graph API Data restrictions also arose from partial disclosures of fact and
17 misinformation made to 643 and other Developers concerning the manner in which Facebook
18 collects, stores and transmits data, including that Facebook maintained the data with respect for
19 user privacy and transmitted it to developers on fair, equal and neutral terms. Facebook's duty to
20 speak truthfully and to disclose material information concerning its handling of user data and its
21 decision to close access to the Graph API Data also arose from the fact that 643 and Facebook
22 had shared confidential and highly sensitive information containing consumers' private
23 information.

24 236. Facebook's duty to speak truthfully and to disclose material information
25 concerning its handling of user data and its decision to close access to the Graph API Data also
26 arose from the fact that 643 and Facebook had entered into a commercial agreement in which 643
27 expended over \$200,000 in order to build a business using data Facebook sent to 643 and gave
28

1 643 all rights to use under the Agreement. This Agreement further required that 643 permit
2 Facebook to audit its highly confidential source code and intellectual property.

3 237. Facebook's duty to speak truthfully and to disclose material information
4 concerning its handling of user data and its decision to close access to the Graph API Data also
5 arose from the fact that Facebook made public representations around its management of user
6 data that enticed tens of thousands of companies to build businesses on Facebook Platform for
7 many years, greatly enriching Facebook and the Conspiring Facebook Executives all while
8 Facebook was actively implementing plans to irreparably damage these companies' investments.

9 238. The concealment of material facts by Facebook, Zuckerberg and the Conspiring
10 Facebook Executives fraudulently induced 643 to enter into its Agreement with Facebook, as 643
11 would not have entered into the Agreement if Facebook had disclosed the material facts, most
12 important among them that Zuckerberg already decided to shut down access to the data 643's
13 business relied upon before 643 was even incorporated or raised seed capital. At no time did 643
14 rescind its Agreement with Facebook. Facebook, Zuckerberg and the Conspiring Facebook
15 Executives benefited materially from their fraudulent, malicious and oppressive conduct,
16 including but not limited to financial benefits tied to the growth of Facebook and the dramatic
17 reversal of its stock price as a result of restraining competition in a wide range of software
18 markets and weaponizing Facebook Platform to force companies to build Facebook's new mobile
19 advertising business or risk being shut down.

20 239. 643 invested considerable capital, labor, time, and effort into developing its
21 technology in reliance on Facebook's representations and partial disclosures.

22 240. 643's reliance was reasonable because Facebook had consistently made these
23 representations and partial disclosures for seven years and tens of thousands of other Developers
24 also relied on these representations and partial disclosures that Facebook was a responsible
25 steward of privacy and a responsible and fair referee of Facebook Platform, one of the largest
26 software economies globally.

- 1 h. 643 would be able to monetize its applications on Facebook;
- 2 i. 643 would be able to build applications on a fair, level playing field relative to
3 Facebook and other Developers;
- 4 j. Developer applications would not be “second class citizens” compared to
5 Facebook’s own applications;
- 6 k. Developer applications that compete with Facebook applications would be
7 welcome; and
- 8 l. As long as 643 abided by its agreement with Facebook, including all privacy
9 requirements, Facebook would be neutral as to 643’s applications and provide
10 643 with access on equal terms relative to all other Developers.

11 246. These representations were made repeatedly by Facebook on many occasions from
12 May 2007 until at least January 20, 2015, including on the dates and times alleged herein, and in
13 particular in speeches by Zuckerberg and other Facebook employees at the direction of
14 Zuckerberg or one of the Conspiring Facebook Executives and in official statements posted on
15 Facebook’s website. These representations were false. Facebook, Zuckerberg and the Conspiring
16 Facebook Executives knew such representations to be false or made such representations
17 recklessly and without regard for their truth when they made them or directed other Facebook
18 employees to make them.

19 247. Upon information and belief, beginning in 2012, Facebook, Zuckerberg and the
20 Conspiring Facebook Executives engaged in conduct and decisions that directly contradicted
21 these representations. Nonetheless, Facebook, Zuckerberg and the Conspiring Facebook
22 Executives continued for over two years to make representations they knew to be false or made
23 such representations recklessly and without regard for their truth. Facebook, Zuckerberg and the
24 Conspiring Facebook Executives intended for 643 and other Developers to rely on such
25 representations and made such representations either directly to 643 or in public fora with
26 reasonable likelihood that such representations would be obtained by 643.

27 248. Facebook, Zuckerberg and the Conspiring Facebook Executives had a duty to
28 speak truthfully and to disclose material information regarding their decision to restrict access to
data in Facebook Platform arising from Facebook’s Agreement with 643 to be a Developer on

1 Facebook Platform and 643's Agreement to abide by Facebook's policies and procedures, as
2 alleged above.

3 249. Upon information and belief, Zuckerberg repeatedly made statements from 2012
4 on that he knew to be false at the time he made them. Upon information and belief, Zuckerberg
5 intended for Developers like 643 to rely on such statements in order to induce them to generate
6 revenues for Facebook and to avoid public relations and or legal ramifications for Zuckerberg's
7 malicious, oppressive, fraudulent, reckless, negligent and/or anti-competitive conduct.

