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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability company,

Plaintiff,

vs.

FACEBOOK, INC., a Delaware corporation; MARK ZUCKERBERG, an individual; 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. V. Raymond Swope, Dep't 23

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF REQUEST TO STRIKE FACEBOOK'S IMPROPER "OPPOSITION" AND "REPLY" IN SUPPORT OF CHALLENGE FOR CAUSE (CAL. CODE CIV. PRO. §§ 170.1 AND 170.3)

(UNLIMITED JURISDICTION)

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

Plaintiff Six4Three, LLC requests that the court take judicial notice of the following documents filed in these proceedings and related writ proceedings before the Court of Appeal:

Date	Description	Exhibit No.
11/26/2018	*Ex Parte* Application for Expedited Relief Regarding Six4Three's Contempt	22
12/14/2018	Application for Order Shortening Time to file Motions to Be Relieved as Counsel	23
12/17/2018	Minute Orders	24
1/8/2019	Gross & Klein LLP's	25

1/8/2019	Birnbaum & Godkin, LLP's Motion to be Relieved as Counsel	26
1/24/2019	Order Granting Ex Parte Apps	27
1/24/2019	Declaration of T. Kramer	28
3/27/2019	Application for Stay of Discovery	29
4/19/2019	Alternative Writ from Court of Appeal	30
6/7/2019	Minute Orders	31
7/1/2019	Declaration of T. Kramer re Retention of Counsel	32
7/2/2019	Notice of Limited Scope Appearance	33
7/2/2019	Peremptory Challenge (§ 170.6)	34
7/5/2019	Facebook's Objection to Peremptory Challenge (§ 170.6)	35
7/9/2019	Order Striking Peremptory Challenge (§ 170.6)	36
7/12/2019	Statement of Disqualification	37
7/17/2019	Facebook's Objection to Statement of Disqualification	38
7/19/2019	Order Striking Statement of Disqualification	39
8/6/2019	Notice of Limited Scope Appearance	40

Evidence Code section 452(d) provides that judicial notice may be taken of "[r]ecords of (1) any court of this state or (2) any court of record of the United States or of any state of the United States." Evidence Code section 453 provides that "[t]he trial court shall take judicial notice of any matter specified in Section 452 if a party requests it and: (a) [g]ives each adverse party sufficient notice of the request, through the pleadings or otherwise, to enable such adverse party to prepare to meet the request; and (b) [f]urnishes the court with sufficient information to enable it to take judicial notice of the matter." Here, the documents are part of the records of this case and related appeals and relevant to the subject matter of the pending Statement of Disqualification under Code of Civil Procedure § 170.1.

DATED: August 13, 2019

MACDONALD FERNANDEZ LLP

By: _____
Matthew J. Olson
Attorneys for Plaintiff,
SIX4THREE, LLC

EXHIBIT 22

D-23

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FILED
SAN MATEO COUNTY
NOV 26 2018
Clerk of the Superior Court
By _____ DEPUTY CLERK

FEE PAID / WAIVED

CIV533328
EPA
Ex Parte Application
1511419

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability company,

Plaintiff,

v.

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

Defendants.

Case No. CIV 533328

Assigned for all purposes to Hon. V. Raymond Swope, Dept. 23

DEFENDANT FACEBOOK, INC.'S EX PARTE APPLICATION FOR EXPEDITED RELIEF RE SIX4THREE'S CONTEMPT, INCLUDING AN ORDER TO SHOW CAUSE.

Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

Defendant Facebook, Inc. ("Facebook") files this *ex parte* application for expedited relief, including an order to show cause as to why terminating sanctions and monetary sanctions should not issue against Plaintiff Six4Three LLC ("Six4Three") and its counsel. Specifically, Facebooks requests:

(1) An Order to Show Cause why terminating sanctions and monetary sanctions should not issue against Six4Three and its counsel in light its repeated and willful violations of this Court's protective and sealing orders.

(2) An order that Six4Three and its counsel produce the following categories of documents on Thursday, November 29, 2018:

a. All written or recorded communications between Six4Three, including without limitation Ted Kramer, Thomas Scaramellino, David Godkin, James Kruzer, Stuart Gross, and any other agent or representative of Six4Three, on the one hand, and any other individual or entity (other than this Court or Facebook) on the other hand, regarding Facebook's confidential information. For the avoidance of doubt, this includes but is not limited to media organizations and governmental entities, including the Digital, Culture, Media and Sport Committee of the House of Commons.

b. Documents (e.g., phone logs) sufficient to show all telephonic and/or video conference communications between Six4Three, including without limitation Ted Kramer, Thomas Scaramellino, David Godkin, James Kruzer, Stuart Gross, and any other agent or representative of Six4Three, and any individual or entity (other than this Court or Facebook) regarding Facebook's confidential information. For the avoidance of doubt, this includes but is not limited to media organizations and governmental entities, including the Digital, Culture, Media and Sport Committee of the House of Commons.

c. Document sufficient to show the identity of all individuals or entities with whom Ted Kramer, David Godkin, James Kruzer, and Stuart Gross, or any other agent or representative of Six4Three, discussed Facebook's confidential information.

(3) An order that depositions of the following individuals take place in San Mateo County by Wednesday, December 5, 2018:

a. Ted Kramer

b. David Godkin

c. Stuart Gross

d. Thomas Scaramellino

Following the depositions, Facebook proposes that Six4Three file an opening brief in response to an Order to Show Cause by Friday, December 7, 2018. Facebook's responsive brief would then be due on Tuesday, December 11, 2018. Facebook requests that the Court set a hearing following the close of briefing at the Court's earliest convenience.

Notice of this application was provided to Six4Three through the Court's correspondence of November 19, 2018.

This application is based upon the memorandum of points and authorities, the declaration of Laura E. Miller, and such additional evidence and argument as may be presented at or before any hearing on this matter.

Dated: November 26, 2018

DURIE TANGRI LLP

By: _____

SONAL N. MEHTA
JOSHUA H. LERNER
LAURA E. MILLER
CATHERINE Y. KIM
ZACHARY ABRAHAMSON

Attorneys for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar

I. INTRODUCTION

These are extraordinary circumstances. Six4Three and its counsel have knowingly violated basic litigation rules and procedures, not to mention multiple orders of this Court directing Six4Three not to misuse or leak confidential documents produced by Facebook in this case.[1]

Indeed, in the last week, we have learned that Six4Three's principal Ted Kramer traveled to the United Kingdom with a thumb drive of confidential, sealed materials, including materials he never should have had access to in the first place under the Stipulated Protective Order. This collection of documents apparently included the sealed Declaration of Six4Three's lawyer David Godkin—a 76-page document full of mischaracterizations of documents and speculation about events and intentions that counsel never could have testified to under oath. Then, notwithstanding the requirements of the Stipulated Protective Order itself, the Court's prior order sealing these documents, and the Court's express order last week that Mr. Kramer not produce the sealed documents in the United Kingdom, Mr. Kramer did ***exactly what the Court ordered him not to do***.

More than two years ago, as is standard in similar cases, the Court entered a Stipulated Protective Order that prohibits the use and disclosure of confidential and highly confidential documents produced in this litigation. Throughout the litigation, Six4Three and its counsel sought internal Facebook documents in discovery. Although the Court denied a number of Six4Three's requests, Facebook participated in discovery in good faith and produced documents, including ones containing confidential and highly confidential material, subject to the protections of the Stipulated Protective Order.

In an effort to create media interest, Six4Three attached hundreds of internal confidential and highly confidential documents to Mr. Godkin's declaration in support of Six4Three's opposition to the Individual Defendants' anti-SLAPP motion. Six4Three and a number of media outlets with whom Six4Three was communicating then sought to unseal the documents. The Court, however, rejected Six4Three's gamesmanship. The Court carefully reviewed and sealed most of the documents—many of

[1] When Facebook initially brought this issue to the Court's attention, it sought to address Six4Three and its counsels' misuse of documents produced in this case to sue Facebook in another recently filed matter. Since then, Facebook has learned of an even more egregious violation of the Court's various protective and sealing orders, which we also address herein.

which the Court found irrelevant or to be mischaracterized by Six4Three's counsel—on November 1, 2018.

That should have been the end of this. But Six4Three betrayed the Court's orders. Over the holiday week when it was difficult for counsel or the Court to react quickly, Six4Three suddenly announced that Mr. Kramer was in the United Kingdom and intended to disclose the sealed documents to officials conducting an inquiry there. Although Six4Three provided less than 24 hours of notice, the Court reacted quickly. On November 20, 2018, the Court confirmed its prior orders and specifically ordered Six4Three not to disclose the documents to the Parliamentary Committee. Just three days after the Court's Order—on the Friday before the Thanksgiving weekend—Six4Three's counsel provided notice that Mr. Kramer had flatly violated this Court's Orders. Six4Three's counsel leaves no doubt as to what happened—he admits that the documents that Mr. Kramer turned over include documents this Court has now repeatedly ordered sealed.[2]

There can be no dispute that immediate relief is necessary. Mr. Kramer violated multiple orders, including this Court's most recent order, and could only have done so knowingly and intentionally. This is no mere "technical foul"—it is a fundamental challenge to this Court's basic authority. There also can be no question that neither Six4Three nor its counsel are to be trusted to comply with this Court's orders regarding the documents produced in this case. There is real and tangible risk that Six4Three or its counsel will continue to violate this Court's orders and leak confidential materials to other third parties.

Given the repeated disregard for this Court's orders, Facebook requests an order to show cause why terminating sanctions should not issue as well as sanctions for contempt. The hearing on the order to show cause should be preceded by a limited document production and depositions so that the Court and Facebook can ascertain the full scope of the violations and harm done beyond what we already know.

[2] Declaration of Laura E. Miller submitted herewith ("Miller Decl.") Ex. 1 (Email from Godkin to Salimi (Nov. 23, 2018)); *see also* https://www.cnn.com/2018/11/24/us/six4three-facebook-uk-parliament/index.html.

II. BACKGROUND FACTS AND ARGUMENT

A. Ted Kramer and Six4Three's Counsel Violated Multiple Court Orders.

The Court has been notified of Ted Kramer's disclosure of Facebook's confidential information through a series of communications beginning on November 19, 2018.[3] To briefly summarize the facts that we already know:

In accordance with the terms of the Stipulated Protective Order, on May 30, 2018, Facebook filed a motion to seal confidential information contained in several hundred internal Facebook documents that Six4Three's counsel, Mr. Godkin, attached to his declaration filed in opposition to Facebook's anti-SLAPP motions. Six4Three opposed Facebook's motion to seal. On November 1, 2018, after extensive briefing and a hearing, the Court issued a detailed order sealing the vast majority of these documents (and striking others from the record entirely).

Less than a month later, it appears that Six4Three has devised a way around the Court's protective and sealing orders. On November 19, 2018, Mr. Godkin advised Facebook, with less than 24 hours' notice, that one of its founders, Ted Kramer, had been asked to disclose the sealed documents to the United Kingdom Digital, Culture, Media and Sport Committee of the House of Commons (the "DCMS Committee"). Miller Decl. Ex. 2 (Letter from Godkin to Mehta (Nov. 19, 2018)). According to Mr. Godkin, the Committee ordered Mr. Kramer to turn over the documents while he was traveling in the United Kingdom, purportedly on other business. *Id.* But neither Six4Three nor its counsel offered any explanation as to how the Committee knew Mr. Kramer was in the U.K. or why he was traveling with sealed documents, many pages of which he is not permitted to even have access to under the Stipulated Protective Order.

Facebook immediately responded, reminding Six4Three and its counsel that any disclosure of Facebook's confidential information would be a violation of the Stipulated Protective Order and the Court's November 1, 2018 sealing order, and that it appeared that there had already been a violation of the Stipulated Protective Order because Mr. Godkin should not have allowed Mr. Kramer access to

[3] In its Order of November 20, 2018, the Court requested briefing on a specific set of questions regarding the DCMS Committee request. Facebook will address those specific issues in its submission this Wednesday, November 28, 2018.

Facebook's Highly Confidential Information. *See* Miller Decl. Ex. 3 (Letter from Miller to Godkin (Nov. 19, 2018)); Ex. 4 (October 25, 2016 Protective Order at 5 (prohibiting disclosure of Highly Confidential Information to "individual parties or directors, officers or employees of a party")).

That evening, Facebook also contacted the Court, copying Six4Three's counsel, requesting an immediate teleconference regarding the impending disclosure of Facebook's confidential information to the DCMS Committee. *See* Miller Decl. Ex. 5 (Email from Miller to Court (Nov. 19, 2018); Email from Court to Miller (Nov. 20, 2018)). The Court responded via email early the next morning expressly stating that "[n]o documents shall be transmitted/released until further order of this Court." *Id.* At approximately the same time, Mr. Godkin sent a letter to the DCMS Committee informing it that Facebook was "seeking appropriate relief from the Superior Court of California, San Mateo County" and that his "client" was "unable to comply with the Order unless and until the Superior Court permits." Miller Decl. Ex. 6 (Letter from Godkin to Collins (Nov. 20, 2018)).

The Court's Order of November 20, 2018, acknowledged the receipt of the correspondence provided by the parties, and requested briefing on a set of specific legal and factual questions. The Court further specified:

> No unredacted copies of Plaintiff's opposition to either Facebook's Special Motion to Strike or Individual Defendants' Special Motion to Strike shall be transmitted, released or submitted, until further order of the Court. ***Failure to comply will be considered an act of contempt.***

Following the Court's November 20, 2018 Order and further correspondence from the DCMS Committee, Mr. Godkin sent another letter to the DCMS Committee on November 21, 2018, again stating that Mr. Kramer was not authorized to disclose Facebook's confidential information. Miller Decl. Ex. 7 (Letter from Godkin to Collins (Nov. 21, 2018)).

Unbeknownst to Facebook, however, on or around November 21, 2018, we understand that Mr. Kramer disclosed an as-of-yet-unidentified set of Facebook's confidential information, via a thumb drive, to the DCMS Committee in direct violation of this Court's orders. Miller Decl. Ex. 8 (Email from Godkin to Miller (Nov. 23, 2018)). Facebook was not notified of this disclosure until ***two days later***, on the afternoon of Friday, November 23, 2018, after the Court was already closed for the Thanksgiving holiday.

As the Court noted in its November 20, 2018 Order, Six4Three's counsel has failed to explain the events and circumstances that led to the DCMS Committee's request and Mr. Kramer's eventual disclosure of Facebook's confidential information on November 21, 2018. The unresolved questions include, for example: Why did Mr. Kramer even have the sealed documents? Who gave them to him? Why did he travel to the United Kingdom with them? Did Mr. Kramer tell the DCMS Committee that he had the documents? Did Mr. Kramer tell the DCMS Committee that he would be in the United Kingdom and where to reach him? What exactly did Mr. Kramer provide to the Committee?

At this point, Facebook, and importantly the Court, cannot determine the scope of the violations of this Court's orders without disclosure of the documents and records revealing what happened here, cross examination of the relevant players (via deposition and/or evidentiary hearing), and a live hearing before the Court.

B. Six4Three's Counsel Also Violated the Stipulated Protective Order by Improperly Using Confidential Material in Another Case.

The knowing and intentional breach of the Court's orders described above would, standing alone, warrant a contempt finding and severe sanctions. But the concerns raised as to Six4Three and its counsels' disrespect for the Court's orders are only exacerbated because this breach appears to be part of a broader pattern.

It has recently come to Facebook's attention that Six4Three's counsel, David Godkin, James Kruzer, and Stuart Gross, further violated the Stipulated Protective Order and this Court's sealing orders through the filing of a new complaint in San Francisco County Superior Court, *Styleform IT v. Facebook, Inc.*, Case No. CGC 18-571075 (the "Styleform Complaint"). *See* Miller Decl. Ex. 9.

