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8 *Additional Plaintiff's Counsel Appear on the Signature Page*

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

12 JOE KOVACEVICH, individually and on
13 behalf of all others similarly situated,

14 Plaintiff,

15 vs.

16 FACEBOOK, INC., a Delaware corporation
17 headquartered in California,

18 Defendant.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Kovacevich brings this action against Defendant Facebook, Inc. (“Facebook”),
2 individually and as a class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on
3 behalf of himself and similarly situated individuals who maintained a Facebook social media profile
4 since 2007. Plaintiff seeks treble damages and injunctive relief for Facebook’s longstanding and
5 continuing violations of section 2 of the Sherman Act, 15 U.S.C. § 2 and violations of California
6 state statutory and common law. Plaintiff alleges as follows based on personal knowledge, the
7 investigation of Plaintiff’s counsel, and on information and belief.

8 NATURE OF THE ACTION

9 1. Facebook is now the largest social media platform in the United States and in the
10 world. As of July 2020, Facebook reported having 2.7 billion monthly active users for its main
11 Facebook product. Facebook also has a number of other product offerings: Instagram, Facebook
12 Messenger, WhatsApp, and Oculus. When all of these product offerings are combined, Facebook
13 boasts 2.47 billion daily active users and 3.14 billion monthly active users worldwide. In the United
14 States, Facebook accounts for over 45 percent of monthly social media visits. Moreover, the
15 Facebook Messenger standalone chat app is one of the most popular mobile messenger apps
16 worldwide.

17 2. Rather than achieving market dominance through fair competition and
18 innovation, Facebook reached its status through a systematic pattern of anticompetitive
19 conduct. Facebook repeatedly misled its consumers about the privacy protections it
20 provided for its users’ data and leveraged its dominant market power to “acquire, copy or
21 kill” any actual or potential competitors.

22 3. Instead of paying money to use Facebook, users exchange their time, attention, and
23 personal data, for access to Facebook’s services. Facebook’s business is focused on selling its users’
24 information and attention, in quantifiable units, for money. In other words, Facebook profits by
25 selling targeted ads based on the rich set of data about users’ activities, interests, and affiliations.

1 Facebook collected over \$70 billion in revenue in 2019,¹ almost all of which was for selling
2 companies the opportunity to display targeted ads to Facebook's users.

3 4. Recognizing the utmost importance early on, Facebook promised stringent privacy
4 protection in its efforts to win the race for market dominance. Due to these promises, many users
5 ultimately chose Facebook over other competitors. When users sign up for a Facebook account,
6 they agree to certain terms. As Part of Facebook's Terms of Service, users give Facebook
7 "[p]ermission to use [their] name, profile picture, and information about your actions with ads and
8 sponsored content." The Terms also state that protecting user "privacy is central to how we have
9 designed our ad system." Essentially, users provide personal information in exchange for access to
10 Facebook's social media network and for a commitment from Facebook to protect user privacy
11 while agreeing to receive targeted advertisements on the Facebook platform.

12 5. Despite Facebook's claims about protecting user privacy, it concealed both the actual
13 scope of the data it collected from its users and the ways in which it used that data to eliminate
14 competition. Through these deceptions, Facebook eliminated potential competition from other
15 social media firms and was able to gain and illegally maintain its control over the Social Network.

16 6. Far from being trivial, the data Facebook collects from its users has enormous
17 economic value. A recent majority staff report from the United States House of Representatives
18 Antitrust Subcommittee explained that "[o]nline platforms rarely charge consumers a monetary
19 price—products appear to be 'free' but are monetized through people's attention or with their
20 data."² In public filings, Facebook describes its massive advertising earnings in terms of average
21 revenue per user ("ARPU"). In the final quarter of 2019, Facebook's ARPU was \$41.41 per user in
22

23 ¹ *Investigation of Competition in Digital Markets*, Majority Staff Report and Recommendations,
24 Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the
25 Judiciary, at 170 ("House Report"), Oct. 6, 2020, available at
https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf.

26 ² See House Report at 18.