8 250. Upon information and belief, Cox repeatedly made statements from 2012 on that
9 he knew to be false at the time he made them. Upon information and belief, Cox intended for
10 Developers like 643 to rely on such statements in order to induce them to generate revenues for
11 Facebook and to avoid public relations and or legal ramifications for Cox's malicious, oppressive,
12 fraudulent, reckless, negligent and/or anti-competitive conduct.

13 251. Upon information and belief, Olivan repeatedly made statements from 2012 on
14 that he knew to be false at the time he made them. Upon information and belief, Olivan intended
15 for Developers like 643 to rely on such statements in order to induce them to generate revenues
16 for Facebook and to avoid public relations and or legal ramifications for Olivan's malicious,
17 oppressive, fraudulent, reckless, negligent and/or anti-competitive conduct.

18 252. Upon information and belief, Lessin repeatedly made statements from 2012 on that
19 he knew to be false at the time he made them. Upon information and belief, Lessin intended for
20 Developers like 643 to rely on such statements in order to induce them to generate revenues for
21 Facebook and to avoid public relations and or legal ramifications for Lessin's malicious,
22 oppressive, fraudulent, reckless, negligent and/or anti-competitive conduct.

23 253. Upon information and belief, Vernal repeatedly made statements from 2012 on
24 that he knew to be false at the time he made them. Upon information and belief, Vernal intended
25 for Developers like 643 to rely on such statements in order to induce them to generate revenues
26 for Facebook and to avoid public relations and or legal ramifications for Vernal's malicious,
27 oppressive, fraudulent, reckless, negligent and/or anti-competitive conduct.

1 Upon information and belief, the Conspiring Facebook Executives actively participated, ratified,
2 served as agents and communicated key components of this intentional misrepresentation in
3 Zuckerberg's announcement.

4 259. Facebook, Zuckerberg and the Conspiring Facebook Executives made these
5 representations in order to induce Developers to build applications that generate revenue for
6 Facebook and to avoid public relations and legal ramifications for their fraudulent, malicious,
7 oppressive and anti-competitive conduct. The Conspiring Facebook Executives participated,
8 ratified and/or served as agents of Facebook in connection with their material omissions and their
9 actions to conceal material facts from Plaintiff and tens of thousands of other Developers.

10 260. Facebook, Zuckerberg and the Conspiring Facebook Executives benefited
11 materially from their fraudulent, malicious and oppressive conduct, including but not limited to
12 financial benefits tied to the growth of Facebook and the dramatic reversal of its stock price as a
13 result of oligopolizing for Facebook and its close partners the various markets associated with
14 Facebook Platform.

15 261. 643 invested considerable capital, labor, time and effort into developing its
16 technology in reliance on Facebook's representations.

17 262. 643's reliance was reasonable because Facebook had consistently made public
18 representations as to equal access and a fair playing field in Facebook Platform for seven years
19 and tens of thousands of other Developers also relied on these representations.

20 263. 643's reliance was foreseeable by Facebook, Zuckerberg and the Conspiring
21 Facebook Executives as Zuckerberg has publicly stated his intent in making such statements was
22 to entice Developers to help generate revenues for Facebook. Further, Facebook's conduct for
23 seven years was designed to induce and reinforce such reliance.

24 264. 643 was injured as a result of its reliance on Facebook's representations and
25 material omissions, which Facebook knew to be false or acted recklessly in representing as true,
26 in an unascertained amount in excess of \$25,000.00, to be established according to proof at trial.

1 In taking the actions alleged herein, Facebook, Zuckerberg and the Conspiring Facebook
2 Executives acted with fraud, malice and oppression, and in reckless disregard of the rights of 643.

3 265. Accordingly, Defendants are liable to 643 for damages.

4 **COUNT V: NEGLIGENT MISREPRESENTATION**

5 **[Against all Defendants]**

6 266. 643 re-alleges and repleads paragraphs 1 through 248 and 255 through 265 as
7 though set forth fully herein.

8 267. Facebook represented that:

- 9 a. Developers would be able to integrate their applications into Facebook's social
10 graph;
- 11 b. Developers would have the same access to integration of their applications as
12 Facebook;
- 13 c. Developers could easily access Graph API objects;
- 14 d. Facebook would support Developers in achieving mass distribution of Developer
15 applications;
- 16 e. Facebook would provide adequate tools for developers to build their applications;
- 17 f. Developers would be able to build a business on Facebook Platform;
- 18 g. Developers would be able to monetize their applications on Facebook by selling
19 ads on their application pages;
- 20 h. Developers would be able to build applications on a fair, level playing field;
- 21 i. Developer applications would not be "second class citizens" compared to
22 Facebook's own applications;
- 23 j. Developer applications that compete with Facebook applications would be
24 welcome; and
- 25 k. As long as Developer applications abided by Facebook Terms of Service,
26 Facebook will be neutral as to these applications.