Paragraph 3 of the Stipulated Protective Order reads as follows:

> All Confidential Information or Highly Confidential Information produced or exchanged in the course of this Case (not including information that is publicly available) shall be used by the party or parties to whom the information is produced ***solely for the purpose of this case.*** Confidential Information or Highly Confidential Information ***shall not be used for any commercial competitive, personal, or other purpose.*** Confidential Information or Highly Confidential Information must be stored and maintained by a receiving party at a location and in a secure manner that ***ensures that access is limited to the persons authorized under this Stipulated Protective Order.***

The Styleform Complaint violates the Stipulated Protective Order in at least two primary ways.

First, it is clear on the face of the Styleform Complaint that Styleform does not have any personal knowledge of the internal Facebook communications, decisions, or strategies it alleges.[4] Instead, it appears that, as counsel for both Six4Three and Styleform, Mr. Godkin, Mr. Kruzer, and Mr. Gross inappropriately drafted the Styleform Complaint that, while mischaracterizing Facebook's confidential documents, improperly relies on them nonetheless. That is a direct violation of our Stipulated Protective Order, which states that the confidential information produced by Facebook in the Six4Three litigation "shall be used by the party or parties to whom the information is produced ***solely for the purpose of this case***," and "***shall not be used for any commercial, competitive, personal, or other purpose***."

Second, in addition to the improper ***use*** of Facebook's confidential information in drafting the Styleform Complaint, Six4Three's counsel also ***disclosed*** certain confidential information contained in the documents Facebook produced in this litigation, subject to the Stipulated Protective Order and ordered sealed by this Court. These disclosures are a direct violation of the Stipulated Protective Order and the Court's various sealing orders, and provide additional evidence of the improper use of Facebook's confidential documents in drafting the Styleform Complaint.

For example, Styleform alleges that "Tinder provided highly valuable unrelated financial consideration, including intellectual property, to Facebook in exchange for its special access to APIs." Styleform Compl. ¶ 68. As Facebook has stated on multiple occasions and as Facebook's witnesses have testified under oath, this allegation is false and relies on the continued misreading of a confidential email chain produced by Facebook. Nothing in the public domain addresses this alleged transfer of intellectual property from Tinder to Facebook as consideration for special access to APIs— because no such transfer ever occurred. Furthermore, this Court has granted multiple motions sealing the underlying document that Six4Three continues to mischaracterize and related discussions in the briefing. *See, e.g.*, November 1, 2018 Amended Order re: Motion to Seal (sealing Exhibit 97 and striking paragraph 98 of the Godkin

[4] *See* Cal. Code Civ. Proc. § 128.7(b)(3) ("By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney . . . is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances," certain conditions are met, including "[t]he allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.").

Declaration in Support of Six4Three's Opposition to the Individual Defendants' Special Motion to Strike).

As another example, the Styleform Complaint alleges that Facebook paid a PR firm "almost $50,000 a month" to "disseminate this fraudulent pro-privacy narrative." Styleform Compl. ¶ 165. This allegation is again untrue, and appears to rely on yet another mischaracterization of a confidential document produced by Facebook in this litigation. This document was similarly subject to a sealing order. *See, e.g.*, January 11, 2018 Order re: Motion to seal (granting in full Facebook's January 8, 2018 Motion to Seal).

As a final example, Styleform alleges: "[I]n 2009, Facebook executives discussed backing down publicly on their promise of a level competitive playing field. They decided internally to back down on these promises, but concealed this decision from Developers, including Styleform, and continued to misrepresent Facebook Platform as a level competitive playing field." Styleform Compl. ¶ 7. As above, the only possible source for Styleform's false allegation about internal Facebook communications is the repeated mischaracterization of the confidential information that Facebook produced, the disclosure and use of which is barred by the Stipulated Protective Order.

When Facebook brought these violations to the attention of Six4Three and Styleform's counsel, requesting that they immediately withdraw the Styleform Complaint and immediately identify all individuals and entities to whom they disclosed Facebook's confidential information, the only response was a categorical denial. Miller Decl. Exs. 10 & 11 (Letter from Miller to Godkin (Nov. 13, 2018); Letter from Godkin to Miller (Nov. 15, 2018)). Notably, Six4Three and Styleform's counsel could not identify any public sources for the specific factual allegations in the three exemplary violations identified above.

C. An Order to Show Cause, and Expedited Discovery, Are Necessary.

It is apparent that in just the last few weeks, Six4Three and its counsel have repeatedly elected to violate their obligations as litigants and officers of the Court. It is also apparent that Facebook, and most importantly the Court, have no way of knowing the full extent of Six4Three's disclosure of confidential, sealed materials without disclosure from Six4Three and its counsel. Accordingly, Facebook requests that the Court issue:

(1) An Order to Show Cause why terminating sanctions and monetary sanctions should not issue in light of Six4Three's multiple violations of this Court's orders, which provide the bedrock for Facebook's—and all parties'—presumption that documents produced pursuant to a protective order will not be misused for purposes other than the litigation at hand. Facebook asks for a hearing as soon as the Court is available following the close of briefing, as proposed above.

(2) An order that Six4Three and its counsel produce the following categories of documents on Thursday, November 29, 2018:

a. All written or recorded communications between Six4Three, including without limitation Ted Kramer, Thomas Scaramellino, David Godkin, James Kruzer, Stuart Gross, and any other agent or representative of Six4Three, on the one hand, and any other individual or entity (other than this Court and Facebook) on the other hand, regarding Facebook's confidential information. For the avoidance of doubt, this includes but is not limited to media organizations and governmental entities, including the Digital, Culture, Media and Sport Committee of the House of Commons.

b. Documents (e.g., phone logs) sufficient to show all telephonic and/or video conference communications between Six4Three, including without limitation Ted Kramer, Thomas Scaramellino, David Godkin, James Kruzer, Stuart Gross, and any other agent or representative of Six4Three, and any individual or entity (other than this Court or Facebook) regarding Facebook's confidential information. For the avoidance of doubt, this includes but is not limited to media organizations and governmental entities, including the Digital, Culture, Media and Sport Committee of the House of Commons.

c. Document sufficient to show the identity of all individuals or entities with whom Ted Kramer, David Godkin, James Kruzer, and Stuart Gross, or any other agent or representative of Six4Three, discussed Facebook's confidential information.

(3) An order that depositions of the following individuals take place in San Mateo County by Wednesday, December 5, 2018:

a. Ted Kramer

b. David Godkin

c. Stuart Gross

d. Thomas Scaramellino

Following the depositions, Facebook proposes that Six4Three file an opening brief in response to an Order to Show Cause by Friday, December 7, 2018. Facebook's responsive brief would then be due on Tuesday, December 11, 2018. Facebook requests that the Court set a hearing following the close of briefing at the Court's earliest convenience.

III. CONCLUSION

For the foregoing reasons, Facebook requests that the Court grant its *ex parte* application.

Dated: November 26, 2018

DURIE TANGRI LLP

By: _____

SONAL N. MEHTA
JOSHUA H. LERNER
LAURA E. MILLER
CATHERINE Y. KIM
ZACHARY G.F. ABRAHAMSON

Attorneys for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar

PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in San Francisco County, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a party to the within action. My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

On November 26, 2018, I served the following documents in the manner described below:

DEFENDANT FACEBOOK, INC.'S EX PARTE APPLICATION FOR AN ORDER SETTING AN EXPEDITED BRIEFING SCHEDULE

[X] BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Durie Tangri's electronic mail system from lmiller@durietangri.com to the email addresses set forth below.

On the following part(ies) in this action:

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Attorneys for Plaintiff
Six4Three, LLC

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 26, 2018, at San Francisco, California.

Laura E. Miller

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Attorneys for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability company,

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

Defendants.

Case No. CIV 533328

Assigned for all purposes to Hon. V. Raymond Swope, Dept. 23

DECLARATION OF LAURA E. MILLER IN SUPPORT OF DEFENDANT FACEBOOK, INC.'S EX PARTE APPLICATION FOR EXPEDITED RELIEF RE SIX4THREE'S CONTEMPT, INCLUDING AN ORDER TO SHOW CAUSE

Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

I, Laura E. Miller, hereby declares as follow:

1. I am an attorney at law licensed to practice in the State of California. I am counsel of record in this matter for Defendant Facebook, Inc. ("Facebook"). I make this Declaration from personal knowledge, and if called to testify, I could and would testify competently thereto.

2. Attached hereto **Exhibit 1** is a true and correct copy of an email from David Godkin, counsel for Plaintiff Six4Three, LLC ("Six4Three") to Saira Salimi and others, copying counsel for Facebook, dated November 23, 2018.

3. Attached hereto **Exhibit 2** is a true and correct copy of a letter from David Godkin to Sonal Mehta and others dated November 19, 2018.

4. Attached hereto **Exhibit 3** is a true and correct copy of my letter to David Godkin and James Kruzer dated November 19, 2018.

5. Attached hereto **Exhibit 4** is a true and correct copy of the Order on Six4Three's Motion for a Protective Order and Facebook's Motion for a Protective Order, issued in this matter on October 25, 2016.

6. Attached hereto **Exhibit 5** is a true and correct copy of my email to the Court dated November 19, 2018 (without attachment).

7. Attached hereto **Exhibit 6** is a true and correct copy of David Godkin's letter to Damian Collins, MP, dated November 20, 2018.

8. Attached hereto **Exhibit 7** is a true and correct copy of David Godkin's letter to Damian Collins, MP, dayed November 21, 2018.

9. Attached hereto **Exhibit 8** is a true and correct copy of David Godkin's email to me dated November 21, 2018.

10. Attached hereto **Exhibit 9** is a true and correct copy of the Complaint in *Styleform IT v. Facebook, Inc.*, et al., Case No. CGC-18-571075, filed November 2, 2018.

11. Attached hereto **Exhibit 10** is a true and correct copy of my letter to David Godkin and others dated November 13, 2018.

12. Attached hereto **Exhibit 11** is a true and correct copy of David Godkin's letter to me dated November 15, 2018.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 26th day of November, 2018.

LAURA E. MILLER

PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in San Francisco County, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a party to the within action. My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

On November 26, 2018, I served the following documents in the manner described below:

DECLARATION OF LAURA E. MILLER IN SUPPORT OF DEFENDANT FACEBOOK, INC.'S EX PARTE APPLICATION FOR AN ORDER SETTING AN EXPEDITED BRIEFING

☐ (BY U.S. MAIL) I am personally and readily familiar with the business practice of Durie Tangri LLP for collection and processing of correspondence for mailing with the United States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at San Francisco, California.

☐ (BY MESSENGER SERVICE) by consigning the document(s) to an authorized courier and/or process server for hand delivery on this date.

☐ (BY FACSIMILE) I am personally and readily familiar with the business practice of Durie Tangri LLP for collection and processing of document(s) to be transmitted by facsimile and I caused such document(s) on this date to be transmitted by facsimile to the offices of addressee(s) at the numbers listed below.

☐ (BY OVERNIGHT MAIL) I am personally and readily familiar with the business practice of Durie Tangri LLP for collection and processing of correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained by Federal Express for overnight delivery.

☒ BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Durie Tangri's electronic mail system from lmiller@durietangri.com to the email addresses set forth below.

☐ (BY PERSONAL DELIVERY) I caused such envelope to be delivered by hand to the offices of each addressee below.

On the following part(ies) in this action:

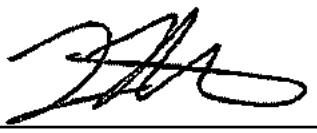
Stuart G. Gross
GROSS & KLEIN LLP
The Embarcadero, Pier 9, Suite 100
San Francisco, CA 94111
Telephone: 415-671-4628
sgross@grosskleinlaw.com
iatkinsonyoung@grosskleinlaw.com

David S. Godkin
James Kruzer
BIRNBAUM & GODKIN, LLP
280 Summer Street

Boston, MA 02210
Telephone: 617-307-6100
godkin@birnbaumgodkin.com
kruzer@birnbaumgodkin.com

Attorneys for Plaintiff
Six4Three, LLC

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 26, 2018, at San Francisco, California.



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jlerner@durietangri.com
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lmiller@durietangri.com
CATHERINE Y. KIM (SBN 308442)
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ZACHARY G. F. ABRAHAMSON (SBN 310951)
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Telephone: 415-362-6666
Facsimile: 415-236-6300

Attorneys for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability company,

Plaintiff,

v.

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

Defendants.

Case No. CIV 533328

Assigned for all purposes to Hon. V. Raymond Swope, Dept. 23

DECLARATION OF LAURA E. MILLER IN SUPPORT OF DEFENDANT FACEBOOK, INC.'S EX PARTE APPLICATION FOR EXPEDITED RELIEF RE SIX4THREE'S CONTEMPT, INCLUDING AN ORDER TO SHOW CAUSE

Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

I, Laura E. Miller, hereby declares as follow:

1. I am an attorney at law licensed to practice in the State of California. I am counsel of record in this matter for Defendant Facebook, Inc. ("Facebook"). I make this Declaration from personal knowledge, and if called to testify, I could and would testify competently thereto.

2. Attached hereto **Exhibit 1** is a true and correct copy of an email from David Godkin, counsel for Plaintiff Six4Three, LLC ("Six4Three") to Saira Salimi and others, copying counsel for Facebook, dated November 23, 2018.

3. Attached hereto **Exhibit 2** is a true and correct copy of a letter from David Godkin to Sonal Mehta and others dated November 19, 2018.

4. Attached hereto **Exhibit 3** is a true and correct copy of my letter to David Godkin and James Kruzer dated November 19, 2018.

5. Attached hereto **Exhibit 4** is a true and correct copy of the Order on Six4Three's Motion for a Protective Order and Facebook's Motion for a Protective Order, issued in this matter on October 25, 2016.

6. Attached hereto **Exhibit 5** is a true and correct copy of my email to the Court dated November 19, 2018 (without attachment).

7. Attached hereto **Exhibit 6** is a true and correct copy of David Godkin's letter to Damian Collins, MP, dated November 20, 2018.

8. Attached hereto **Exhibit 7** is a true and correct copy of David Godkin's letter to Damian Collins, MP, dayed November 21, 2018.

9. Attached hereto **Exhibit 8** is a true and correct copy of David Godkin's email to me dated November 21, 2018.

10. Attached hereto **Exhibit 9** is a true and correct copy of the Complaint in *Styleform IT v. Facebook, Inc.*, et al., Case No. CGC-18-571075, filed November 2, 2018.

11. Attached hereto **Exhibit 10** is a true and correct copy of my letter to David Godkin and others dated November 13, 2018.

12. Attached hereto **Exhibit 11** is a true and correct copy of David Godkin's letter to me dated November 15, 2018.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 26th day of November, 2018.

LAURA E. MILLER

PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in San Francisco County, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a party to the within action. My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

On November 26, 2018, I served the following documents in the manner described below:

DECLARATION OF LAURA E. MILLER IN SUPPORT OF DEFENDANT FACEBOOK, INC.'S EX PARTE APPLICATION FOR AN ORDER SETTING AN EXPEDITED BRIEFING

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godkin@birnbaumgodkin.com
kruzer@birnbaumgodkin.com

Attorneys for Plaintiff
Six4Three, LLC

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 26, 2018, at San Francisco, California.

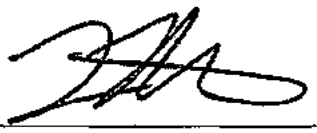

EXHIBIT 1

DURIE TANGRI LLP
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JOSHUA H. LERNER (SBN 220755)
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CATHERINE Y. KIM (SBN 308442)
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ZACHARY G. F. ABRAHAMSON (SBN 310951)
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Telephone: 415-362-6666
Facsimile: 415-236-6300

Attorneys for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability company,

Plaintiff,

v.

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

Defendants.

Case No. CIV 533328

Assigned for all purposes to Hon. V. Raymond Swope, Dept. 23

EXHIBIT 1 TO THE DECLARATION OF LAURA E. MILLER IN SUPPORT OF DEFENDANT FACEBOOK, INC.'S EX PARTE APPLICATION FOR EXPEDITED RELIEF RE SIX4THREE'S CONTEMPT, INCLUDING AN ORDER TO SHOW CAUSE

Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

RE: Order of the DCMS Committee for the production of papers

DELETE REPLY REPLY ALL FORWARD ...

