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15 *Counsel for Plaintiff*

16 **IN THE UNITED STATES DISTRICT COURT**
17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

18 RITA GARVIN, individually and on behalf
19 of all others similarly situated,

20 Plaintiff,

21 vs.

22 FACEBOOK, INC., a Delaware corporation
23 headquartered in California,

24 Defendant.

25 **CLASS ACTION COMPLAINT**

26 **(1) MONOPOLIZATION OF SOCIAL
27 NETWORK MARKET**

Violation of the Sherman Act
(15 U.S.C. § 2)

**(2) ATTEMPTED
MONOPOLIZATION OF SOCIAL
NETWORK MARKET**

Violation of the Sherman Act
(15 U.S.C. § 2)

**(3) MONOPOLIZATION OF SOCIAL
MEDIA MARKET**

Violation of the Sherman Act
(15 U.S.C. § 2)

**(4) ATTEMPTED
MONOPOLIZATION OF SOCIAL
MEDIA MARKET**

Violation of the Sherman Act
(15 U.S.C. § 2)

**(5) UNJUST ENRICHMENT
(6) VIOLATION OF UNFAIR
COMPETITION ACT**

**(7) VIOLATION OF THE
CARTTWRIGHT ACT**

JURY TRIAL DEMANDED

1 users' privacy. Facebook's current Terms of Service state:

2 *Instead of paying to use Facebook and the other products and services*
3 *we offer, by using the Facebook Products covered by these Terms, you*
4 *agree that we can show you ads that businesses and organizations pay us*
5 *to promote on and off the Facebook Company Products. We use your*
personal data, such as information about your activity and interests, to
*show you ads that are more relevant to you.*¹

6 Significantly, Facebook suggests to its users that the extent to which it utilizes their data is
7 limited, and that the extent of the data collection is limited to Facebook's services themselves.

8 7. Facebook's Terms of Service further state that "In exchange [for access to Facebook's
9 services] we need you to make [certain] commitments." Among those "commitments" is
10 "[p]ermission to use your name, profile picture, and information about your actions with ads and
11 sponsored content." The Terms then state that protecting user "privacy is central to how [Facebook
12 has] designed [its] ad system." In other words, users give up personal information and agree to
13 receive targeted advertisements on the Facebook platform in exchange for access to Facebook's
14 social media network and for a commitment from Facebook to protect user privacy. They do not
15 agree to anything beyond that.

16 8. In truth, Facebook deceptively concealed the real scope of the data it collected from its
17 users and the ways in which it used that data to eliminate competition. Facebook's deceptions
18 allowed the company to gain and illegally maintain its control over on the Social Network and
19 Social Media Markets.

20 9. The data Facebook collects from its users has enormous economic value. A recent
21 majority staff report from the United States House of Representatives Antitrust Subcommittee
22 explained that "[o]nline platforms rarely charge consumers a monetary price—products appear to be
23 'free' but are monetized through people's attention or with their data."² The same House Report
24

25 ¹ Facebook Terms of Service, <https://www.facebook.com/terms.php> (last accessed December 22,
26 2020).

27 ² See *Investigation of Competition in Digital Markets*, Majority Staff Report and Recommendations
("House Report"), Subcommittee on Antitrust, Commercial, and Administrative Law of the
Committee on the Judiciary, at 18 (emphasis added), October 6, 2020, available at

1 recognizes the monstrous monetary value that Facebook reaps from the data that it extracts from its
2 users.³

3 10. Facebook itself touts the economic value of the data it collects from consumers. For
4 example, Facebook describes its massive advertising earnings in terms of average revenue per user
5 (“ARPU”) in its public filings. For 2019, Facebook’s ARPU was over \$41 per user in the United
6 States and Canada.⁴

7 11. Facebook, driven by fear that it would lose its market dominance due to new
8 competitors and innovations, engaged in the illegal course of conduct alleged herein. Facebook’s
9 “acquire, copy, or kill” strategy has been wildly successful at the expense of users. Facebook’s
10 anticompetitive scheme has lessened, if not eliminated, competition and harmed users.

11 12. As Facebook’s founder and CEO, Mark Zuckerberg observed, “[o]ne thing about
12 startups . . . is you can often acquire them,” indicating at other times that such acquisitions would
13 enable Facebook to “build a competitive moat” or “neutralize a competitor.”

14 13. Facebook uses the valuable data it deceitfully collects from its users to execute its
15 “acquire, copy, or kill” business plan. Rather than competing on the merits, Facebook uses this
16 valuable consumer data to identify incipient competitors with the most likely path to meaningful
17 market share gains. Often, these competitors are Facebook users’ preferred alternatives.

18 14. Facebook has made it clear that it would copy incipient competitors’ innovations and
19 discriminatorily shut off these firms’ access to Facebook’s valuable user data if they did not sell
20 their businesses to Facebook first. The message to its competitors was explicit: sell at a bargain, or
21 Facebook will go into “destroy mode.” All of this was enabled by Facebook’s deception.

22 15. Two of Facebook’s largest acquisitions, the mobile social photo app Instagram and the
23 mobile messaging service WhatsApp, are examples of Facebook executing its plan. Each posed a
24 unique and dire threat to Facebook’s monopoly, each had enormous and rapidly growing user
25 networks, and each was well positioned to encroach on Facebook’s dominant market position.

26 _____
27 ³ *Id.* at 18

1 16. Facebook’s destruction of competition has caused consumers to suffer substantial
2 economic injury. Consumers give up something of material value when agreeing to Facebook’s
3 Terms of Service: their personal information and their attention. User information and attention is
4 then sold in measurable units to advertisers in exchange for money. Consumers thus give up
5 valuable consideration in using Facebook pursuant to Facebook’s Terms of Service. As
6 Facebook’s co-founder explained, “[Facebook] is not actually free, and it certainly isn’t harmless. . .
7 . We pay for Facebook with our data and our attention, and by either measure it doesn’t come
8 cheap.”⁵

9 17. Absent Facebook’s anticompetitive scheme, fair competition would have required
10 Facebook to provide consumers greater value in return for consumers’ data, but Facebook instead
11 took that data without providing adequate compensation to its users (*i.e.*, the members of the
12 putative class in this action). That constitutes antitrust injury. Through its deception and the
13 acquisitions enabled by its deception, Facebook prevented competition on the merits, and as a result
14 of that reduction in competition, users received less value for their data than they would have
15 received in some form assent the reduction.

16 18. Facebook’s acquisition and maintenance of monopoly power continues to harm
17 consumers. Prior to Facebook’s consolidation of the Social Network and Social Media Markets, a
18 number of firms vigorously competed to win over consumers by offering competing products which
19 differed in non-price attributes such as quality. For instance, early social media companies,
20 including Facebook, competed for market share by offering competing products to consumers that
21 highlighted particular privacy features. Absent Facebook’s anticompetitive scheme, which has
22 allowed Facebook to place consumers under its monopolistic thumb, competition from Facebook’s
23 rivals would require Facebook to offer products of quality superior to those it thrusts upon
24 consumers today. Instead, Facebook’s anticompetitive conduct has allowed Facebook to artificially
25

26 _____
27 ⁵ Chris Hughes, *It’s Time to Break Up Facebook*, NY Times, May 9, 2019, available at
<https://k1link/3dIITsbC>

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