27 268. Such representations were untrue, because Facebook later claimed that it had
28 retained for itself the right to provide Graph API data on unequal and arbitrary terms, while
keeping for itself and its close partners the ability to develop applications that access photos and
other valuable data.

1 275. Upon information and belief, Vernal repeatedly made statements from 2012 on
2 without any reasonable grounds for believing the representations to be true. Upon information
3 and belief, Vernal intended for Developers like 643 to rely on such statements in order to induce
4 them to generate revenues for Facebook and to avoid public relations and or legal ramifications
5 for Vernal's malicious, oppressive, fraudulent, reckless, negligent and/or anti-competitive
6 conduct.

7 276. Upon information and belief, Sukhar repeatedly made statements from 2012 on
8 without any reasonable grounds for believing the representations to be true. Upon information
9 and belief, Sukhar intended for Developers like 643 to rely on such statements in order to induce
10 them to generate revenues for Facebook and to avoid public relations and or legal ramifications
11 for Sukhar's malicious, oppressive, fraudulent, reckless, negligent and/or anti-competitive
12 conduct.

13 277. 643 was not aware that Facebook and the Conspiring Facebook Executives'
14 representations were false, and 643 developed its technology in reliance on the truth of
15 Facebook's representations.

16 278. 643's reliance on the truth of Facebook's representations was justified because
17 Facebook had consistently made these representations for seven years without ever stating that it
18 could prevent Developers from building the specific kinds of applications Facebook was enticing
19 them to build all along.

20 279. 643 was injured as a result of its reliance on Facebook's representations, in an
21 unascertained amount in excess of \$25,000.00, to be established according to proof at trial.

22 280. In taking the actions alleged herein, Facebook, Zuckerberg and the Conspiring
23 Facebook Executives acted with fraud, malice and oppression, and in reckless disregard of the
24 rights of 643.

25 281. Accordingly, Defendants are liable to 643 for damages.
26
27
28

1 and objective expectation of prospective economic relations since these qualified prospective
2 customers explicitly took action to indicate they would enter into contract with 643 when 643
3 notified them of the opportunity to do so. 643 did not have the opportunity to convert all of these
4 qualified prospective customers as a direct result of Facebook's conduct.

5 293. Based upon research 643 conducted regarding user personas likely to download its
6 App, 643 hired at significant expense over 20 contractors to identify consumers likely to enter
7 into license agreements with 643. These consumers converted into qualified prospective
8 customers at a statistically significant and repeatable average rate of 6%, well above industry
9 norms. Approximately 13,000 of these consumers had not yet been contacted by 643. Given the
10 expense 643 undertook to identify and target prospective customers, and the high and repeatable
11 rate of conversion, 643 had an objective and reasonable expectation of prospective economic
12 relations with these prospective customers.

13 294. 643 purchased advertising campaigns on Facebook using Facebook's mobile App
14 Install Ad product. These advertisements purchased by 643 potentially reached hundreds of
15 thousands of Facebook users, a portion of which entered into license agreements with 643. 643
16 had an objective and reasonable expectation of prospective economic relations from prospective
17 customers to whom it targeted in these advertising campaigns and in future advertising campaigns
18 643 planned to administer.

19 295. Upon information and belief, around the time Zuckerberg made the decision to
20 implement Facebook's anti-competitive scheme in 2012, Facebook was experiencing substantial
21 difficulty transitioning its service from desktop computers to mobile devices. The executive team
22 was extremely concerned around the impact this transition would have on Facebook's revenues,
23 particularly in light of the fact that Facebook was planning an initial public offering (IPO) of its
24 shares around this time. In discussions in 2011 and 2012, Zuckerberg and other members of
25 Facebook's management team, including Lessin, Olivan, Cox, Sandberg, and Bosworth, decided
26 to remove any APIs in Facebook Platform that permitted mobile apps to obtain organic growth,
27 including the Graph API Data. Organic growth enabled an app to acquire new users without
28