David Godkin <godkin@birnbaumgodkin.com>
Fri 11/23/2018 3:45 PM

Mark as unread

To: SALIMI, Saira <salimis@parliament.uk>; damian.collins.mp@parliament.uk; challenderc@parliament.uk;

Cc: Laura Miller; Sonal Mehta; Josh Lerner; Catherine Kim; SERVICE-SIX4THREE; Stuart Gross <sgross@grosskleinlaw.com>;

All,

It came to my attention this afternoon that Mr. Kramer did in fact provide you with certain documents on Wednesday afternoon in response to the DCMS Committee Orders. Mr. Kramer was instructed not to do so because the documents were subject to a Protective Order entered by the San Mateo Superior Court, and because the San Mateo Superior Court had ordered Mr. Kramer to refrain from producing documents and that failure to comply would be in violation of the Superior Court's order.

I have advised Facebook's counsel of these developments so that Facebook can take any action it deems appropriate. In addition, I urge to you refrain from reviewing the materials provided by Mr. Kramer, refrain from providing them to any third parties, and to return all such materials including any copies either to me or to Facebook's counsel (copied herewith).

Very truly yours,

David Godkin

From: SALIMI, Saira <salimis@parliament.uk>
Sent: Friday, November 23, 2018 4:59 AM
To: David Godkin <godkin@birnbaumgodkin.com>
Subject: Order of the DCMS Committee for the production of papers

Dear Mr Godkin

Please see the attached letter in reply to yours of Wednesday to Damian Collins MP.

S A Salimi
Speaker's Counsel
Office of Speaker's Counsel
1st Floor, Richmond House, House of Commons, London, SW1A 0AA

020 7219 3776 (Office)
07801 890 933 (Mobile)
18001 020 7219 3776 (Text relay)

EXHIBIT 2

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CATHERINE Y. KIM (SBN 308442)
ckim@durietangri.com
ZACHARY G. F. ABRAHAMSON (SBN 310951)
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217 Leidesdorff Street
San Francisco, CA 94111
Telephone: 415-362-6666
Facsimile: 415-236-6300

Attorneys for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability company,

Plaintiff,

v.

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

Defendants.

Case No. CIV 533328

Assigned for all purposes to Hon. V. Raymond Swope, Dept. 23

EXHIBIT 2 TO THE DECLARATION OF LAURA E. MILLER IN SUPPORT OF DEFENDANT FACEBOOK, INC.'S EX PARTE APPLICATION FOR EXPEDITED RELIEF RE SIX4THREE'S CONTEMPT, INCLUDING AN ORDER TO SHOW CAUSE

Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

BIRNBAUM & GODKIN, LLP
ATTORNEYS AT LAW

David S. Godkin
Direct Dial: (617) 307-6110
godkin@birnbaumgodkin.com

November 19, 2018

BY EMAIL

Sonal Mehta, Esq.
Joshua Lerner, Esq.
Laura Miller, Esq.
Durie Tangri
217 Leidesdorff Street
San Francisco, CA 94111

Re: Six4Three, LLC v. Facebook, Inc., et al.
California Superior Court, San Mateo
Case No. Civ 533328

Dear Counsel:

Please be advised that my client's principal, Ted Kramer, received this morning, November 19th, 2018, an Order for Documents ("Order," attached hereto as Exhibit A) from the Parliament of the United Kingdom to compel the production of certain documents in our possession, including:

> Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating Six4Three's opposition to the anti-SLAPP motion.

Order, at 1. The Order further requires Mr. Kramer to comply no later than 5pm local time on Tuesday, November 20th, 2018 or he may be held in contempt and could face investigation and sanction by Parliament. Mr. Kramer is currently located in the United Kingdom for business meetings this week and is therefore subject to the jurisdiction of Parliament.

Pursuant to the Protective Order entered October 25, 2016 ("Protective Order," attached hereto as Exhibit B), this letter serves as prompt (immediate) notice of the Order as required under Section 16(a) and of 643's intent to cooperate with respect to all reasonable and timely relief Facebook may seek in Parliament, pursuant to Section 16(c).

Further, for avoidance of doubt, please note the procedure available to Defendants under the Protective Order:

> If the designating party timely seeks a protective order, the party served with the subpoena or court order shall not produce any Confidential Information or Highly Confidential Information before a determination by the court from which the subpoena or order ***issued***, unless the party has obtained the designating party's permission. The designating party shall bear the burden and expense of seeking protection in that court of its confidential material—and nothing in these provisions should be construed as authorizing or encouraging a receiving party in this action to disobey a lawful directive from another court.

Protective Order, Section 16. Thus, if Facebook intends to seek relief in the Parliament of the United Kingdom, which is the entity "from which the subpoena or order issued," we request that you please do so prior to the deadline imposed by the Order.

Very truly yours,

David S. Godkin

DSG:cam
Attachments
Cc: Catherine Kim, Esq. (By email)
Service-Six4Three (By email)
Stuart G. Gross, Esq. (By email)
James E. Kruzer, Esq. (By email)

EXHIBIT A

Digital, Culture, Media and Sport Committee

House of Commons, London SW1A 0AA
Tel 020 7219 6120 Email cmscom@parliament.uk Website www.parliament.uk/cms

Mr Theodore Kramer
London Marriott Hotel County Hall
Westminster Bridge Rd
London SE1 7PB

19th November 2018

Dear Mr Kramer,

Order for documents

The Digital, Culture, Media and Sport Committee has been given the power by the House of Commons under Standing Order No. 152(4) "to send for persons, papers and records". This includes the power to compel the production of papers by people within UK jurisdiction.

On Monday 19 November, the Committee made the following order (which will be published in its formal minutes in due course):

> *Ordered*, That Mr Theodore Kramer submit the following documents to the DCMS Committee in relation to its inquiry into Disinformation and 'fake news', by 5pm on 20th November 2018:
>
> > Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating Six4Three's opposition to the anti-SLAPP motion.

We are requesting these documents because we believe that they contain information that is highly relevant to our ongoing investigation into disinformation and fake news. In particular, we are interested to know whether they can provide further insights to the committee about what senior executives at Facebook knew about concerns relating to Facebook users' data privacy, and developers' access to user data. The Committee's request is made for these reasons, and in no way suggests any support for the position of your organisation in its dispute with Facebook.

As noted in Erskine May's *Parliamentary Practice*: "there is no restriction on the power of committees to require the production of papers by private bodies or individuals provided that such papers are relevant to the committee's work as defined by its order of reference. [...] Solicitors have been ordered to produce papers relating to a client" (Erskine May, Parliamentary Practice, 24th edition, 2011, p.819.)

As Erskine May also notes: "Individuals have been held in contempt who [...] have disobeyed or frustrated committee orders for the production of papers" (p.839). Should you fail to comply with the order of the Committee and were found to be in contempt, you could face investigation and sanction by the House.

We require the documents by 5pm on Tuesday 20th November 2018. I look forward to your compliance with this Order.

Yours sincerely,

DAMIAN COLLINS MP
CHAIR, DIGITAL, CULTURE, MEDIA AND SPORT COMMITTEE

Digital, Culture, Media and Sport Committee
House of Commons, London SW1A 0AA
Tel 020 7219 6120 Email cmscom@parliament.uk Website www.parliament.uk/cms

19 November 2018

Extract from formal minutes of the Committee of 19 November 2018:

Ordered, That Mr Theodore Kramer submit the following documents to the DCMS Committee in relation to its inquiry into Disinformation and 'fake news', by 5pm on 20th November 2018:

> Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating Six4Three's opposition to the anti-SLAPP motion.

DAMIAN COLLINS MP

CHAIR, DCMS COMMITTEE

EXHIBIT B

Julie E. Schwartz, Bar No. 260624
JSchwartz@perkinscoie.com
PERKINS COIE LLP
3150 Porter Drive
Palo Alto, CA 94304-1212
Telephone: 650.838.4300
Facsimile: 650.838.4350

James R. McCullagh, admitted *pro hac vice*
JMcCullagh@perkinscoie.com
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Telephone: 206.359.8000
Facsimile: 206.359.9000

Attorneys for Defendant
Facebook, Inc.

2-28 MSC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation and DOES 1-50, inclusive,

Defendant.

Case No. CIV533328

STIPULATED [PROPOSED] PROTECTIVE ORDER

In order to protect confidential information obtained by the parties in connection with this case, the parties, by and through their respective undersigned counsel and subject to the approval of the Court, hereby agree as follows:

Part One: Use Of Confidential Materials In Discovery

1. Any party or non-party may designate as Confidential Information (by stamping the relevant page or as otherwise set forth herein) any document or response to discovery which that party or non-party considers in good faith to contain information involving trade secrets, or

confidential business, financial, or personal information, including personal financial information about any individual or entity; information regarding any individual's or entity's banking relationship with any banking institution, including information regarding financial transactions or financial accounts, and any information regarding any individual or entity that is not otherwise available to the public, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160, and 8.490 of the California Rules of Court or under other provisions of California law. Any party or non-party may designate as Highly Confidential Information (by stamping the relevant page or as otherwise set forth herein) any document or response to discovery which that party or non-party considers in good faith to contain information involving highly sensitive trade secrets or confidential business, financial, or personal information, the disclosure of which would result in the disclosure of trade secrets or other highly sensitive research, development, production, personnel, commercial, market, financial, or business information, or highly sensitive personal information, subject to protection under Rules 2.550, 2.551, 2.580, 2.585,8.160, and 8.490 of the California Rules of Court or under other provisions of California law. Where a document or response consists of more than one page, the first page and each page on which confidential information appears shall be so designated.

2. A party or non-party may designate information disclosed during a deposition or in response to written discovery as Confidential Information or Highly Confidential Information by so indicating in said responses or on the record at the deposition and requesting the preparation of a separate transcript of such material. In addition, a party or non-party may designate in writing, within thirty (30) days after receipt of said responses or of the deposition transcript for which the designation is proposed, that specific pages of the transcript and/or specific responses be treated as Confidential Information or Highly Confidential Information. Any other party may object to such proposal, in writing or on the record. Upon such objection, the parties shall follow the procedures described in Paragraph 9 below. Until the thirty (30) day period for designation has lapsed, the entirety of each deposition transcript shall be treated as Confidential Information. After the thirty (30) day period for designation has lapsed, any documents or information designated pursuant to the procedure set forth in this paragraph shall be treated according to the

designation until the matter is resolved according to the procedures described in Paragraph 9 below, and counsel for all parties shall be responsible for marking all previously unmarked copies of the designated material in their possession or control with the specified designation. A party that makes original documents or materials available for inspection need not designate them as Confidential Information or Highly Confidential Information until after the inspecting party has indicated which materials it would like copied and produced. During the inspection and before the designation and copying, all of the material made available for inspection shall be considered Highly Confidential Information.

3. All Confidential Information or Highly Confidential Information produced or exchanged in the course of this case (not including information that is publicly available) shall be used by the party or parties to whom the information is produced solely for the purpose of this case. Confidential Information or Highly Confidential Information shall not be used for any commercial competitive, personal, or other purpose. Confidential Information or Highly Confidential Information must be stored and maintained by a receiving party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Stipulated Protective Order. The protections conferred by this Stipulated Protective Order cover not only the Confidential Information or Highly Confidential Information produced or exchanged in this case, but also (1) any information copied or extracted from or reflecting the Confidential Information or Highly Confidential Information; (2) all copies, excerpts, summaries, or compilations of Confidential Information or Highly Confidential Information; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal Confidential Information or Highly Confidential Information. However, the protections conferred by this Stipulated Protective Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a receiving party or becomes part of the public domain after its disclosure to a receiving party as a result of publication not involving a violation of this Stipulated Protective Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the receiving party prior to

the disclosure or obtained by the receiving party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the designating party.

4. Except with the prior written consent of the other parties, or upon prior order of this Court obtained upon notice to opposing counsel, Confidential Information shall not be disclosed to any person other than:

(a) counsel for the respective parties to this litigation, including in-house counsel and co-counsel retained for this litigation;

(b) employees of such counsel;

(c) individual parties or officers or employees of a party, to the extent deemed necessary by counsel for the prosecution or defense of this litigation;

(d) consultants or expert witnesses retained for the prosecution or defense of this litigation, provided that each such person shall execute a copy of the Certification annexed to this Order (which shall be retained by counsel to the party so disclosing the Confidential Information and made available for inspection by opposing counsel during the pendency or after the termination of the action only upon good cause shown and upon order of the Court) before being shown or given any Confidential Information, and provided that if the party chooses a consultant or expert employed by the opposing party or one of its competitors, the party shall notify the opposing party, or designating non-party, before disclosing any Confidential Information to that individual and shall give the opposing party an opportunity to move for a protective order preventing or limiting such disclosure;

(e) any authors or recipients of the Confidential Information or a custodian;

(f) the Court, court personnel, and court reporters; and

(g) witnesses (other than persons described in Paragraph 4(e)). A witness shall sign the Certification before being shown a confidential document. Confidential Information may be disclosed to a witness who will not sign

the Certification only in a deposition at which the party who designated the Confidential Information is represented or has been given notice that Confidential Information produced by the party may be used. At the request of any party, the portion of the deposition transcript involving the Confidential Information shall be designated "Confidential" pursuant to Paragraph 2 above. Witnesses shown Confidential Information shall not be allowed to retain copies.

5. Except with the prior written consent of the other parties, or upon prior order of this Court obtained after notice to opposing counsel, Highly Confidential Information shall be treated in the same manner as Confidential Information pursuant to Paragraph 4 above, except that it shall not be disclosed to individual parties or directors, officers or employees of a party, or to witnesses (other than persons described in Paragraph 4(a) or 4(e)).

6. Any persons receiving Confidential Information or Highly Confidential Information shall not reveal or discuss such information to or with any person who is not entitled to receive such information, except as set forth herein. If a party or any of its representatives, including counsel, inadvertently discloses any Confidential Information or Highly Confidential Information to persons who are not authorized to use or possess such material, the party shall provide immediate written notice of the disclosure to the party whose material was inadvertently disclosed. If a party has actual knowledge that Confidential Information or Highly Confidential Information is being used or possessed by a person not authorized to use or possess that material, regardless of how the material was disclosed or obtained by such person, the party shall provide immediate written notice of the unauthorized use or possession to the party whose material is being used or possessed. No party shall have an affirmative obligation to inform itself regarding such possible use or possession.

7. In connection with discovery proceedings as to which a party submits Confidential Information or Highly Confidential Information, all documents and chamber copies containing Confidential Information or Highly Confidential Information which are submitted to the Court shall be filed with the Court in sealed envelopes or other appropriate sealed containers. On the

outside of the envelopes, a copy of the first page of the document shall be attached. If Confidential Information or Highly Confidential Information is included in the first page attached to the outside of the envelopes, it may be deleted from the outside copy. The word "CONFIDENTIAL" shall be stamped on the envelope and a statement substantially in the following form shall also be printed on the envelope:

> "This envelope is sealed pursuant to Order of the Court, contains Confidential Information and is not to be opened or the contents revealed, except by Order of the Court or agreement by the parties."

8. A party may designate as Confidential Information or Highly Confidential Information documents or discovery materials produced by a non-party by providing written notice to all parties of the relevant document numbers or other identification within thirty (30) days after receiving such documents or discovery materials. Until the thirty (30) day period for designation has lapsed, any documents or discovery materials produced by a non-party shall be treated at Confidential Information. Any party or non-party may voluntarily disclose to others without restriction any information designated by that party or nonparty as Confidential Information or Highly Confidential Information, although a document may lose its confidential status if it is made public. If a party produces materials designated Confidential Information or Highly Confidential Information in compliance with this Order, that production shall be deemed to have been made consistent with any confidentiality or privacy requirements mandated by local, state or federal laws.

