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*Attorneys for Plaintiff Brittany Condit*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO / OAKLAND DIVISION**

BRITTANY CONDITI, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

INSTAGRAM, LLC, a Delaware limited  
liability company, and FACEBOOK, INC., a  
Delaware corporation,

Defendants.

Case No.: \_\_\_\_\_

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff Brittany Condit, individually and on behalf of all others similarly situated, asserts  
2 the following against Defendants Instagram, LLC (“Instagram”) and Facebook, Inc. (“Facebook”)  
3 (collectively “Defendants”), based upon personal knowledge, where applicable, information and  
4 belief, and the investigation of counsel.

### 5 SUMMARY OF ALLEGATIONS

6 1. Instagram is a popular social media platform, wholly owned by Facebook, with  
7 approximately one billion annual active users.

8 2. Instagram’s focus as a social media platform is based on allowing users to share  
9 photographs and videos with one another. Originally, users were only able to post photographs or  
10 videos to their Instagram “Feed,” which is a permanent collection of users’ content that others can  
11 interact with by viewing, commenting, or liking. In August 2016, Instagram launched “Stories,” a  
12 feature where users can post photographs or videos that disappear from view within a 24-hour  
13 period.

14 3. As a social media platform that allows users to post photographs and videos,  
15 Instagram has access to a user’s smartphone camera for the limited purpose of allowing users to  
16 directly take a photograph or video and then post that content to its platform.

17 4. Instagram claims to only access users’ smartphone cameras with user permission,  
18 such as when a user is interacting with the Instagram application’s (also referred to as an “app”)  
19 camera feature.

20 5. For example, Instagram recently released a statement saying “[Instagram] only  
21 access[es] your camera when you tell us to—for example, when you swipe from Feed to Camera.”  
22 Instagram claims when its camera feature is not used, it does not access users’ smartphone cameras.<sup>1</sup>

23 6. However, Instagram does more than it claims. Instagram is constantly accessing  
24 users’ smartphone camera feature while the app is open and monitors users without permission, i.e.,  
25

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26 <sup>1</sup> Filipe Esposito, *Instagram Promises to Fix Bug After Being Exposed By Always Accessing*  
27 *the Camera on iOS 14*, 9TO5MAC, (July 25, 2020), [https://9to5mac.com/2020/07/25/instagram-](https://9to5mac.com/2020/07/25/instagram-promises-to-fix-bug-after-being-exposed-by-always-accessing-the-camera-on-ios-14/)  
28 [promises-to-fix-bug-after-being-exposed-by-always-accessing-the-camera-on-ios-14/](https://9to5mac.com/2020/07/25/instagram-promises-to-fix-bug-after-being-exposed-by-always-accessing-the-camera-on-ios-14/).

1 when users are not interacting with Instagram's camera feature.

2 7. This access goes beyond the services that Instagram promises to provide. Instagram  
3 has no legitimate reason for accessing users' smartphone cameras when they are not using the  
4 Instagram camera feature.

5 8. By doing so, Defendants have been able to monitor users' most intimate moments,  
6 including those in the privacy of their own homes, in addition to collecting valuable insight and  
7 market research on its users.

8 9. Defendants engage in this conduct for one main reason: to collect lucrative and  
9 valuable data on its users that it would not otherwise have access to. By obtaining extremely private  
10 and intimate personal data on their users, including in the privacy of their own homes, Defendants  
11 are able to increase their advertising revenue by targeting users more than ever before. For example,  
12 Defendants are able to see in-real time how users respond to advertisements on Instagram, providing  
13 extremely valuable information to its advertisers.

14 10. The full extent and scope of Defendants' conduct is only just beginning to come to  
15 light as a result of an update to the Apple Inc.'s ("Apple") iPhone operating system, which provides  
16 notice to consumers when third parties are accessing their camera and microphone or collecting their  
17 data. The update to iPhone's operating system was only made available to developers on June 22,  
18 2020, and to the general public on July 9, 2020.

19 11. Defendants' conduct constitutes an egregious violation of Plaintiff's and Class  
20 members' privacy rights, as established through California's privacy laws. In addition, Defendants'  
21 actions constitute violations of the common law as well as several state and federal laws.