1 having to purchase advertising. Facebook built features like the newsfeed APIs and full friends
2 list in order to drive organic growth for Developers and represented for many years that organic
3 growth was a key reason a developer should build its business on Facebook Platform. Organic
4 growth was primarily achieved through the newsfeed APIs and full friends list, because these
5 APIs let potential new users of an app learn about and download the app from existing users
6 without the app needing to purchase advertisements to reach that new user. Upon information and
7 belief, Zuckerberg decided to implement the anti-competitive scheme in 2012 not only to restrain
8 competition to make way for new Facebook products but also to hold hostage the tens of
9 thousands of companies that relied on Facebook Platform for organic growth. By eliminating the
10 full friend list, friend permissions and newsfeed APIs, Zuckerberg placed tens of thousands of
11 companies in an impossible position: either spend hundreds of thousands of dollars each year
12 buying ads with Facebook's new mobile advertising product or shut down the product or
13 business. For companies who could afford it, the choice was clear: give in to Zuckerberg's
14 demands, pony up the cash, and stay in business. Based in significant part upon the
15 representations Facebook made from 2007 until 2014 that Facebook Platform was the most
16 effective organic growth and distribution channel for applications, 643 decided to build its
17 business on Facebook Platform because Facebook represented that any friends of 643's users
18 were qualified prospective customers who could enter into license agreements with 643 with a
19 single click or tap on a notification from a friend or a post in their newsfeed. There were
20 approximately 100,000 Facebook users who were friends of the 4,481 customers of 643, any of
21 whom Facebook represented repeatedly for 7 years could enter into license agreements with 643
22 seamlessly and easily with a single click or tap. In a survey of test users of the App, 75% of users
23 said they were likely to recommend the App to a friend, with 40% saying they already had
24 recommended the App to a friend. All of these friends who had received recommendations from
25 existing users to download the App were prospective customers with whom 643 could now
26 classify as qualified leads. Therefore, 643 had an objective and reasonable expectation of
27 prospective economic relations with these prospective customers and Zuckerberg interfered with

1 643's prospective economic advantage with these customers when he decided to shut down all
2 organic growth and distribution channels in 2012, before 643 was formed as a Delaware limited
3 liability company.

4 296. 643 thus had relationships with the following categories of consumers: its test
5 users (4,481 consumers), qualified prospective customers (6,000 consumers), prospective
6 customers (13,000 consumers), Facebook friends of customers (100,000 consumers), and
7 Facebook users who received 643's test advertisements (tens of thousands of consumers). In the
8 absence of Facebook's bait-and-switch scheme, 643 would have obtained future economic benefit
9 above and beyond its current contracts in all of these categories of consumers.

10 297. The conduct of Zuckerberg and the Conspiring Facebook Executives was wrongful
11 on a number of independent grounds, including violation of California's Unfair Competition law
12 (including violation of the FTC Order), and the common law causes of action for intentional
13 misrepresentation, negligent misrepresentation, and concealment.

14 298. Zuckerberg and the Conspiring Facebook Executives knew of 643's relationship
15 with the users or prospective users of the App, and knew or should have known of 643's
16 marketing and advertising tests of the App and its plans to grow the App both organically and
17 through participating in Facebook's mobile advertising product.

18 299. Zuckerberg and the Conspiring Facebook Executives intentionally disrupted these
19 relationships when they decided in 2012 to privatize Graph API Data. From that moment on,
20 643's business was operating on borrowed time with no possibility of obtaining economic
21 advantage with prospective customers and yet 643 had no way of knowing this was the case.

22 300. Zuckerberg and the Conspiring Facebook Executives intentionally disrupted these
23 relationships when they decided throughout 2012 and 2013 to fail to provide proper privacy
24 controls for information Facebook sent to 643, requiring 643 to build its own controls at
25 significant cost notwithstanding that Facebook made partial disclosures implying that it handled
26 this user data properly.

1 301. Zuckerberg and the Conspiring Facebook Executives intentionally disrupted 643's
2 relationships with users and prospective users when they emailed 643 on January 20, 2015 that
3 Facebook would end 643's access to Graph API Data, despite knowing that interference with
4 these relationships would be certain or substantially certain to occur as a result of Facebook's act
5 in ending 643's access.

6 302. Zuckerberg and the Conspiring Facebook Executives further intentionally
7 interfered with and disrupted 643's relationships with its users and prospective users when it did
8 terminate 643's access on April 30, 2015, despite knowing that interference with these
9 relationships would be certain or substantially certain to occur as a result of Facebook's conduct
10 in ending 643's access.

11 303. 643's relationship with its users and prospective users was thereby disrupted, and
12 will be further disrupted.

13 304. As a result, 643 suffered damage in an unascertained amount in excess of
14 \$25,000.00 to be established according to proof at trial.

15 305. In taking the actions alleged herein, Zuckerberg and the Conspiring Facebook
16 Executives acted with fraud, malice and oppression, and in reckless disregard of the rights of 643.

17 306. Accordingly, Defendants Zuckerberg, Cox, Olivan, Lessin, Vernal and Sukhar are
18 liable to 643 for damages.