9. If a party contends that any material is not entitled to confidential treatment, such party may at any time give written notice to the party or non-party who designated the material. The party or non-party who designated the material shall have twenty (20) days from the receipt of such written notice to apply to the Court for an order designating the material as confidential. The party or non-party seeking the order has the burden of establishing that the document is entitled to protection.

10. Notwithstanding any challenge to the designation of material as Confidential Information or Highly Confidential Information, all documents shall be treated as such and shall be subject to the provisions hereof unless and until one of the following occurs:

(a) the party or non-party who claims that the material is Confidential Information or Highly Confidential Information withdraws such designation in writing; or

(b) the party or non-party who claims that the material is Confidential Information or Highly Confidential Information fails to apply to the Court for an order designating the material confidential within the time period specified above after receipt of a written challenge to such designation; or

(c) the Court rules the material is not Confidential Information or Highly Confidential Information.

11. All provisions of this Order restricting the communication or use of Confidential Information or Highly Confidential Information shall continue to be binding after the conclusion of this action, unless otherwise agreed or ordered. Upon conclusion of the litigation, a party in the possession of Confidential Information or Highly Confidential Information shall within sixty (60) days either (a) return such documents to counsel for the party or non-party who provided such information, or (b) destroy such documents. Whether the Confidential Information or Highly Confidential Information is returned or destroyed, the receiving party must submit a written certification to the producing party (and, if not the same person or entity, to the designating party) by the 60 day deadline that (1) all the Confidential Information or Highly Confidential Information that was returned or destroyed, and (2) affirms that the receiving party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Confidential Information or Highly Confidential Information. Notwithstanding this provision, counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Confidential Information or Highly Confidential

Information. Any such archival copies that contain or constitute Confidential Information or Highly Confidential Information remain subject to this Stipulated Protective Order. The conclusion of the litigation shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law. After the conclusion of this action, this Court will retain jurisdiction to enforce the terms of this Order.

12. Nothing herein shall be deemed to waive any applicable privilege or work product protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material protected by privilege or work product protection. Any witness or other person, firm or entity from which discovery is sought may be informed of and may obtain the protection of this Order by written advice to the parties' respective counsel or by oral advice at the time of any deposition or similar proceeding.

13. In the event that any Confidential Information or Highly Confidential Information is inadvertently produced without such designation, the party or non-party that inadvertently produced the information without designation shall give written notice of such inadvertent production promptly after the party or non-party discovers the inadvertent failure to designate (but no later than fourteen (14) calendar days after the party or non-party discovers the inadvertent failure to designate), together with a further copy of the subject information designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" (the "Inadvertent Production Notice"). Upon receipt of such Inadvertent Production Notice, the party that received the information that was inadvertently produced without designation shall promptly destroy the inadvertently produced information and all copies thereof, or, at the expense of the producing party or non-party, return such together with all copies of such information to counsel for the producing party and shall retain only the newly-produced versions of that information that are designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." This provision is not intended to apply to any inadvertent production of any information or materials protected by

attorney-client or work product privileges, which inadvertent production is governed by Section 14 below.

14. In the event that any party or non-party inadvertently produces information that is privileged or otherwise protected from disclosure during the discovery process ("Inadvertent Production Material"), the following shall apply:

(a) Such inadvertent production or disclosure shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of attorney-client privilege, attorney work product protection, or other applicable protection in this case or any other federal or state proceeding, provided that the producing party shall notify the receiving party in writing of such protection or privilege promptly after the producing party discovers such materials have been inadvertently produced.

(b) If a claim of inadvertent production is made, pursuant to this Stipulated Protective Order, with respect to discovery material then in the custody of another party, that party shall: (i) refrain from any further examination or disclosure of the claimed Inadvertent Production Material; (ii) promptly make a good-faith effort to return the claimed Inadvertent Production Material and all copies thereof (including summaries and excerpts) to counsel for the producing party, or destroy all such claimed Inadvertent Production Material (including summaries and excerpts) and certify in writing to that fact; and (iii) not disclose or use the claimed Inadvertent Production Material for any purpose until further order of the Court expressly authorizing such use.

(c) A party may move the Court for an order compelling production of the Inadvertent Production Material on the ground that it is not, in fact, privileged or protected. The motion shall be filed under seal and shall not assert as a ground for entering such an order the fact or circumstance of the inadvertent production. The producing party retains the burden of establishing the privileged or protected nature of any inadvertently disclosed or produced information. While such a motion is pending, the Inadvertent Production Material at issue shall be treated in accordance with Paragraph 14(b) above.

(d) If a party, in reviewing discovery material it has received from any other party or any non-party, finds anything the reviewing party believes in good faith may be Inadvertent Production Material, the reviewing party shall: (i) refrain from any further examination or disclosure of the potentially Inadvertent Production Material; (ii) promptly identify the material in question to the producing party (by document number or other equally precise description); and (iii) give the producing party seven (7) days to respond as to whether the producing party will make a claim of inadvertent production. If the producing party makes such a claim, the provisions of Paragraphs 14(a)-(c) above shall apply.

15. The parties agree that should the production of source code become necessary, they will need to amend or supplement the terms of this Order. To the extent production of source code becomes necessary in this case, the parties will work expeditiously to propose amendments to this Order to cover any production of source code.

16. If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any Confidential Information or Highly Confidential Information, the receiving party must:

(a) promptly notify in writing the designating party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Stipulated Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose Confidential Information or Highly Confidential Information may be affected.

If the designating party timely seeks a protective order, the party served with the subpoena or court order shall not produce any Confidential Information or Highly Confidential Information before a determination by the court from which the subpoena or order issued, unless the party has obtained the designating party's permission. The designating party shall bear the burden and

expense of seeking protection in that court of its confidential material—and nothing in these provisions should be construed as authorizing or encouraging a receiving party in this action to disobey a lawful directive from another court.

17. The following additional terms apply to non-party discovery material:

(a) The terms of this Order are applicable to information produced by a non-party in this action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." Such information produced by non-parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a non-party from seeking additional protections.

(b) In the event that a party is required, by a valid discovery request, to produce a non-party's confidential information in its possession, and the party is subject to an agreement with the non-party not to produce the non-party's confidential information, then the party shall:

i. promptly notify in writing the requesting party and the non-party that some or all of the information requested is subject to a confidentiality agreement with a non-party;

ii. promptly provide the non-party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

iii. make the information requested available for inspection by the non-party.

(c) If the non-party fails to object or seek a protective order from this Court within 28 days of receiving the notice and accompanying information, the receiving party may produce the non-party's confidential information responsive to the discovery request. If the non-party timely seeks a protective order, the receiving party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the non-party before a determination by the Court. Absent a court order to the contrary, the non-party shall bear the

burden and expense of seeking protection in this Court of its Confidential Information or Highly Confidential Information.

18. Nothing in this Stipulated Protective Order shall be construed to preclude any party from asserting in good faith that certain Confidential Information or Highly Confidential Information requires additional protections. The parties shall meet and confer to agree upon the terms of such additional protection. By stipulating to the entry of this Protective Order no party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no party waives any right to object on any ground to use in evidence of any of the material covered by this Stipulated Protective Order. Nothing in this Stipulated Protective Order abridges the right of any person to seek its modification by the Court in the future.

Part Two: Use of Confidential Materials in Court

The following provisions govern the treatment of Confidential Information or Highly Confidential Information used at trial or submitted as a basis for adjudication of matters other than discovery motions or proceedings. These provisions are subject to Rules 2.550, 2.551, 2.580, 2.585, 8.160, and 8.490 of the California Rules of Court and must be construed in light of those Rules.

19. A party that files with the Court, or seeks to use at trial, materials designated as Confidential Information or Highly Confidential Information, and who seeks to have the record containing such information sealed, shall submit to the Court a motion or an application to seal, pursuant to California Rule of Court 2.551.

20. A party that files with the Court, or seeks to use at trial, materials designated as Confidential Information or Highly Confidential Information by anyone other than itself, and who does not seek to have the record containing such information sealed, shall comply with either of the following requirements:

(a) At least ten (10) business days prior to the filing or use of the Confidential Information or Highly Confidential Information, the submitting party shall give notice to all other parties, and to any non-party that designated the

materials as Confidential Information or Highly Confidential Information pursuant to this Order, of the submitting party's intention to file or use the Confidential Information or Highly Confidential Information, including specific identification of the Confidential Information or Highly Confidential Information. Any affected party or non-party may then file a motion to seal, pursuant to California Rule of Court 2.551(b); or

(b) At the time of filing or desiring to use the Confidential Information or Highly Confidential Information, the submitting party shall submit the materials pursuant to the lodging-under-seal provision of California Rule of Court 2.551(d). Any affected party or non-party may then file a motion to seal, pursuant to the California Rule of Court 2.551(b), within ten (10) business days after such lodging. Documents lodged pursuant to California Rule of Court 2.551(d) shall bear a legend stating that such materials shall be unsealed upon expiration of ten (10) business days, absent the filing of a motion to seal pursuant to Rule 2.551(b) or Court order.

21. In connection with a request to have materials sealed pursuant to Paragraph 12 or Paragraph 13, the requesting party's declaration pursuant to California Rule of Court 2.551(b)(1) shall contain sufficient particularity with respect to the particular Confidential Information or Highly Confidential Information and the basis for sealing to enable the Court to make the findings required by California Rule of Court 2.550(d).

IT IS SO STIPULATED.

DATED: _____, 2016

PERKINS COIE LLP

By: _____
Julie E. Schwartz

Attorneys for Defendant Facebook, Inc.

DATED: _____, 2016

BIRNBAUM & GODKIN, LLP

By: _____
David Godkin

Attorneys for Plaintiff
SIX4THREE, LLC

IT IS SO ORDERED.

DATED: 10/24, 2016

_____
JUDGE OF THE SUPERIOR COURT

CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on _____, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or Highly Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ located at the address of _____ as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this ___ day of _____, 2016, at _____.

By: _____

Address: _____

_____

Phone: _____

EXHIBIT 3

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Attorneys for Defendants
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability company,

Plaintiff,

v.

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

Defendants.

Case No. CIV 533328

Assigned for all purposes to Hon. V. Raymond Swope, Dept. 23

EXHIBIT 3 TO THE DECLARATION OF LAURA E. MILLER IN SUPPORT OF DEFENDANT FACEBOOK, INC.'S EX PARTE APPLICATION FOR EXPEDITED RELIEF RE SIX4THREE'S CONTEMPT, INCLUDING AN ORDER TO SHOW CAUSE

Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

Durie Tangri

Laura Miller
415-362-6666 (main)
lmiller@durietangri.com

November 19, 2018

VIA EMAIL

David S. Godkin
James Kruzer
BIRNBAUM & GODKIN, LLP
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godkin@birnbaumgodkin.com
kruzer@birnbaumgodkin.com

Re: *Six4Three, LLC v. Facebook, Inc.*
Case No. CIV 533328

Dear David:

We are in receipt of your letter dated November 19, 2018 regarding the letter to Mr. Kramer from Mr. Collins, the Chair of the Digital, Culture, Media and Sports Committee (the "DCMS Committee"). Facebook continues to cooperate with the DCMS Committee and has provided extensive information in response to its inquiries over the past several months.

Nevertheless, under the provisions of the Stipulated Protective Order, Six4Three is not permitted to disclose Facebook's confidential information in response to the DCMS Committee letter.

Under the plain terms of the Stipulated Protective Order, the November 19, 2018 letter from the DCMS Committee is not "a subpoena or a court order issued in other litigation that compels disclosure of any Confidential Information or Highly Confidential Information." *See* Stipulated Protective Order ¶ 16. As such, Six4Three (let alone Mr. Kramer) is prohibited from disclosing this information pursuant to the DCMS Committee's request. Facebook will view any production of those documents, or the confidential information they contain, as a violation of the October 2016 protective order entered in the *Six4Three* litigation.

Further, your letter fails to articulate any reason why Mr. Kramer has possession of Facebook's confidential information. Under the plain terms of the protective order, Mr. Kramer should not have access to Facebook's Highly Confidential Information, including Six4Three's unredacted opposition to Facebook's anti-SLAPP briefing. *See* October 25, 2016 Protective Order at 5 (precluding disclosure of Highly Confidential Information to "individual parties or directors, officers or employees of a party").

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Accordingly, Mr. Kramer does not have the authority to review many of the documents that the Committee requests, let alone the authority to disclose them.

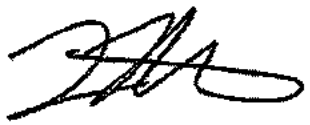
The facts suggest that Six4Three may have *already* violated the protective order by disclosing portions of the record containing confidential information. The protective order makes clear that "[a]ll Confidential Information or Highly Confidential Information produced or exchanged in the course of this case . . . shall be used by the . . . parties to whom the information is produced *solely for the purpose of this case*." October 25, 2016 Protective Order ¶ 3.

Facebook reserves its rights to pursue all available remedies for any production by Six4Three of designated Confidential or Highly Confidential Information in violation of the Stipulated Protective Order entered in *Six4Three, LLC v. Facebook, Inc.*, as well as the San Mateo County Superior Court's November 1, 2018 Order sealing or striking this very material. *See generally* Cal. Civ. Proc. Code § 1209(a).

Although we do not agree that the provisions of Paragraph 16 of the Stipulated Protective Order apply here, to the extent that they do, Facebook intends to seek appropriate relief. Accordingly, Six4Three is required to "cooperate with respect to all reasonable procedures sought to be pursued by" Facebook. Facebook is willing to meet and confer to negotiate a reasonable schedule for the relief it intends to seek.

Please confirm that neither Mr. Kramer nor Six4Three will disclose Facebook's confidential information in response to the DCMS Committee letter, dated November 19, 2018.

Very truly yours,



Laura Miller

EXHIBIT 4

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability company,

Plaintiff,

v.

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

Defendants.

Case No. CIV 533328

Assigned for all purposes to Hon. V. Raymond Swope, Dept. 23

EXHIBIT 4 TO THE DECLARATION OF LAURA E. MILLER IN SUPPORT OF DEFENDANT FACEBOOK, INC.'S EX PARTE APPLICATION FOR EXPEDITED RELIEF RE SIX4THREE'S CONTEMPT, INCLUDING AN ORDER TO SHOW CAUSE

Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

FILED
SAN MATEO COUNTY
OCT 25 2016
Clerk of the Superior Court
By _____ Deputy Clerk

RECEIVED
OCT 20 2016
CLERK OF THE SUPERIOR COURT
SAN MATEO COUNTY

2-28 MSC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC a Delaware limited liability company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation and DOES 1-50, inclusive,

Defendant.

Case No. CIV 533328

~~[PROPOSED]~~ [PROPOSED] ORDER ON SIX4THREE'S MOTION FOR PROTECTIVE ORDER AND FACEBOOK'S MOTION FOR PROTECTIVE ORDER

Date: October 13, 2016
Time: 9:00 a.m.
Dept.: Law and Motion

ORIGINAL

CIV533328
OAH
Order After Hearing
231344

Plaintiff Six4Three, LLC's ("Plaintiff") Motion for Protective Order and Defendant Facebook, Inc.'s ("Facebook") Motion for Protective Order came on regularly for hearing before the Court on October 13, 2016 in the Law and Motion Department.

The Court, having reviewed the moving papers and all opposing and reply papers filed with the Court, and having heard the arguments of counsel, hereby DENIES Plaintiff's Motion and GRANTS Defendant's Motion in part, as set out below.

Pursuant to Code of Civil Procedure Section 2031.060, the Court finds good cause to enter a two-tier protective order.