1 the United States and Canada.³

2 7. With so much value at stake, for fear of losing its market dominance to new
3 competitors and innovations, Facebook engaged in an illegal pattern of conduct including an
4 “acquire, copy, or kill” strategy which, while extremely successful for Facebook, has been very
5 detrimental to users. Facebook’s anticompetitive scheme has drastically lessened, if not eliminated,
6 competition and harmed users. Facebook founder and CEO Mark Zuckerberg observed, “[o]ne
7 thing about startups though is you can often acquire them,”⁴ reflecting his understanding that such
8 acquisitions would enable Facebook to shield itself from competition.

9 8. Rather than competing on the merits of its products, Facebook misuses valuable user
10 data to identify and eliminate emerging competitors. Using its dominant power, Facebook
11 discriminatorily shut off emerging competitors’ access to Facebook’s valuable user data if they
12 refused to sell their businesses to Facebook. Two of Facebook’s largest acquisitions, the mobile
13 social photo app Instagram, and the mobile messaging service WhatsApp, are examples of
14 Facebook executing its plan. Each posed a unique and dire threat to Facebook’s monopoly, each
15 had enormous and rapidly growing user networks, and each was well positioned to encroach on
16 Facebook’s dominant market position.

17 9. Consumers have suffered substantial economic injury as a result of Facebook’s
18 destruction of competition. If Facebook had to contend with rivals, fair competition would have
19 required Facebook to provide consumers greater value in return for their data, but Facebook instead
20 took that data without providing adequate compensation. Through its deception and the acquisitions
21 enabled by its deception, Facebook prevented competition on the merits, and as a result of that
22 reduction in competition, users received less value for their data than they would have otherwise

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24 ³ *Facebook Q4 2019 Results* at 4, available at
25 [https://s21.q4cdn.com/399680738/files/doc_financials/2019/q4/Q4-2019-Earnings-Presentation-](https://s21.q4cdn.com/399680738/files/doc_financials/2019/q4/Q4-2019-Earnings-Presentation-final.pdf)
26 [final.pdf](https://s21.q4cdn.com/399680738/files/doc_financials/2019/q4/Q4-2019-Earnings-Presentation-final.pdf).

26 ⁴ House Report at 153.

1 received.

2 10. Facebook's acquisition and maintenance of monopoly power continues to harm
3 consumers. Prior to Facebook's consolidation of the social media competitors that may threaten the
4 Social Network Market, several firms vigorously competed to win over consumers by offering
5 competing products which differed in quality and other non-price attributes. Early social media
6 companies, including Facebook, competed for market share by offering privacy features to
7 consumer alongside their competing products. Absent Facebook's anticompetitive scheme, which
8 has allowed Facebook to place consumers under its monopolistic thumb, competition from
9 Facebook's rivals would require Facebook to offer products of quality superior to those it thrusts
10 upon consumers today. Instead, Facebook's anticompetitive conduct has allowed Facebook to
11 artificially stifle innovation and deprive consumers of any meaningful alternative to Facebook's
12 social media empire. As such, consumers are faced with a "take it or leave it choice" that provides
13 no choice at all: accept a Facebook of lesser quality or forgo use of the only social media platform
14 used by most consumers' friends and family members.

15 11. Facebook's monopolistic conduct violates the antitrust laws and harms consumers.
16 Facebook is dominant in the Social Network Market and has engaged in predatory and exclusionary
17 conduct in order to monopolize, causing Plaintiff and Class members to suffer substantial economic
18 injury as a result of Facebook's competition-reducing violations of law. This action seeks recovery
19 for consumers' losses and Facebook's unlawful gains, and it seeks other appropriate equitable relief
20 to prevent Facebook from continuing to destroy competition and harm consumers.

21 JURISDICTION, VENUE, AND CHOICE OF LAW

22 12. This action arises under Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2, and
23 Section 4 of the Clayton Act, 15 U.S.C. § 15. The action seeks to recover treble damages or
24 disgorgement of profits, interest, costs of suit, equitable relief, and reasonable attorneys' fees for
25 damages to Plaintiff and members of the Class resulting from Defendant's restraints of trade and
26 monopolization of the Social Network Market described herein.

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