19 **COUNT VIII: NEGLIGENT INTERFERENCE WITH**
20 **PROSPECTIVE ECONOMIC RELATIONS**
21 **[Against Defendants Zuckerberg, Cox, Olivan, Lessin, Vernal and Sukhar]**

22 307. 643 re-alleges and repleads paragraphs 1 through 298 and 303 through 306 as
23 though set forth fully herein.

24 308. 643 had an expectation of economic benefit from its 4,481 users who downloaded
25 the App and entered into 643's license agreements. 643 had an existing relationship with these
26 users and at any time these users could open the App on their phones and tap a button to subscribe
27 to additional features that would result in additional monthly payments to 643. The potential for
28 these additional monthly payments went above and beyond the terms of the basic license to which

1 643 and the user had agreed, and therefore constitute prospective economic relations. The
2 existence of the license agreement between 643 and these 4,481 users demonstrates that they had
3 an existing relationship, and the opportunity for these users to opt-in to pay additional monies to
4 643 demonstrates that 643 had a reasonable and objective expectation of prospective economic
5 relations with these users with whom it had an existing relationship. 643's contract structure was
6 tiered, so that consumers who entered into a basic contract with 643 at any time could upgrade
7 their contract to obtain additional features and pay 643 additional monies. Therefore, 643 had an
8 expectation of economic relations with its existing user base above and beyond the terms of their
9 existing contract. 643 had an expectation of economic benefit from the approximately 6,000
10 qualified prospective customers who opted in to the App's website by proactively going to the
11 website and inserting their email address in order to be notified of the public launch of the App.
12 643 had an existing relationship with these qualified prospective users since they signed up and
13 joined the App's website and became subject to the App's website's terms and conditions. 643
14 did not have a contract with many of these users who never downloaded the App. 643 had plans
15 to send additional emails to these 6,000 users to convert them into license agreements with 643
16 that would have resulted in monthly payments from these users to 643. The decision of these
17 qualified prospective customers to join the App's website and become subject to its terms and
18 conditions demonstrates 643 had an existing relationship with these consumers and a reasonable
19 and objective expectation of prospective economic relations since these qualified prospective
20 customers explicitly took action to indicate they would enter into contract with 643 when 643
21 notified them of the opportunity to do so. 643 did not have the opportunity to convert all of these
22 qualified prospective customers as a direct result of Facebook's conduct.

23 309. Based upon research 643 conducted regarding user personas likely to download its
24 App, 643 hired at significant expense over 20 contractors to identify consumers likely to enter
25 into license agreements with 643. These consumers converted into qualified prospective
26 customers at a statistically significant and repeatable average rate of 6%, well above industry
27 norms. Approximately 13,000 of these consumers had not yet been contacted by 643. Given the
28

1 expense 643 undertook to identify and target prospective customers, and the high and repeatable
2 rate of conversion, 643 had an objective and reasonable expectation of prospective economic
3 relations with these prospective customers.

4 310. 643 purchased advertising campaigns on Facebook using Facebook's mobile App
5 Install Ad product. These advertisements purchased by 643 potentially reached hundreds of
6 thousands of Facebook users, a portion of which entered into license agreements with 643. 643
7 had an objective and reasonable expectation of prospective economic relations from prospective
8 customers to whom it targeted in these advertising campaigns and in future advertising campaigns
9 643 planned to administer.

10 311. Upon information and belief, around the time Zuckerberg made the decision to
11 implement Facebook's anti-competitive scheme in 2012, Facebook was experiencing substantial
12 difficulty transitioning its service from desktop computers to mobile devices. The executive team
13 was extremely concerned around the impact this transition would have on Facebook's revenues,
14 particularly in light of the fact that Facebook was planning an initial public offering (IPO) of its
15 shares around this time. In discussions in 2011 and 2012, Zuckerberg and other members of
16 Facebook's management team, including Lessin, Olivan, Cox, Sandberg, and Bosworth, decided
17 to remove any APIs in Facebook Platform that permitted mobile apps to obtain organic growth,
18 including the Graph API Data. Organic growth enabled an app to acquire new users without
19 having to purchase advertising. Facebook built features like the newsfeed APIs and full friends
20 list in order to drive organic growth for Developers and represented for many years that organic
21 growth was a key reason a developer should build its business on Facebook Platform. Organic
22 growth was primarily achieved through the newsfeed APIs and full friends list, because these
23 APIs let potential new users of an app learn about and download the app from existing users
24 without the app needing to purchase advertisements to reach that new user. Upon information and
25 belief, Zuckerberg decided to implement the anti-competitive scheme in 2012 not only to restrain
26 competition to make way for new Facebook products but also to hold hostage the tens of
27 thousands of companies that relied on Facebook Platform for organic growth. By eliminating the