Defendant indicates that Defendant's proposed protective order is similar to the Court's model protective order. After comparing the Court's model protective order for double level of confidentiality to Defendant's proposed protective order, the Court makes the following changes to Defendant's proposed protective order (all paragraph, page and line references are to Defendant's proposed protective order):

Paragraph 2, p.2:25: Delete "Highly Confidential" and replace with "Confidential"

Add to Paragraph 4(d), p.4:15 (which was omitted from Court's model protective order): "and provided that if the party chooses a consultant or expert employed by the opposing party or one of its competitors, the party shall notify the opposing party, or designating non-party, before disclosing any Confidential Information to that individual and shall give the opposing party an opportunity to move for a protective order preventing or limiting such disclosure;"

Delete Paragraph 4(e), p.4:16-17: "or other person who otherwise possessed or knew the information"

Paragraph 8, p.6:9: Delete "Highly Confidential" and replace with "Confidential"

Delete Paragraph 11, p.7:15 only as to "identifies (by category, where appropriate)"

Delete entire Paragraph 18, p.11:24-12:7.

Delete entire Paragraph 19, p.12:8-16.

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The Court hereby enters the protective order attached as Exhibit A hereto, which reflects the aforementioned modifications.

IT IS SO ORDERED.

DATED: OCT 24 2016

HONORABLE JONATHAN KARESH

Approved as to form by:

PERKINS COIE, LLP

Julie E. Schwartz

BIRNBAUM & GODKIN, LLP

James E. Kruzer

EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation and DOES 1-50, inclusive,

Defendant.

Case No. CIV533328

STIPULATED [PROPOSED] PROTECTIVE ORDER

In order to protect confidential information obtained by the parties in connection with this case, the parties, by and through their respective undersigned counsel and subject to the approval of the Court, hereby agree as follows:

Part One: Use Of Confidential Materials In Discovery

1. Any party or non-party may designate as Confidential Information (by stamping the relevant page or as otherwise set forth herein) any document or response to discovery which that party or non-party considers in good faith to contain information involving trade secrets, or

confidential business, financial, or personal information, including personal financial information about any individual or entity; information regarding any individual's or entity's banking relationship with any banking institution, including information regarding financial transactions or financial accounts, and any information regarding any individual or entity that is not otherwise available to the public, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160, and 8.490 of the California Rules of Court or under other provisions of California law. Any party or non-party may designate as Highly Confidential Information (by stamping the relevant page or as otherwise set forth herein) any document or response to discovery which that party or non-party considers in good faith to contain information involving highly sensitive trade secrets or confidential business, financial, or personal information, the disclosure of which would result in the disclosure of trade secrets or other highly sensitive research, development, production, personnel, commercial, market, financial, or business information, or highly sensitive personal information, subject to protection under Rules 2.550, 2.551, 2.580, 2.585,8.160, and 8.490 of the California Rules of Court or under other provisions of California law. Where a document or response consists of more than one page, the first page and each page on which confidential information appears shall be so designated.

2. A party or non-party may designate information disclosed during a deposition or in response to written discovery as Confidential Information or Highly Confidential Information by so indicating in said responses or on the record at the deposition and requesting the preparation of a separate transcript of such material. In addition, a party or non-party may designate in writing, within thirty (30) days after receipt of said responses or of the deposition transcript for which the designation is proposed, that specific pages of the transcript and/or specific responses be treated as Confidential Information or Highly Confidential Information. Any other party may object to such proposal, in writing or on the record. Upon such objection, the parties shall follow the procedures described in Paragraph 9 below. Until the thirty (30) day period for designation has lapsed, the entirety of each deposition transcript shall be treated as Confidential Information. After the thirty (30) day period for designation has lapsed, any documents or information designated pursuant to the procedure set forth in this paragraph shall be treated according to the

designation until the matter is resolved according to the procedures described in Paragraph 9 below, and counsel for all parties shall be responsible for marking all previously unmarked copies of the designated material in their possession or control with the specified designation. A party that makes original documents or materials available for inspection need not designate them as Confidential Information or Highly Confidential Information until after the inspecting party has indicated which materials it would like copied and produced. During the inspection and before the designation and copying, all of the material made available for inspection shall be considered Highly Confidential Information.

3. All Confidential Information or Highly Confidential Information produced or exchanged in the course of this case (not including information that is publicly available) shall be used by the party or parties to whom the information is produced solely for the purpose of this case. Confidential Information or Highly Confidential Information shall not be used for any commercial competitive, personal, or other purpose. Confidential Information or Highly Confidential Information must be stored and maintained by a receiving party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Stipulated Protective Order. The protections conferred by this Stipulated Protective Order cover not only the Confidential Information or Highly Confidential Information produced or exchanged in this case, but also (1) any information copied or extracted from or reflecting the Confidential Information or Highly Confidential Information; (2) all copies, excerpts, summaries, or compilations of Confidential Information or Highly Confidential Information; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal Confidential Information or Highly Confidential Information. However, the protections conferred by this Stipulated Protective Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a receiving party or becomes part of the public domain after its disclosure to a receiving party as a result of publication not involving a violation of this Stipulated Protective Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the receiving party prior to

the disclosure or obtained by the receiving party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the designating party.

4. Except with the prior written consent of the other parties, or upon prior order of this Court obtained upon notice to opposing counsel, Confidential Information shall not be disclosed to any person other than:

(a) counsel for the respective parties to this litigation, including in-house counsel and co-counsel retained for this litigation;

(b) employees of such counsel;

(c) individual parties or officers or employees of a party, to the extent deemed necessary by counsel for the prosecution or defense of this litigation;

(d) consultants or expert witnesses retained for the prosecution or defense of this litigation, provided that each such person shall execute a copy of the Certification annexed to this Order (which shall be retained by counsel to the party so disclosing the Confidential Information and made available for inspection by opposing counsel during the pendency or after the termination of the action only upon good cause shown and upon order of the Court) before being shown or given any Confidential Information, and provided that if the party chooses a consultant or expert employed by the opposing party or one of its competitors, the party shall notify the opposing party, or designating non-party, before disclosing any Confidential Information to that individual and shall give the opposing party an opportunity to move for a protective order preventing or limiting such disclosure;

(e) any authors or recipients of the Confidential Information or a custodian;

(f) the Court, court personnel, and court reporters; and

(g) witnesses (other than persons described in Paragraph 4(e)). A witness shall sign the Certification before being shown a confidential document. Confidential Information may be disclosed to a witness who will not sign

the Certification only in a deposition at which the party who designated the Confidential Information is represented or has been given notice that Confidential Information produced by the party may be used. At the request of any party, the portion of the deposition transcript involving the Confidential Information shall be designated "Confidential" pursuant to Paragraph 2 above. Witnesses shown Confidential Information shall not be allowed to retain copies.

5. Except with the prior written consent of the other parties, or upon prior order of this Court obtained after notice to opposing counsel, Highly Confidential Information shall be treated in the same manner as Confidential Information pursuant to Paragraph 4 above, except that it shall not be disclosed to individual parties or directors, officers or employees of a party, or to witnesses (other than persons described in Paragraph 4(a) or 4(e)).

6. Any persons receiving Confidential Information or Highly Confidential Information shall not reveal or discuss such information to or with any person who is not entitled to receive such information, except as set forth herein. If a party or any of its representatives, including counsel, inadvertently discloses any Confidential Information or Highly Confidential Information to persons who are not authorized to use or possess such material, the party shall provide immediate written notice of the disclosure to the party whose material was inadvertently disclosed. If a party has actual knowledge that Confidential Information or Highly Confidential Information is being used or possessed by a person not authorized to use or possess that material, regardless of how the material was disclosed or obtained by such person, the party shall provide immediate written notice of the unauthorized use or possession to the party whose material is being used or possessed. No party shall have an affirmative obligation to inform itself regarding such possible use or possession.

7. In connection with discovery proceedings as to which a party submits Confidential Information or Highly Confidential Information, all documents and chamber copies containing Confidential Information or Highly Confidential Information which are submitted to the Court shall be filed with the Court in sealed envelopes or other appropriate sealed containers. On the

outside of the envelopes, a copy of the first page of the document shall be attached. If Confidential Information or Highly Confidential Information is included in the first page attached to the outside of the envelopes, it may be deleted from the outside copy. The word "CONFIDENTIAL" shall be stamped on the envelope and a statement substantially in the following form shall also be printed on the envelope:

> "This envelope is sealed pursuant to Order of the Court, contains Confidential Information and is not to be opened or the contents revealed, except by Order of the Court or agreement by the parties."

8. A party may designate as Confidential Information or Highly Confidential Information documents or discovery materials produced by a non-party by providing written notice to all parties of the relevant document numbers or other identification within thirty (30) days after receiving such documents or discovery materials. Until the thirty (30) day period for designation has lapsed, any documents or discovery materials produced by a non-party shall be treated at Confidential Information. Any party or non-party may voluntarily disclose to others without restriction any information designated by that party or nonparty as Confidential Information or Highly Confidential Information, although a document may lose its confidential status if it is made public. If a party produces materials designated Confidential Information or Highly Confidential Information in compliance with this Order, that production shall be deemed to have been made consistent with any confidentiality or privacy requirements mandated by local, state or federal laws.

9. If a party contends that any material is not entitled to confidential treatment, such party may at any time give written notice to the party or non-party who designated the material. The party or non-party who designated the material shall have twenty (20) days from the receipt of such written notice to apply to the Court for an order designating the material as confidential. The party or non-party seeking the order has the burden of establishing that the document is entitled to protection.

10. Notwithstanding any challenge to the designation of material as Confidential Information or Highly Confidential Information, all documents shall be treated as such and shall be subject to the provisions hereof unless and until one of the following occurs:

(a) the party or non-party who claims that the material is Confidential Information or Highly Confidential Information withdraws such designation in writing; or

(b) the party or non-party who claims that the material is Confidential Information or Highly Confidential Information fails to apply to the Court for an order designating the material confidential within the time period specified above after receipt of a written challenge to such designation; or

(c) the Court rules the material is not Confidential Information or Highly Confidential Information.

11. All provisions of this Order restricting the communication or use of Confidential Information or Highly Confidential Information shall continue to be binding after the conclusion of this action, unless otherwise agreed or ordered. Upon conclusion of the litigation, a party in the possession of Confidential Information or Highly Confidential Information shall within sixty (60) days either (a) return such documents to counsel for the party or non-party who provided such information, or (b) destroy such documents. Whether the Confidential Information or Highly Confidential Information is returned or destroyed, the receiving party must submit a written certification to the producing party (and, if not the same person or entity, to the designating party) by the 60 day deadline that (1) all the Confidential Information or Highly Confidential Information that was returned or destroyed, and (2) affirms that the receiving party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Confidential Information or Highly Confidential Information. Notwithstanding this provision, counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Confidential Information or Highly Confidential

Information. Any such archival copies that contain or constitute Confidential Information or Highly Confidential Information remain subject to this Stipulated Protective Order. The conclusion of the litigation shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law. After the conclusion of this action, this Court will retain jurisdiction to enforce the terms of this Order.

12. Nothing herein shall be deemed to waive any applicable privilege or work product protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material protected by privilege or work product protection. Any witness or other person, firm or entity from which discovery is sought may be informed of and may obtain the protection of this Order by written advice to the parties' respective counsel or by oral advice at the time of any deposition or similar proceeding.

13. In the event that any Confidential Information or Highly Confidential Information is inadvertently produced without such designation, the party or non-party that inadvertently produced the information without designation shall give written notice of such inadvertent production promptly after the party or non-party discovers the inadvertent failure to designate (but no later than fourteen (14) calendar days after the party or non-party discovers the inadvertent failure to designate), together with a further copy of the subject information designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" (the "Inadvertent Production Notice"). Upon receipt of such Inadvertent Production Notice, the party that received the information that was inadvertently produced without designation shall promptly destroy the inadvertently produced information and all copies thereof, or, at the expense of the producing party or non-party, return such together with all copies of such information to counsel for the producing party and shall retain only the newly-produced versions of that information that are designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." This provision is not intended to apply to any inadvertent production of any information or materials protected by

attorney-client or work product privileges, which inadvertent production is governed by Section 14 below.

14. In the event that any party or non-party inadvertently produces information that is privileged or otherwise protected from disclosure during the discovery process ("Inadvertent Production Material"), the following shall apply:

(a) Such inadvertent production or disclosure shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of attorney-client privilege, attorney work product protection, or other applicable protection in this case or any other federal or state proceeding, provided that the producing party shall notify the receiving party in writing of such protection or privilege promptly after the producing party discovers such materials have been inadvertently produced.

(b) If a claim of inadvertent production is made, pursuant to this Stipulated Protective Order, with respect to discovery material then in the custody of another party, that party shall: (i) refrain from any further examination or disclosure of the claimed Inadvertent Production Material; (ii) promptly make a good-faith effort to return the claimed Inadvertent Production Material and all copies thereof (including summaries and excerpts) to counsel for the producing party, or destroy all such claimed Inadvertent Production Material (including summaries and excerpts) and certify in writing to that fact; and (iii) not disclose or use the claimed Inadvertent Production Material for any purpose until further order of the Court expressly authorizing such use.

(c) A party may move the Court for an order compelling production of the Inadvertent Production Material on the ground that it is not, in fact, privileged or protected. The motion shall be filed under seal and shall not assert as a ground for entering such an order the fact or circumstance of the inadvertent production. The producing party retains the burden of establishing the privileged or protected nature of any inadvertently disclosed or produced information. While such a motion is pending, the Inadvertent Production Material at issue shall be treated in accordance with Paragraph 14(b) above.

(d) If a party, in reviewing discovery material it has received from any other party or any non-party, finds anything the reviewing party believes in good faith may be Inadvertent Production Material, the reviewing party shall: (i) refrain from any further examination or disclosure of the potentially Inadvertent Production Material; (ii) promptly identify the material in question to the producing party (by document number or other equally precise description); and (iii) give the producing party seven (7) days to respond as to whether the producing party will make a claim of inadvertent production. If the producing party makes such a claim, the provisions of Paragraphs 14(a)-(c) above shall apply.

15. The parties agree that should the production of source code become necessary, they will need to amend or supplement the terms of this Order. To the extent production of source code becomes necessary in this case, the parties will work expeditiously to propose amendments to this Order to cover any production of source code.

16. If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any Confidential Information or Highly Confidential Information, the receiving party must:

(a) promptly notify in writing the designating party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Stipulated Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose Confidential Information or Highly Confidential Information may be affected.

If the designating party timely seeks a protective order, the party served with the subpoena or court order shall not produce any Confidential Information or Highly Confidential Information before a determination by the court from which the subpoena or order issued, unless the party has obtained the designating party's permission. The designating party shall bear the burden and

expense of seeking protection in that court of its confidential material—and nothing in these provisions should be construed as authorizing or encouraging a receiving party in this action to disobey a lawful directive from another court.

17. The following additional terms apply to non-party discovery material:

(a) The terms of this Order are applicable to information produced by a non-party in this action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." Such information produced by non-parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a non-party from seeking additional protections.

(b) In the event that a party is required, by a valid discovery request, to produce a non-party's confidential information in its possession, and the party is subject to an agreement with the non-party not to produce the non-party's confidential information, then the party shall:

i. promptly notify in writing the requesting party and the non-party that some or all of the information requested is subject to a confidentiality agreement with a non-party;

ii. promptly provide the non-party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

iii. make the information requested available for inspection by the non-party.

(c) If the non-party fails to object or seek a protective order from this Court within 28 days of receiving the notice and accompanying information, the receiving party may produce the non-party's confidential information responsive to the discovery request. If the non-party timely seeks a protective order, the receiving party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the non-party before a determination by the Court. Absent a court order to the contrary, the non-party shall bear the

burden and expense of seeking protection in this Court of its Confidential Information or Highly Confidential Information.

18. Nothing in this Stipulated Protective Order shall be construed to preclude any party from asserting in good faith that certain Confidential Information or Highly Confidential Information requires additional protections. The parties shall meet and confer to agree upon the terms of such additional protection. By stipulating to the entry of this Protective Order no party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no party waives any right to object on any ground to use in evidence of any of the material covered by this Stipulated Protective Order. Nothing in this Stipulated Protective Order abridges the right of any person to seek its modification by the Court in the future.

