

Mark N. Todzo (California Bar No. 168389)

LEXINGTON LAW GROUP

503 Divisadero Street
San Francisco, CA 94117
Telephone: 415-913-7800
Facsimile: 415-759-4112
mtodzo@lexlawgroup.com

Christian Levis (*pro hac vice* forthcoming)

Amanda Fiorilla (*pro hac vice* forthcoming)

LOWEY DANNENBERG, P.C.

44 South Broadway, Suite 1100
White Plains, NY 10601
Telephone: (914) 997-0500
Facsimile: (914) 997-0035
clevis@lowey.com
afiorilla@lowey.com

Anthony M. Christina (*pro hac vice* forthcoming)

LOWEY DANNENBERG, P.C.

One Tower Bridge
100 Front Street, Suite 520
West Conshohocken, PA 19428
Telephone: (215) 399-4770
Facsimile: (914) 997-0035
achristina@lowey.com

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.¹

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

26 ¹ 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

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

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

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

PARTIES

A. Plaintiff

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

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

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

B. Defendants

19. Defendant Instagram, LLC is a limited liability company, organized and existing under the laws of the State of Delaware, with its principal place of business located at 1601 Willow 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.”² Both Instagram and Facebook “share technology, systems, insights, and information-including information [they] have about [users].”³

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.

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

³ *Id.*

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.