1 full friend list, friend permissions and newsfeed APIs, Zuckerberg placed tens of thousands of
2 companies in an impossible position: either spend hundreds of thousands of dollars each year
3 buying ads with Facebook's new mobile advertising product or shut down the product or
4 business. For companies who could afford it, the choice was clear: give in to Zuckerberg's
5 demands, pony up the cash, and stay in business. Based in significant part upon the
6 representations Facebook made from 2007 until 2014 that Facebook Platform was the most
7 effective organic growth and distribution channel for applications, 643 decided to build its
8 business on Facebook Platform because Facebook represented that any friends of 643's users
9 were qualified prospective customers who could enter into license agreements with 643 with a
10 single click or tap on a notification from a friend or a post in their newsfeed. There were
11 approximately 100,000 Facebook users who were friends of the 4,481 customers of 643, any of
12 whom Facebook represented repeatedly for 7 years could enter into license agreements with 643
13 seamlessly and easily with a single click or tap. In a survey of test users of the App, 75% of users
14 said they were likely to recommend the App to a friend, with 40% saying they already had
15 recommended the App to a friend. All of these friends who had received recommendations from
16 existing users to download the App were prospective customers with whom 643 could now
17 classify as qualified leads. Therefore, 643 had an objective and reasonable expectation of
18 prospective economic relations with these prospective customers and Zuckerberg interfered with
19 643's prospective economic advantage with these customers when he decided to shut down all
20 organic growth and distribution channels in 2012, before 643 was formed as a Delaware limited
21 liability company.

22 312. 643 thus had relationships with the following categories of consumers: its test
23 users (4,481 consumers), qualified prospective customers (6,000 consumers), prospective
24 customers (13,000 consumers), Facebook friends of customers (100,000 consumers), and
25 Facebook users who received 643's test advertisements (tens of thousands of consumers). In the
26 absence of Facebook's bait-and-switch scheme, 643 would have obtained future economic benefit
27 above and beyond its current contracts in all of these categories of consumers.

1 313. The conduct of Zuckerberg and the Conspiring Facebook Executives was wrongful
2 on a number of independent grounds, including violation of California's Unfair Competition law
3 (including violation of the FTC Order), and the common law causes of action for intentional
4 misrepresentation, negligent misrepresentation, and concealment.

5 314. Zuckerberg and the Conspiring Facebook Executives knew of 643's relationship
6 with the users or prospective users of the App, and knew or should have known of 643's
7 marketing and advertising tests of the App and its plans to grow the App both organically and
8 through participating in Facebook's mobile advertising product.

9 315. Zuckerberg and the Conspiring Facebook Executives negligently disrupted these
10 relationships when they decided in 2012 to privatize Graph API Data. From that moment on,
11 643's business was operating on borrowed time with no possibility of obtaining economic
12 advantage with prospective customers and yet 643 had no way of knowing this was the case.

13 316. Zuckerberg and the Conspiring Facebook Executives negligently disrupted these
14 relationships when they decided throughout 2012 and 2013 to fail to provide proper privacy
15 controls for information Facebook sent to 643, requiring 643 to build its own controls at
16 significant cost notwithstanding that Facebook made partial disclosures implying that it handled
17 this user data properly.

18 317. Zuckerberg and the Conspiring Facebook Executives negligently disrupted 643's
19 relationships with users and prospective users when they emailed 643 on January 20, 2015 that
20 Facebook would end 643's access to Graph API Data, despite knowing that interference with
21 these relationships would be certain or substantially certain to occur as a result of Facebook's act
22 in ending 643's access.

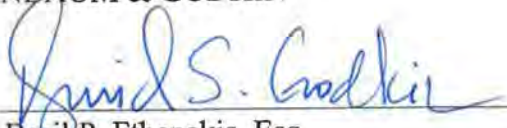
23 318. Zuckerberg and the Conspiring Facebook Executives further negligently interfered
24 with and disrupted 643's relationships with its users and prospective users when it did terminate
25 643's access on April 30, 2015, despite knowing that interference with these relationships would
26 be certain or substantially certain to occur as a result of Facebook's conduct in ending 643's
27 access.

- 1 E. A judgment or order declaring that Defendants' conduct, as alleged, constitutes
2 negligent misrepresentation;
- 3 F. A judgment or order declaring that Defendants' conduct, as alleged, constitutes
4 intentional interference with contract;
- 5 G. A judgment or order declaring that the conduct of Defendants Zuckerberg, Cox,
6 Olivan, Lessin, Vernal and Sukhar as alleged, constitutes intentional interference
7 with prospective economic relations;
- 8 H. A judgment or order declaring that the conduct of Defendants Zuckerberg, Cox,
9 Olivan, Lessin, Vernal and Sukhar, as alleged, constitutes negligent interference
10 with prospective business relations.
- 11 I. A judgment, order, or award of damages adequate to compensate 643;
- 12 J. A permanent injunction requiring Facebook to restore Developer access to the
13 Graph API data, including reading the full friends list, friends permissions and
14 newsfeed APIs, and all other data and APIs available prior to Facebook's removal
15 of the APIs on April 30, 2015;
- 16 K. A permanent injunction prohibiting Defendants Zuckerberg, Cox and Olivan from
17 interfering with 643's contracts;
- 18 L. A permanent injunction prohibiting Defendants Zuckerberg, Cox and Olivan from
19 interfering with 643's prospective economic relations;
- 20 M. An award of 643's reasonable attorneys' fees and costs;
- 21 N. Punitive damages and/or treble damages as provided by applicable law; and
- 22 O. Such other further relief as this Court or a jury may deem proper and just.
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1 DATED: January 12, 2018