Part Two: Use of Confidential Materials in Court

The following provisions govern the treatment of Confidential Information or Highly Confidential Information used at trial or submitted as a basis for adjudication of matters other than discovery motions or proceedings. These provisions are subject to Rules 2.550, 2.551, 2.580, 2.585, 8.160, and 8.490 of the California Rules of Court and must be construed in light of those Rules.

19. A party that files with the Court, or seeks to use at trial, materials designated as Confidential Information or Highly Confidential Information, and who seeks to have the record containing such information sealed, shall submit to the Court a motion or an application to seal, pursuant to California Rule of Court 2.551.

20. A party that files with the Court, or seeks to use at trial, materials designated as Confidential Information or Highly Confidential Information by anyone other than itself, and who does not seek to have the record containing such information sealed, shall comply with either of the following requirements:

(a) At least ten (10) business days prior to the filing or use of the Confidential Information or Highly Confidential Information, the submitting party shall give notice to all other parties, and to any non-party that designated the

materials as Confidential Information or Highly Confidential Information pursuant to this Order, of the submitting party's intention to file or use the Confidential Information or Highly Confidential Information, including specific identification of the Confidential Information or Highly Confidential Information. Any affected party or non-party may then file a motion to seal, pursuant to California Rule of Court 2.551(b); or

(b) At the time of filing or desiring to use the Confidential Information or Highly Confidential Information, the submitting party shall submit the materials pursuant to the lodging-under-seal provision of California Rule of Court 2.551(d). Any affected party or non-party may then file a motion to seal, pursuant to the California Rule of Court 2.551(b), within ten (10) business days after such lodging. Documents lodged pursuant to California Rule of Court 2.551(d) shall bear a legend stating that such materials shall be unsealed upon expiration of ten (10) business days, absent the filing of a motion to seal pursuant to Rule 2.551(b) or Court order.

21. In connection with a request to have materials sealed pursuant to Paragraph 12 or Paragraph 13, the requesting party's declaration pursuant to California Rule of Court 2.551(b)(1) shall contain sufficient particularity with respect to the particular Confidential Information or Highly Confidential Information and the basis for sealing to enable the Court to make the findings required by California Rule of Court 2.550(d).

IT IS SO STIPULATED.

DATED: _____, 2016

PERKINS COIE LLP

By: _____
Julie E. Schwartz

Attorneys for Defendant
Facebook, Inc.

DATED: _____, 2016

BIRNBAUM & GODKIN, LLP

By: _____
David Godkin

Attorneys for Plaintiff
SIX4THREE, LLC

IT IS SO ORDERED.

DATED: 10/24, 2016

JUDGE OF THE SUPERIOR COURT

CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on _____, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or Highly Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ located at the address of _____ as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this ___ day of _____, 2016, at _____.

By: _____

Address: _____

_____

Phone: _____

EXHIBIT 5

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ZACHARY G. F. ABRAHAMSON (SBN 310951)
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Facsimile: 415-236-6300

Attorneys for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability company,

Plaintiff,

v.

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

Defendants.

Case No. CIV 533328

Assigned for all purposes to Hon. V. Raymond Swope, Dept. 23

EXHIBIT 5 TO THE DECLARATION OF LAURA E. MILLER IN SUPPORT OF DEFENDANT FACEBOOK, INC.'S EX PARTE APPLICATION FOR EXPEDITED RELIEF RE SIX4THREE'S CONTEMPT, INCLUDING AN ORDER TO SHOW CAUSE

Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

From: Laura Miller
Sent: Monday, November 19, 2018 8:12 PM
To: complexcivil@sanmateocourt.org; Rebecca Huerta
Cc: SERVICE-SIX4THREE; David Godkin; James Kruzer; Stuart Gross
Subject: Six4Three v. Facebook (CIV533328)
Attachments: 2018-11-19 Godkin letter to DT re Order from Parliament.pdf

Ms. Huerta,

I write with an urgent request for an ex parte hearing regarding Six4Three's imminent violation of the protective order. This is in addition but related to Facebook's request for an ex parte from earlier today.

Six4Three's counsel sent us the attached letter this morning at 11:33 a.m., purporting to put Facebook on notice that Six4Three is planning to provide to the Digital, Culture, Media and Sport Committee (the "DCMS Committee") of the UK House of Parliament:

> Unredacted copies of Six4Three's opposition to the anti-SLAPP (strategic lawsuits against public participation) motion, filed in the California courts, relating to the company's dispute with Facebook, along with any documents or notes relating to Six4Thre's opposition to the anti-SLAPP motion.

This is precisely the information that the Court ordered sealed and/or struck in its Order of November 1, 2018. And as the DCMS Committee's letter is neither a subpoena nor a court order in related litigation, Six4Three has no basis to disclose Facebook's confidential information under the Stipulated Protective Order.

We have informed Six4Three of Facebook's position and asked them not to disclose Facebook's confidential information, under both to the Stipulated Protective Order and this Court's Order of November 1, 2018. Six4Three has not provided a response, and may disclose Facebook's confidential information as early as **9 a.m. pacific tomorrow**.

Understanding the extraordinary nature of its request, Facebook asks the Court to schedule an ex parte teleconference on this matter as soon as possible. In the event that Six4Three agrees to delay any disclosure until the Court has had an opportunity to address this matter, Facebook requests that this matter proceed along the same briefing schedule as set forth in the Court's email of 3:25 p.m. today regarding Facebook's ex parte application for expedited briefing on a motion for sanctions and contempt related to other violations of the Protective Order.

Best regards,

Laura Miller | Attorney | Durie Tangri LLP | 415-362-6666 | lmiller@durietangri.com

From: ComplexCivil [complexcivil@sanmateocourt.org]
Sent: Tuesday, November 20, 2018 7:34 AM
To: Laura Miller; ComplexCivil; Rebecca Huerta
Cc: SERVICE-SIX4THREE; David Godkin; James Kruzer; Stuart Gross
Subject: RE: Six4Three v. Facebook (CIV533328)

Importance: High

The Court is in receipt and receipt this email and the attached letter proffered of Mr. Godkin and is reviewing it.

No documents shall be transmitted/released until further order of this Court.

From: Laura Miller <LMiller@durietangri.com>
Sent: Monday, November 19, 2018 8:12 PM
To: ComplexCivil <complexcivil@sanmateocourt.org>; Rebecca Huerta <rhuerta@sanmateocourt.org>
Cc: SERVICE-SIX4THREE <SERVICE-SIX4THREE@durietangri.com>; David Godkin <godkin@birnbaumgodkin.com>; James Kruzer <kruzer@birnbaumgodkin.com>; Stuart Gross <sgross@grosskleinlaw.com>
Subject: Six4Three v. Facebook (CIV533328)

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Best regards,

DURIE TANGRI LLP
SONAL N. MEHTA (SBN 222086)
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Telephone: 415-362-6666
Facsimile: 415-236-6300

Attorneys for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier Olivan, Samuel Lessin; Michael Vernal, and Ilya Sukhar

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability company,

Plaintiff,

v.

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

Defendants.

Case No. CIV 533328

Assigned for all purposes to Hon. V. Raymond Swope, Dept. 23

EXHIBIT 6 TO THE DECLARATION OF LAURA E. MILLER IN SUPPORT OF DEFENDANT FACEBOOK, INC.'S EX PARTE APPLICATION FOR EXPEDITED RELIEF RE SIX4THREE'S CONTEMPT, INCLUDING AN ORDER TO SHOW CAUSE

Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

BIRNBAUM & GODKIN, LLP
ATTORNEYS AT LAW

David S. Godkin
Direct Dial: (617) 307-6110
godkin@birnbaumgodkin.com

November 20, 2018

BY EMAIL (damian.collins.mp@parliament.uk)

Mr. Damian Collins MP
Chair, Digital, Culture, Media and Sports Committee
House of Commons
London SW1A 0AA

Re: Order for Documents Served on Six4Three's Principal, Ted Kramer, on November 19, 2018

Dear Mr. Collins:

Following up on my letter sent yesterday regarding this matter, we have been informed by counsel for Defendants that they are seeking appropriate relief from the Superior Court of California, San Mateo County with respect to the Order served yesterday on Mr. Kramer. Insofar as my client is subject to and bound by Protective Order and other orders issued by the California Superior Court, my client is unable to comply with the Order unless and until the Superior Court permits, or unless Defendants consent. Insofar as the documents you seek include internal Facebook records, I suggest that you seek to obtain them directly from Facebook. Facebook's counsel in the California litigation is copied below.

Very truly yours,

David S. Godkin

DSG:cam
cc: Ms. Chloe Challender (By email to challenderc@parliament.uk)
Culture, Media & Sport Committee (By email to CMSCOM@parliament.uk)
Joshua Lerner, Esq. (By email)
Sonal Mehta, Esq. (By email)
Catherine Kim, Esq. (By email)
Service-Six4Three (By email)
Stuart G. Gross, Esq. (By email)
James E. Kruzer, Esq. (By email)

EXHIBIT 7

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Facsimile: 415-236-6300

Attorneys for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar

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Defendants.

Case No. CIV 533328

Assigned for all purposes to Hon. V. Raymond Swope, Dept. 23

EXHIBIT 7 TO THE DECLARATION OF LAURA E. MILLER IN SUPPORT OF DEFENDANT FACEBOOK, INC.'S EX PARTE APPLICATION FOR EXPEDITED RELIEF RE SIX4THREE'S CONTEMPT, INCLUDING AN ORDER TO SHOW CAUSE

Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

BIRNBAUM & GODKIN, LLP
ATTORNEYS AT LAW

David S. Godkin
Direct Dial: (617) 307-6110
godkin@birnbaumgodkin.com

November 21, 2018

BY EMAIL (damian.collins.mp@parliament.uk)

Mr. Damian Collins MP
Chair, Digital, Culture, Media and Sports Committee
House of Commons
London SW1A 0AA

Re: Orders for Documents Served on Six4Three's Principal, Ted Kramer, on November 19, 2018 and November 21, 2018

Dear Mr. Collins:

Following up on my letter sent yesterday regarding this matter, I have attached for your information an Order for Briefing and Staying Submission of Unredacted Copies of Sealed Documents entered by the San Mateo Superior Court yesterday evening. As we have previously informed you, Mr. Kramer is bound by the Protective Order and has no choice but to comply with it. In addition, the attached Order further prevents Mr. Kramer from transmitting, releasing or submitting unredacted copies of Plaintiff's opposition to either Facebook's Special Motion to Strike or Individual Defendants' Special Motion to Strike until further order of the Court, and provides that failure to comply will be considered an act of contempt.

Accordingly, the various orders for documents that your committee has served on Mr. Kramer on November 19 and this morning have placed Mr. Kramer in an impossible position. He would subject himself to contempt sanctions in San Mateo Superior Court if he complies with your orders, and you have reported his non-compliance with your Committee's orders to the House of Commons and requested that it take action against him.

Per the attached Order, the San Mateo Superior Court has asked the parties to the Six4Three litigation to brief a number of issues, including what authority your Committee has to overrule the Superior Court's orders without first seeking relief from the Superior Court, what is the legal effect under United Kingdom law of the DCMS letter to Mr. Kramer, is the DCMS letter different from a summons, what are the procedures for Mr. Kramer, who is visiting the United Kingdom on business, to respond or object to the DCMS letter, and what are the contempt procedures for DCMS for non-compliance by Mr. Kramer. Insofar as these are questions of United Kingdom law and concern your committee, Six4Three's attorneys in the United States are not qualified to address them, and Six4Three is not able to engage United Kingdom counsel to assist.

In addition, as I indicated yesterday, the documents you seek include internal Facebook records, and I suggest that you seek to obtain them directly from Facebook. In the attached order, the Superior Court has also asked whether Facebook is subject to the jurisdiction of your committee, whether DCMS or another committee has served a similar demand for unredacted copies of sealed documents on Facebook and if so, how has Facebook responded.

As the answers to the questions raised by the Superior Court implicate your committee, I urge you or someone on your behalf to provide answers to the Superior Court's questions directly to the Superior Court by Monday, November 26, 2018 at 12 p.m. Pacific Time.

Very truly yours,

David S. Godkin

DSG:cam
cc: Ms. Chloe Challender (By email to challenderc@parliament.uk)
Culture, Media & Sport Committee (By email to CMSCOM@parliament.uk)
Joshua Lerner, Esq. (By email)
Sonal Mehta, Esq. (By email)
Catherine Kim, Esq. (By email)
Service-Six4Three (By email)
Stuart G. Gross, Esq. (By email)
James E. Kruzer, Esq. (By email)

EXHIBIT 8

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Attorneys for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability company,

Plaintiff,

v.

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

Defendants.

Case No. CIV 533328

Assigned for all purposes to Hon. V. Raymond Swope, Dept. 23

EXHIBIT 8 TO THE DECLARATION OF LAURA E. MILLER IN SUPPORT OF DEFENDANT FACEBOOK, INC.'S EX PARTE APPLICATION FOR EXPEDITED RELIEF RE SIX4THREE'S CONTEMPT, INCLUDING AN ORDER TO SHOW CAUSE

Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

DCMS Orders Served on Ted Kramer

DELETE ← REPLY ← REPLY ALL → FORWARD •••

David Godkin <godkin@birnbaumgodkin.com>

Fri 11/23/2018 3:36 PM

Mark as unread

To: Laura Miller; **SERVICE-SIX4THREE**; Sonal Mehta; Josh Lerner; Catherine Kim;

Cc: Stuart Gross <sgross@grosskleinlaw.com>; James Kruzer <kruzer@birnbaumgodkin.com>;

1 attachment

2034_001.pdf

Counsel:

I received the attached correspondence from the House of Commons Speaker's Counsel this morning, in response to my letter to Mr. Collins sent on Wednesday. When I sent my letter on Wednesday, it was my understanding that Mr. Kramer would comply with my instructions that he obey the orders of the San Mateo Superior Court and decline to produce anything to the DCMS Committee in response to its orders served on him on November 19 and 21, 2018. I did not communicate further with Mr. Kramer again after instructing him to comply with the Superior Court orders, until this afternoon.

I learned this afternoon that Mr. Kramer did in fact produce certain documents to the United Kingdom Parliament on Wednesday evening, November 21, 2018, after being repeatedly informed by the DCMS Committee over the course of several hours of the consequences of his failure to comply with three DCMS Committee Orders that he was served with on November 19 and 21, 2018. Mr. Kramer is not certain what documents he turned over as he did not review them, but copied a number of files onto a thumb drive that he gave to them. He believes from reviewing the file names that the files included 643's opposition to the individual defendants' anti-Slapp motion and my declaration in support. He does not know whether any exhibits to my declaration were included. Regardless, it appears that the material he provided included information subject to the protective order.

I am about to write to the DCMS Committee to inform again that the materials Mr. Kramer produced are subject to the Protective Order and that the San Mateo Superior Court ordered Mr. Kramer to refrain from producing them to the Committee. I will ask the DCMS to refrain from reviewing the materials, and to return the thumb drive and any copies either to me or to you. I will copy you on my email.

We will provide you with further updates as we obtain additional information, and will inform the Superior Court of these developments with our filing on Monday.

Sincerely,

David Godkin

HOUSE OF COMMONS

David S. Godkin, Esq.
Birmbaum Godkin LLP
280 Summer Street
Boston
MA 02210
United States of America

By email only

23 November 2018

Dear Mr Godkin

RE: Orders for documents served by the Digital, Culture, Media and Sport Committee of the House of Commons on 19 and 21 November 2018

We have been instructed to respond to your letter of 21 November 2018 to Damian Collins MP, Chair of the Digital, Culture, Media and Sport Committee, which raises a number of questions of United Kingdom law and Parliamentary procedure. We regret that we are unable to brief the court directly; it would be improper for us to do so as we have no standing in the case and the House of Commons is not within the jurisdiction of the court. However, we address your questions below, in the hope that this letter will be of assistance in preparing Six4Three's brief. We do not address those matters that are clearly questions of US law, or which are matters of fact.

What authority does DCMS have to overrule the Court's orders without first seeking relief from the court?