## 22 **JURISDICTION AND VENUE**

23 12. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C  
24 § 1332(d), because the amount in controversy for the Class exceeds \$5,000,000 exclusive of interest  
25 and costs, there are more than 100 putative class members, and minimal diversity exists because a  
26 significant portion of putative class members are citizens of a state different from the citizenship of  
27 Defendants.

28

1           13. This Court has general personal jurisdiction over Defendants because their principal  
2 place of business is in California. Additionally, Defendants are subject to specific personal  
3 jurisdiction in California because a substantial part of the events and conduct giving rise to  
4 Plaintiff's claims occurred in California.

5           14. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial  
6 portion of the conduct described in this Complaint was carried out in this District. Furthermore,  
7 Defendants Instagram, LLC and Facebook, Inc. are headquartered in this District and subject to  
8 personal jurisdiction in this District.

9           15. **Intra-district Assignment (L.R. 3-2(c) and (e) and 3-5(b))**: This action arises in  
10 San Mateo County, in that a substantial part of the events which give rise to the claims asserted  
11 herein occurred in San Mateo County. Pursuant to L.R. 3-2(e), all civil actions that arise in San  
12 Mateo County shall be assigned to either the San Francisco Division or Oakland Division.

### 13 **PARTIES**

#### 14 **A. Plaintiff**

15           16. Plaintiff Brittany Condit ("Plaintiff") is a natural person and citizen of the State of  
16 New Jersey and a resident of Bergen County.

17           17. Plaintiff downloaded the Instagram application to her smartphone and regularly uses  
18 Instagram, including during intimate moments in private places. For example, on a routine basis  
19 Plaintiff uses her smartphone and the Instagram app while she is in her bedroom.

20           18. Without her consent, Instagram secretly accessed Plaintiff's smartphone camera and  
21 monitored Plaintiff—beyond the scope of any of the services that Instagram provides and while the  
22 Instagram camera feature was not in use—including in the privacy of her own home.

#### 23 **B. Defendants**

24           19. Defendant Instagram, LLC is a limited liability company, organized and existing  
25 under the laws of the State of Delaware, with its principal place of business located at 1601 Willow  
26 Road, Menlo Park, CA 94025.

20. Defendant Facebook, Inc. is the parent company of Instagram, LLC. Defendant Facebook, Inc. is a corporation, incorporated and existing under the laws of the State of Delaware, with its principal place of business located at 1601 Willow Road, Menlo Park, California 94025.

21. Defendant Instagram is a wholly owned subsidiary of Defendant Facebook, Inc. Instagram is considered a “Facebook Product” and is provided to users “[b]y Facebook, Inc.”<sup>2</sup> Both Instagram and Facebook “share technology, systems, insights, and information-including information [they] have about [users].”<sup>3</sup>

### **FACTUAL BACKGROUND**

#### **I. The History of Facebook and Instagram**

22. Facebook which was founded in 2004 by Mark Zuckerberg, Eduardo Saverin, Dustin Moskovitz, and Chris Hughes, first began as a new social media platform directed towards college students. By the end of the following year, Facebook had amassed over six million users.

23. In 2006, Facebook expanded its membership from college students to anyone over the age of thirteen. Four years later, Facebook had not only surpassed “Myspace” as the most popular and most visited, social media platform, but it had also accomplished the difficult task of having over 400 million active users. To date, Facebook reports over 2.6 billion active users.

24. Facebook’s rise to becoming the most popular social media platform in the United States was no small feat. During the process, and to maintain its dominance in the market, Facebook acquired several other social media platforms and other apps to boost its portfolio. Some of Facebook’s most popular acquisitions have included “WhatsApp” and “Instagram.”

25. Instagram was launched as a social media platform in 2010 by Kevin Systrom. On the day the app launched it was downloaded over 25,000 times. A few short months later, Instagram surpassed one million active users. To date, Instagram has over one billion active annual users.

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<sup>2</sup> *Terms of Use*, INSTAGRAM, <https://help.instagram.com/581066165581870> (last visited July 30, 2020).

<sup>3</sup> *Id.*

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