CRITERION LAW

2 BIRNBAUM & GODKIN

3 By: 

4 Basil P. Fthenakis, Esq.

5 David S. Godkin (admitted *pro hac vice*)

6 James E. Kruzer (admitted *pro hac vice*)

7 Attorneys for Plaintiff

8 Six4Three, LLC

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1
2 **PROOF OF SERVICE**

3 I, Cheryl A. McDuffee, declare:

4 I am a citizen of the United States and employed in Suffolk County, Massachusetts. I am
5 over the age of eighteen years and not a party to the within-entitled action. My business address
6 is 280 Summer Street, Boston, MA 02210. On January 12, 2018, I served a copy of the within
7 document(s):

8 **PLAINTIFF'S FIFTH AMENDED COMPLAINT FOR INJUNCTION AND DAMAGES**

9 by electronic service, per the agreement of the parties, by emailing a true and
10 correct copy through counsel's email address to Defendant's counsel of record at
11 the email addresses set forth below.

12 **VIA EMAIL ONLY**

13 Joshua Lerner (jlerner@durietangri.com)
14 Sonal N. Mehta (SMehta@durietangri.com)
15 Laura Miller (LMiller@durietangri.com)
16 Catherine Kim (ckim@durietangri.com)
17 Durie Tangri (Service-Six4Three@durietangri.com)
217 Leidesdorff Street
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P (415) 376 - 6427
Attorney for Defendant
FACEBOOK, INC.

18 **VIA EMAIL ONLY**

19 Judge's Copy
20 Department 2
Superior Court of California, County of San Mateo
400 County Center, Courtroom 2E
21 Redwood City, CA 94063

22 I declare under penalty of perjury under the laws of the State of California that the above
23 is true and correct.

24 Executed January 12, 2018, at Boston, Massachusetts.

25 
26 _____
27 Cheryl A. McDuffee

EXHIBIT 1



f8 Event and Facebook Platform FAQ

What is f8?

f8 was an event held at the San Francisco Design Center on May 24, 2007, during which Mark Zuckerberg unveiled the next evolution of Facebook Platform. The event included an eight-hour "hackathon," where both Facebook engineers and outside developers collaborated on building new applications on the new Facebook Platform.

What is a "hackathon"?

A hackathon is an all-night coding event during which Facebook engineers work on any project that interests them. Facebook uses the word "hackathon" to refer to a gathering of engineers, who possess technical expertise and collaborate on innovative projects. Facebook has a tradition of holding frequent developer hackathons, which have spawned some of the most popular features and applications on the site.

What is Facebook Platform?

Facebook Platform is a development system that enables companies and developers to build applications for the Facebook website, where all of Facebook's 24 million active users can interact with them. Facebook Platform offers deep integration into the Facebook website, distribution through the social graph and an opportunity to build a business.

What is the social graph?

The social graph is at the core of Facebook. It is the network of connections and relationships between people on Facebook and enables the efficient spreading and filtering of information. Just as people share information with their friends and the people around them in the real world, these connections are reflected online in the Facebook social graph.

What is a Facebook application?

A Facebook application uses Facebook Platform to access information from the social graph, offering users an experience that's relevant to them. Facebook applications can plug into the Facebook website in a number of ways: applications can be embedded on users' profile pages, reside on their own separate pages (called "canvas" pages), or live through desktop applications using data from the Facebook social graph.

What's new in Facebook Platform?

We've been adding functionality since Facebook Platform first shipped in beta in August 2006. With the latest evolution of Facebook Platform however, third-party developers can now create applications on the Facebook site with the same level of integration as applications built by internal Facebook developers. Now developers everywhere have the ability to create Facebook applications that deeply integrate into the Facebook site, as well as the potential for mass distribution through the social graph and new business opportunities.

Why did Facebook launch Facebook Platform?

Our engineers have created great applications for Facebook, but we recognized that third-party developers can help us make Facebook an even more powerful social utility. Facebook Platform gives developers everywhere the tools to create applications that we just wouldn't have the resources to build in-house, and those applications make Facebook an even better way for our users to exchange information. Developers also benefit from Facebook Platform as it gives them the potential to broadly distribute their applications and even build new business opportunities.

What kinds of applications can be built on Facebook Platform?