DCMS is a select committee of the House of Commons, the elected House of the United Kingdom Parliament. The House of Commons has unfettered powers to call for "persons, papers and records" to enable it effectively to exercise its core functions of scrutiny and debate. By the Standing Orders of the House of Commons, that power to call for persons, papers and records is delegated to a number of Select Committees, including the DCMS Committee. *Erskine May*[1] says (p.819), "There is no restriction on the power of committees to require the production of papers by private

[1] Erskine May's Treatise on the Law, Privilege, Proceedings and Usage of Parliament. References are to the 24th edition (2011), ed. Sir Malcolm Jack KCB PhD.

House of Commons Richmond House London SW1A 0AA

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bodies or individuals, provided that such papers are relevant to the committee's work as defined by its order of reference. [A copy of the terms of reference of the "Fake News" inquiry is annexed to this letter.] Select committees have formally ordered papers to be produced by the chairman of a nationalized industry and a private society. Solicitors have been ordered to produce papers relating to a client."

The Committee made an order within Parliament's own jurisdiction, at a time when Mr Kramer was present within the jurisdiction, for the production of papers that were present in the jurisdiction. It would have been wholly inappropriate for it to make prior application to a court in California, which does not exercise authority over Parliament's exercise of its functions in the United Kingdom.

By self-denying ordinance (the *sub judice* resolution made in 2001 and annexed to its Standing Orders) the House of Commons and its committees do not in general make reference to proceedings that are active in UK courts, but there is nothing as a matter of law to prevent them from doing so, and there is no equivalent resolution or requirement in relation to proceedings of courts outside the United Kingdom.

What is the legal effect, under United Kingdom law, of the DCMS letter to Mr Kramer?

The order contained in the letter to Mr Kramer dated 19 November 2019 imposes an obligation on Mr Kramer to produce the documents referred to in the order. Mr Kramer had previously been asked to provide the material voluntarily, and had refused to do so by reason of the order of the Court in California. Failure to comply with the order of the Committee would have been capable of constituting a contempt of Parliament (as to which, see below).

By virtue of Article IX of the Bill of Rights 1689, which states (in modern spelling) that "freedom of speech in debate and proceedings in Parliament ought not to be impeached or questioned in any court or place outside Parliament", the courts in the United Kingdom have not been able to consider the legal effect of an order by either House of Parliament, and therefore there is no case law on this issue.

Is the DCMS letter different from a summons?

It has an effect similar to that of a summons, but is not a summons as it is not issued by a court but by Parliament. The Committee also has the power to require the attendance of witnesses, in the exercise of its power to call for "persons, papers and records", and sometimes the exercise of that power to require the attendance of a witness in person is referred to as a summons. The Committee did not require the personal attendance of Mr Kramer in this case.

What are the procedures for Mr Kramer to respond or object to the DCMS letter demand?

There is no procedure for an appeal against an order of a committee, or to enable a person who receives an order to respond to it. Once made, it must be complied with. Mr Kramer was placed in a position where he was required to obey the order or risk being found in contempt of Parliament.

What are the contempt procedures for DCMS for non-compliance by Mr Kramer?

If Mr Kramer had failed to produce the documents after being ordered to do so by the Committee, the Committee would have reported that failure to the House of Commons as a matter of potential contempt of Parliament. "Contempt" is not anywhere defined, but *Erskine May* says (p.837), "Acts or omissions which obstruct or impede the work of a committee or any of its members or officers, or which tend, directly or indirectly, to produce such results, may be treated as a contempt of the House and investigated and punished, as appropriate". May lists disobedience to an order of a committee as a contempt of the House (p.839).

The House would then have considered a motion to refer Mr Kramer's case to the Committee of Privileges. If the motion were passed the Committee of Privileges would have considered the matter and would, if it considered it appropriate, have proposed a sanction on Mr Kramer for his contempt. The powers of the House of Commons to punish for contempt are not defined by statute, and have in the past included imprisonment, fines and admonishment either at the bar of the House or in absentia. In modern times the powers have been exercised sparingly.

Yours faithfully

Speaker's Counsel

Speaker's Counsel

Annex

Terms of reference of the DCMS Committee inquiry into 'fake news'

The Culture, Media and Sport Committee [since 2017, the Digital, Culture, Media and Sport Committee] are looking at ways to respond to the phenomenon of fake news, focusing in particular on the following questions:

- What is 'fake news'? Where does biased but legitimate commentary shade into propaganda and lies?
- What impact has fake news on public understanding of the world, and also on the public response to traditional journalism? If all views are equally valid, does objectivity and balance lose all value?
- Is there any difference in the way people of different ages, social backgrounds, genders etc use and respond to fake news?
- Have changes in the selling and placing of advertising encouraged the growth of fake news, for example by making it profitable to use fake news to attract more hits to websites, and thus more income from advertisers?
- What responsibilities do search engines and social media platforms have, particularly those which are accessible to young people? Is it viable to use computer-generated algorithms to root out 'fake news' from genuine reporting?
- How can we educate people in how to assess and use different sources of news?
- Are there differences between the UK and other countries in the degree to which people accept 'fake news', given our tradition of public service broadcasting and newspaper readership?
- How have other governments responded to fake news?

EXHIBIT 9

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability company,

Plaintiff,

v.

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

Defendants.

Case No. CIV 533328

Assigned for all purposes to Hon. V. Raymond Swope, Dept. 23

EXHIBIT 9 TO THE DECLARATION OF LAURA E. MILLER IN SUPPORT OF DEFENDANT FACEBOOK, INC.'S EX PARTE APPLICATION FOR EXPEDITED RELIEF RE SIX4THREE'S CONTEMPT, INCLUDING AN ORDER TO SHOW CAUSE

Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

STYLEFORM IT, a Swedish sole proprietorship; Plaintiff, v. FACEBOOK, INC., a Delaware corporation; FACEBOOK IRELAND LTD., an Irish limited liability company; MARK ZUCKERBERG, an individual; 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. CGC-18-571075 **COMPLAINT OF PLAINTIFF STYLEFORM IT FOR:** 1. BREACH OF CONTRACT 2. CONCEALMENT 3. INTENTIONAL MISREPRESENTATION 4. NEGLIGENT MISREPRESENTATION 5. INTENTIONAL INTERFERENCE WITH CONTRACT 6. INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS 7. NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS 8. VIOLATION OF BUSINESS AND

JURY TRIAL DEMANDED

TABLE OF CONTENTS

Plaintiff, Styleform IT ("Styleform" or "Plaintiff"), alleges as follows based on information and belief, except where based on personal knowledge:

I. OVERVIEW OF THE FACEBOOK PLATFORM EXTORTION SCHEME

1. This matter concerns a series of fraudulent and anti-competitive schemes designed and effectuated by Defendant Facebook, Inc.'s ("Facebook") Chief Executive Officer Mark Zuckerberg ("Zuckerberg"), with the intention of deliberately misleading tens of thousands of software companies, including Styleform, (collectively, "Developers") into developing applications that generated substantial user growth and revenues for Facebook in order to help it grow from 20 million active users in 2007 to approximately 2.23 billion by the second quarter of 2018.

2. From May 2007 until at least May 2015, Facebook executed a series of malicious anti-competitive bait-and-switch schemes in which it engaged in a campaign of misrepresentations, misleading partial disclosures, and false inducements to Developers, including Styleform, to induce them to invest capital and resources in building applications on Facebook's operating system, Facebook Platform ("Facebook Platform Extortion Scheme"). These misrepresentations and misleading partial disclosures were made in the form of official statements, announcements, videos and policies announced by Zuckerberg and other Facebook executives and were posted by Facebook on its official website, as well as training sessions, conferences, hackathons and other events. In sum and substance, it was thereby represented that Developers would have the opportunity, *inter alia*, to build a business and distribute their applications organically, to compete on a level and fair playing field, and to access the APIs offered in Facebook Platform on terms equal to all other Developers and to Facebook itself. These representations and misleading partial disclosures around equal access and a level playing field were made repeatedly over seven years in private and public settings, such as official press releases and announcements on Facebook's website, Developer training sessions managed by Facebook employees, and conferences, such as Facebook's annual Developer conference, F8.

3. These misrepresentations and misleading partial disclosures were directed at Developers, including Styleform, were widely known in the Developer community, and were

intended by Defendants to be relied on by Developers, including Styleform. Styleform relied upon these misrepresentations and misleading partial disclosures when deciding whether to build its business on Facebook Platform.

4. These misrepresentations and misleading partial disclosures fraudulently induced tens of thousands of Developers, including Styleform, to enter into identical adhesion contracts with Facebook that placed a host of costly obligations and conditions on Developers in exchange for access to Facebook Platform's software APIs (known as the "Graph API," "Open Graph," or "Social Graph"). Access to the Graph API enabled Developers to build more useful applications that generated increased user engagement and revenues for both Developers and Facebook while giving consumers a choice as to which companies would meet their needs for various products and services. They also offered the opportunity for Developers to grow their applications organically due to features Facebook offered that made Facebook users prospective customers of Developer applications without requiring that the Developer purchase advertisements. This organic growth Facebook promised Developers on its Platform could be described as the Internet-equivalent of word-of-mouth business.

5. However, Facebook at no time provided access to the Graph API on an equal basis, but rather offered large Developers unfair competitive advantages and special access to data in repeated violation of user privacy and its public commitment to a level competitive playing field, in exchange for unrelated advertising purchases or other in-kind consideration at the expense of small or new Developers, like Styleform, that were attempting to compete in Facebook Platform. Further, from 2007 through 2015, Facebook intentionally made it more difficult for small Developers to continue to maintain their products in a manner that was not cost-prohibitive, while giving larger Developers who made unrelated advertising purchases from Facebook special access to APIs that made it less costly for them to release and maintain the very same products and features.

6. At Zuckerberg's personal direction, as early as 2009, Facebook used Facebook Platform as a weapon to gain leverage against competitors in the Developer community in a host of ways by threatening any company that crossed Facebook's radar that it would shut down its

access to publicly available APIs unless: (1) the Developer, itself, was sold to Facebook for a purchase price below its fair market value; (2) the Developer purchased large amounts of unrelated advertising from Facebook; (3) the Developer transferred intellectual property over to Facebook; and/or (4) the Developer fed all of its data back to Facebook, where it would then be available to the Developer's competitors, placing the Developer's business at great risk.

7. At the personal direction of Zuckerberg, by 2009, Facebook took full advantage of its perverse incentives in serving as both the referee of, and largest participant in, one of the world's largest software economies. By making a series of misleading partial disclosures and misrepresentations, Facebook irreparably damaged tens of thousands of Developers in order to unjustly enrich Defendants. Further, in 2009, Facebook executives discussed backing down publicly on their promise of a level competitive playing field. They decided internally to back down on these promises, but concealed this decision from Developers, including Styleform, and continued to misrepresent Facebook Platform as a level competitive playing field.

8. In 2011 and 2012, Zuckerberg extended this concealment campaign and decided it would be in Facebook's best interest to no longer compete with many Developers and to, instead, shut down their businesses by restricting their access to dozens of the most popular Platform APIs, including the full friends list, friends permissions, newsfeed APIs, and other endpoints ("Graph API endpoints"). Styleform's business and the business of many Developers depended on these APIs. Working in concert with other Facebook executives and employees and other large Developers that were close partners, Zuckerberg implemented a plan to deny access to many applications on Facebook Platform on the primary or exclusive basis that these applications were competitive with current or future products offered by Facebook or Facebook's close partners. Defendants' anti-competitive conduct was undertaken in concert with other large Developers to oligopolize various software markets that Defendants continued to represent would operate on fair and equal terms and a level competitive playing field.

9. Specifically, in 2011 and 2012, Zuckerberg held discussions with Facebook executives Chris Cox, Javier Olivan, Samuel Lessin, Sheryl Sandberg, Andrew Bosworth, Colin Stretch and others in which Zuckerberg made a decision to weaponize Facebook Platform using a

policy called "Reciprocity," which included Zuckerberg's decision to shut down most Developers' access to the Graph API endpoints, upon which Styleform's business depended. Zuckerberg's motivations for his decision to create a Reciprocity Policy and shut down public access to Graph API were two-fold: (1) restrain competition in a wide range of software markets to make room for new products from Facebook and its close partners; and (2) shut down all mechanisms for apps to grow organically in order to force apps to prop up Facebook's new mobile advertising business or else Facebook would shut them down. The first anti-competitive motivation helped ensure that no new competitive threat could ever become as big as Facebook. The second extortion motivation ensured that Facebook could make the transition from desktop computer advertising to mobile phone advertising without experiencing a significant drop in revenues in order to turn around its collapsing business.

10. Facebook's internal definition of the Reciprocity Policy required that a Developer provide to Facebook anything that Facebook in its own discretion deemed valuable, including unrelated advertising purchases, feeding data back to Facebook, ownership interests in the Developer's company, intellectual property rights, or other valuable but unrelated consideration in order to continue to maintain access to the publicly available Graph API endpoints. If Developers refused to "reciprocate," Facebook would shut off their access to data and/or build its own scraping tools to pull data from the Developer's website or app directly. The practical effect of the Reciprocity Policy for many Developers was that they would be shut out of Facebook Platform, and this was Zuckerberg's intention in implementing the Reciprocity Policy.

11. Facebook published an external version of its Reciprocity Policy in late January 2013 on its public website but intentionally, maliciously, willfully and/or negligently opted not to disclose that this policy entailed the privatization of over 50 Graph API endpoints that Facebook for years had represented, and for at least two more years would continue to represent, as available publicly on equal and fair terms. Facebook further did not disclose when publishing this policy that Facebook had already begun enforcing these anti-competitive data restrictions and had active plans to expand the data restrictions to many Developers, including Styleform. Facebook's partial disclosure of its Reciprocity Policy was designed to conceal full disclosure of Facebook's

bait-and-switch scheme while enabling Facebook to have a pretext to begin enforcing the scheme. Had Facebook made a full disclosure that the Reciprocity policy entailed removal of the Graph API endpoints from the public Platform, then Styleform would not have invested in or continued to invest in its business.

12. Facebook's failure to make a full disclosure of the Reciprocity Policy was an intentional act to ensure the policy was as vague as possible. The vagueness of the policy permitted Defendants to shut down any company under a policy-based pretext for any arbitrary or punitive reason Defendants desired.

13. Once Defendants decided to remove competing Developers' access to the Graph API, Zuckerberg personally maintained an ever-growing list of competing Developers that only he could authorize blacklisting from the Graph API. Once a Developer was blacklisted from the Graph API, any applications the Developer built could no longer use any of the blacklisted APIs that Facebook purportedly provided on fair and neutral terms to all Developers. Blacklisted APIs often included the Graph API endpoints, including the full friends list, friends permissions and newsfeed APIs. Facebook made misleading partial public disclosures that certain blacklisted Developers had their API access restricted but claimed these restrictions were due to clear policy and privacy violations when in no fact no legitimate policy or privacy violation had occurred. In numerous other cases, Facebook manipulated its own policy as a pretext to enforce anti-competitive data restrictions while concealing the announcement of these restrictions. Had Facebook made a full disclosure that Developers were being blacklisted because Facebook considered them competitive, then Styleform would not have invested in or continued to invest in their businesses.

14. Zuckerberg's blacklist first contained only a handful of large competitors in 2011, but then was quickly expanded in 2012 to include major messaging applications, professional services, and photo or video sharing applications. By 2013, the blacklist included contact management apps, reputation apps, gifting apps, sharing economy apps, utility apps, file repository apps, payment apps, birthday reminder apps, photo and video apps, calendar apps, lifestyle apps, and health and fitness apps. Facebook at various times shut down data access to

apps in these categories and made misleading partial disclosures and/or misrepresentations that these apps were in violation of policies. However, many of these apps violated no published policy. Rather, policy was used as a pretext for anti-competitive data restrictions. Had Facebook fully disclosed its reasons for shutting down access to these apps in its public statements, Styleform would not have invested in or continued to invest in their businesses. Facebook's misleading partial disclosures and/or misrepresentations around its reasons for shutting down API access to these app categories, made at various times from 2012 through 2015, greatly enriched Facebook by making room for its own products on mobile phones – as a result, four of the five most popular apps worldwide across all major smartphone platforms are now Facebook-owned apps (see https://thenextweb.com/apps/ 2017/04/18/facebook-downloaded-app-netflix/).