The kinds of applications developers can build on Facebook Platform are limited only by their imaginations. Because applications are based on the Facebook social graph they can be more relevant to users, keeping people in touch with what and whom they care about. We've already seen a variety of applications built by our developer partners, including those for sharing media files, book reviews, slideshows and more. Some of the

facebook

possibilities of Facebook applications are illustrated in the Facebook Platform Application Directory, available at <http://www.facebook.com/apps>.

Are there any restrictions on what developers can build?

Developers are encouraged to exercise their creativity when building applications. Of course, all applications are subject to the Terms of Service that every developer agrees to, which include basic requirements such as not storing any sensitive user information, not creating any offensive or illegal applications, and not building anything that phishing or spams users. And users will always have the power to report any applications that compromise Facebook's trusted environment, keeping our users' information safe.

What are the benefits of Facebook Platform for users?

With Facebook Platform, users gain the ability to define their experience on Facebook by choosing applications that are useful and relevant to them. Now that they have access to a virtually limitless set of applications from outside developers, users have an unprecedented amount of choice. They can share information and communicate with their trusted connections in ways that would never have been possible before Facebook opened its platform.

How do users add applications to and remove applications from their account?

If a user sees an application she likes on a friend's profile, she can add it to her account by clicking the "Add" link on the application's profile box. She can also add new applications by navigating to the application's specific page in the Facebook Platform Application Directory and clicking "Add Application" in the top-right corner. To remove an application, she first clicks "Applications" on the left navigation bar. From there, she can "Remove" any of the applications in her account, whether they are built by a developer partner or by Facebook.

What are the privacy controls for Facebook Platform, and what kind of user information can be shared?

On Facebook, users are always in control of their information and can choose how much of their information is made available to specific applications. With Facebook Platform, we're offering additional privacy controls and requiring that third parties treat user information with the same respect we do—and our users have come to expect. Users can also choose to completely opt out of making their data available through Facebook Platform. Applications can never violate users' basic privacy settings and are meant to provide users with a better opportunity to share their information with their friends and networks.

What do third-party applications do with user information?

Applications built by third parties are required to respect Facebook users' privacy preferences. Third-party applications allow users and their friends to share information in new ways, without affecting the security and privacy that they've always enjoyed on Facebook.

How many applications are there for Facebook Platform?

At f8, we are launching with over 85 applications from more than 65 developer partners, and that's only the beginning. We're encouraging interested developers everywhere to create Facebook applications. We have no limits on the number of applications that can be created.

What differentiates Facebook applications from widgets on other sites?

Facebook applications are deeply integrated into the site and take advantage of the network of real connections through which users share information and communicate—what we call the "social graph." Widgets are typically single-purpose Flash add-ons to a web page (i.e., displaying a single video) that are not fully integrated into a site nor are aware of the social context among users.

How will Facebook maintain its minimalist style if users can add and move applications around on their profile?

We're giving our users the choice to add applications and control their placement in their profiles, but we're not changing the essential layout and familiar style of the Facebook site. Facebook applications are focused on providing new ways to spread information on Facebook, not about redesigning the way a profile looks. For example, users will not be able to change the site background, add music that plays when their profiles load, or



insert animation into their profiles. Individual applications may play media, music or animations but only when a visitor to that profile interacts with them.

How will Facebook deal with applications that compete with one another or even compete with Facebook-built applications?

We welcome developers with competing applications, including developers whose applications might compete with Facebook-built applications. Many applications are likely to offer similar features. We've designed Facebook Platform so that applications from third-party developers are on a level playing field with applications built by Facebook. Ultimately, our users will decide which applications they find most useful, and it is these applications that will become the most popular.

How will Facebook monetize Facebook Platform?

All the great applications built by our developer partners provide a service to our users and strengthen the social graph. The result is even more engaged Facebook users creating more advertising opportunities.

Can Facebook applications include ads?

We want to enable developers to build a business on their Facebook applications, so we're giving developers the freedom to monetize their applications as they like. Developers can include advertising on their applications' canvas pages, though no advertising will be allowed within the application boxes that appear within user profiles.

Are you going to share revenue with developers?

While revenue sharing is not available at launch, we are looking into ways to share advertising revenue with developers. This version of Facebook Platform already lets developers monetize their applications as they like, whether they choose to offer it for free or build a business on their application.

What are the key technical elements of Facebook Platform?

Facebook Platform offers several technologies that help developers use data from the social graph. In addition to the Facebook API, this recently launched version of Facebook Platform introduces Facebook Markup Language (FBML), which enables developers to build applications that deeply integrate into the Facebook site. Facebook Platform also includes Facebook Query Language (FQL), which lets developers use a SQL-style interface to query the data they can access through the API.

For more details on the technology behind Facebook Platform, check out the Facebook Developer site at <http://developers.facebook.com>.

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