15. During this time Facebook maintained a public "size policy" whereby Developers that acquired large numbers of users could be potentially be subject to rate limiting or data throttling restrictions, which is standard in the industry. However, the "size policy" also included a secretive but effective component, undisclosed to Styleform, whereby if a company became too large and successful, it would go on Zuckerberg's blacklist and have its API access shut off. The "size policy" published on the Facebook website would have been materially qualified if Facebook had fully disclosed its own internal definition of the "size policy" that was different from the public policy. Facebook employees would even encourage Developers to continue to rely on certain APIs or avoid telling the Developer its access would be shut off in order to induce the Developer to grow in reliance on Facebook with full knowledge that once the company obtained a certain size, Facebook would shut the Developer down. Facebook thus made a misleading partial disclosure that it was maintaining a fair and neutral platform but failed to qualify this disclosure with material information that the size of a company would affect Facebook's position on whether to remain fair and neutral. Had Facebook shared all material facts related to its size policy, Styleform would never have invested or continued to invest in building its business.

16. Starting in mid-to-late 2012, Zuckerberg, Olivan, Cox and Lessin began communicating the decision to restrict Graph API endpoints in order to restrain competition for

Facebook's new products and to prop up Facebook's new mobile advertising business to senior executives on the Platform team, including Michael Vernal (VP Engineering for Platform) and Doug Purdy (Director of Engineering for Platform), who were tasked with implementing the scheme. From late 2012 to mid-2013, Vernal and Purdy made additional senior members of the Platform team aware of the scheme, including Vladimir Federov (Senior Platform Engineering Leader), Eddie O'Neil (Product Manager for Platform), Ime Archibong (Head of Platform Partnerships), Simon Cross (Product Manager for Platform), Jackie Chang (Senior Partnerships Leader), Ilya Sukhar (Head of Developer Products), and other senior members of the Platform and Developer teams. At no time did any Facebook employees communicate Defendants' scheme publicly or disclose the scheme directly to Styleform.

17. Starting in late 2012 and throughout 2013, at Zuckerberg's instruction, Vernal, Purdy, O'Neil, Sukhar and others began implementing Zuckerberg's decision to restrict API access for anti-competitive reasons under the Reciprocity Policy framework. The Platform team, managed by Vernal, was working on a public announcement of these changes to be released before the end of 2012. However, Zuckerberg directed Vernal not to disclose these changes but to instead extract payments from Developers upon threat of being shut down from the public Platform APIs. In other words, Zuckerberg directed Vernal to privately and secretly enforce these changes while continuing to mislead the general public and Developers, including Styleform. Had Facebook made the public announcement Vernal had planned in late 2012, Styleform never would have invested in or continued to invest in building its business. By continuing to represent fairness and neutrality publicly while privately requiring unrelated payments in Facebook's new advertising product, Mobile App Install Ads, Facebook was able to rapidly accelerate its transition from desktop computer advertising to mobile advertising, which makes up more than 90% of its revenues today.

18. In mid-2013, Zuckerberg directed Defendants to expand their efforts at extracting payments from Developers upon threat of being shut down, eventually entering into over 5,000 special agreements that provided special access to data that violated user privacy in exchange for financial consideration from the Developer, typically in the form of a minimum required annual

purchase in Facebook's new Mobile App Install Ads advertising product. Mobile App Install Ads became the fastest growing business in the history of advertising as a direct result of Zuckerberg's concealment and extortion campaign.

19. Zuckerberg and other Facebook executives and employees actively, intentionally, recklessly, maliciously, oppressively, fraudulently and/or negligently concealed from Developers, the public and certain internal employees this decision to restrict the Graph API, while continuing to make misrepresentations and misleading partial disclosures that enticed Developers to make investments in Facebook Platform until at least 2015, notwithstanding that Facebook had a duty to disclose this material fact that applications relying on Graph API would no longer function and that any investments made by Developers in such applications, particularly after 2011 and 2012, would be irreparably damaged.

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

21. Beginning in 2011 and continuing until 2015, at Zuckerberg's personal direction, Facebook executives instructed their subordinates to identify categories of applications that would be considered competitive and to develop a plan to remove access to critical APIs necessary for these applications to function, thereby eliminating competition across entire categories of

software applications, like the ones Styleform had been developing and maintaining continuously from 2007 through 2015, after Zuckerberg had already decided to restrict access to the Graph API necessary for Styleform's technology to function.

22. Defendants actively, maliciously, oppressively and fraudulently concealed the fact that it would be restricting access to the Graph API endpoints and continued to entice Developers to make such investments for at least two years. Had Defendants disclosed this fact within a reasonable time after making its decision, Styleform would not have made investments of capital and resources in Facebook Platform. Instead, Defendants unjustly enriched themselves through this fraudulent and anti-competitive conduct by enticing investments that generated revenues for Facebook with full knowledge that those investments would be irreparably damaged.

23. Further, while actively suppressing this material information and continuing to entice Developers to invest in building applications for Facebook Platform, Zuckerberg instructed certain Facebook executives to require or encourage their subordinates to engage in a number of collusive and anti-competitive schemes with other large companies. The schemes involved Facebook offering these Developers unfair advantages via private API access in various software markets in exchange for unrelated advertising payments and/or other forms of cash or in-kind consideration that benefited Facebook. In doing so, Facebook and these large Developers held hostage APIs that Facebook previously promised would be available to all Developers on neutral and equal terms.

24. This practice systematically disadvantaged small or new Developers, including Styleform, that had been competing in Facebook's purportedly fair and neutral operating system. Smaller Developers like Styleform could no longer participate in one of the largest application and advertising economies globally, providing an immense advantage to large Developers that combined and conspired with Facebook to control the Graph API that Facebook for years promised would be accessible on equal terms. The conduct of the Facebook executives who participated in these schemes was undertaken in combination and concert with large Developers who benefited from the decision to restrict data access, eliminate competition in various software markets, and make it more difficult for small Developers to maintain their products and grow on

Facebook Platform.

25. Finally, beginning in 2013 and coalescing around February 2014, Zuckerberg fabricated and disseminated a fraudulent pro-privacy narrative to mask the deceptive and anti-competitive schemes that Defendants had begun implementing in 2012. Zuckerberg directed Defendants Vernal and Sukhar, along with Doug Purdy, to end the extortion scheme by 2014 or 2015 under a purported pro-privacy narrative which was announced publicly as "The New Login and Graph API 2.0" but referred to internally by Defendants as the "Switcharoo Plan." The cover-up was called the Switcharoo Plan because it hid the anti-competitive, privacy-violating scheme behind an unrelated initiative to revamp Facebook Login, which Facebook purported was undertaken to promote user privacy, in order to pull the "switch" on Facebook's competitors.

26. This fabricated pro-privacy narrative centered on the false claim that the APIs being shut off to tens of thousands of smaller Developers were rarely used and/or violated user trust and control over their data. These fabricated reasons for shutting off APIs critical to the functioning of tens of thousands of applications, including Styleform's applications, played no role in the actual decisions made by Zuckerberg and ratified and implemented by other Facebook executives. Further, employees were livid by the scheme when they found out in late 2013 and 2014 and many left the company. Before leaving, these employees noted that Facebook was deliberately trying to place the blame on unspecified bad actor Developers for Facebook's own anti-competitive and privacy-violating conduct and that Facebook was succeeding in doing so.

27. Further, once Styleform entered into the Agreement with Facebook, Facebook had a duty to disclose material information, including the fact that Zuckerberg had decided to shut down API access in 2012. Facebook provided notices to Styleform via email many dozens of times from 2012 through 2018, and yet not a single communication from Facebook put Styleform on notice of this material information, making it impossible for Styleform to recoup its investment of time and money. Facebook intentionally withheld and actively concealed this information and only made misleading partial disclosures of this information to which it had exclusive knowledge in order to unjustly enrich Facebook and its executives, mitigate potential legal liability and avoid negative press. Facebook's misleading partial disclosures of material

information exclusively in its own possession fraudulently induced Styleform to enter into contract and to continue to contract with Facebook by maintain its products and building its business on Facebook Platform at significant cost to Styleform.

28. Facebook, at Zuckerberg's personal direction, deliberately suppressed material information and shared only partial information in its communications regarding Facebook Platform from 2007 through 2018, and, in particular, during Zuckerberg's April 30, 2014 announcement at F8, causing further harm to Styleform in a malicious and fraudulent attempt to cover up Defendants' bait-and-switch schemes. For instance, Zuckerberg partially disclosed that Facebook was versioning the Graph API, but then misrepresented that Developers would be able to choose the version they build against, while concealing material facts Zuckerberg knew at the time contradicted this representation.

29. Defendants conspired with and instructed their subordinates to conspire with other Developers to engage in fraudulent bait-and-switch schemes and repeatedly acted negligently, fraudulently and maliciously in violation of California law to the detriment of consumers and tens of thousands of small Developers, whose investments unjustly enriched Defendants. Defendants' conduct amounts to a classic bait-and-switch tactic barred by California's Unfair Competition Law. Further, Defendants' knowingly false representations and misleading partial disclosures to users and Developers violate California's False Advertising Law. Finally, Defendants' representations for years that Graph API would be offered on fair and neutral terms while secretly tying access to these purportedly public APIs to an unrelated mobile advertising product is a textbook tying scheme in violation of California's Cartwright Act.

30. Around the time Zuckerberg made this decision to engage in the Facebook Platform Extortion Scheme, Facebook's stock price had dropped by more than half from its initial public offering ("IPO") in May 2012, reaching a low of $37 billion in September 2012. Zuckerberg personally lost approximately $10 billion in the period during which he decided to implement the fraudulent and anti-competitive schemes alleged herein. After Zuckerberg decided upon and implemented the alleged fraudulent and anti-competitive schemes, the downward trajectory of Facebook's stock reversed course and began its rapid climb to an approximate $445

billion market capitalization as of October 19, 2018, a much more than ten-fold increase from the low it had reached prior to Zuckerberg engaging in the alleged conduct. Zuckerberg and certain other Facebook executives were greatly enriched as a result of the alleged conduct on the order of millions or billions of dollars. The alleged conduct was a substantial factor in the turnaround of Facebook's stock price and the growth of its business.

31. Facebook's entire business up until 2013 was built for desktop computers. However, by 2012, people began accessing the Internet more frequently from their phones than from their computers. This was the primary reason Facebook's business was collapsing by mid-2012. In order to save Facebook's business, Sheryl Sandberg, Dan Rose, Samuel Lessin and others convinced Zuckerberg to weaponize user data and Graph API in an extortion scheme that had devastating impacts across the entire consumer software industry and caused 35,000 small-to-medium businesses to shut down or pivot at a substantial loss, wreaking havoc on their investors, employees and the families that depended upon them. It further prevented consumers from exercising any reasonable degree of choice in how their needs are met across a wide range of products and services, resulting in the dominant market position Facebook maintains over many consumer software experiences today.

II. THE PARTIES

32. Plaintiff Styleform IT is a sole proprietorship registered in Sweden with a principal place of business at Tussmotevagen 192b, S-12264 Enskede, Sweden.

33. Defendant Facebook, Inc. ("Facebook") is a Delaware Corporation with a principal place of business at One Hacker Way, Menlo Park, California.

34. Defendant Facebook Ireland Limited is an Irish limited liability company wholly owned by Facebook, Inc. with a principal place of business at 4 Grand Canal Square, Grand Canal Harbour, Dublin 2.

35. Defendant Mark Zuckerberg ("Zuckerberg") is an individual residing in Palo Alto, California. Zuckerberg was the Chief Executive Officer of Facebook during the time during which the alleged conduct occurred and personally made the decisions comprising the alleged

conduct, including: (1) the decision to use Facebook Platform as a 'bait and switch' scheme to unjustly enrich Facebook and the individual Defendants from 2007 through present; (2) the decision to fraudulently, negligently, intentionally, maliciously and oppressively misrepresent Facebook's plans regarding Facebook Platform before and *after* Facebook had already decided to restrict Graph API in 2011 and 2012; (3) the decision to actively conceal material information to tens of thousands of Developers, including Styleform, for years, notwithstanding that Facebook was under a duty to disclose such information; (3) the decision to conspire with large Developers to restrict access to data that Facebook promised for seven years would be available to all Developers on neutral and equal terms in exchange for large cash payments in advertising and/or other in-kind consideration that greatly benefited Facebook; and (4) the decision in late 2013 and early 2014 to concoct an entirely fabricated narrative in order to mask Facebook's true intentions around its deceptive and anti-competitive schemes. Zuckerberg made, and directed Facebook employees to make, false statements and to maliciously suppress material facts from 2007 through at least 2015, regarding Facebook's management of Facebook Platform with the intention of inducing investment from Developers to build applications on Facebook Platform. Zuckerberg did so knowing these investments would be irreparably damaged. Zuckerberg was aware these statements were false at the time they were made and that the facts suppressed would have materially qualified the misleading partial disclosures he authorized or personally made. Zuckerberg engaged in this wrongful and malicious conduct precisely in order to damage (and with full knowledge of the proximate damage to) these 40,000 or more software applications, including Styleform's applications, (collectively, "Apps"), to fulfill his primary goals of removing competitive threats to Facebook's planned products and propping up Facebook's mobile advertising business by holding Developers hostage. Zuckerberg was aware that these 40,000 or more apps, including Styleform's Apps, had contracts with their end customers that would be breached or otherwise interrupted by Zuckerberg's intentional, wrongful, malicious, oppressive, fraudulent and negligent conduct because the adhesion contract Developers, including Styleform, entered into with Facebook required them to maintain such contracts with their end customers.

36. Defendant Christopher Cox ("Cox") is an individual residing in San Francisco, California. Cox was the VP Product and/or Chief Product Officer of Facebook during the period in question and was responsible for deciding upon and implementing key components of Zuckerberg's fraudulent and anti-competitive schemes. Cox actively approved, participated, ratified, directed and acquiesced in the conspiracies and schemes alleged herein, including directing subordinates to increasingly expand the definition of competitive applications whose access to data would be removed. Cox made, and directed Facebook employees to make, false statements and to maliciously suppress material facts from at least 2007 through 2015 regarding Facebook's management of Facebook Platform with the intention of inducing investment from Developers to build applications on Facebook Platform. Cox did so knowing that these investments would be irreparably damaged. Cox was aware these statements were false at the time they were made and that the facts suppressed would have materially qualified the misleading partial disclosures he authorized or personally made. Cox engaged in this wrongful and malicious conduct precisely in order to damage (and with full knowledge of the proximate damage to) these 40,000 or more apps., including Styleform's Apps, to fulfill his primary goals of removing competitive threats to Facebook's planned products and propping up Facebook's mobile advertising business by holding Developers hostage. Cox was aware that these 40,000 or more apps, including Styleform's Apps, had contracts with their end customers that would be breached or otherwise interrupted by Cox's intentional, wrongful, malicious, oppressive, fraudulent and negligent conduct because the adhesion contract Developers, including Styleform, entered into with Facebook required them to maintain such contracts with their end customers.

37. Defendant Javier Olivan ("Olivan") is an individual residing in Atherton, California and Santa Cruz, California. Olivan was the Vice President of Growth of Facebook during the period in question and was responsible for deciding upon and implementing key components of Zuckerberg's fraudulent and anti-competitive schemes. Olivan actively approved, participated, ratified, directed and acquiesced in the conspiracies and schemes alleged herein, including directing subordinates to increasingly expand the definition of competitive applications whose access to data would be removed. Olivan repeatedly required the Facebook Platform team

to shut down applications on the exclusive basis that they were competitive with Facebook and further required the Platform team to re-architect the APIs Facebook made available to make it more difficult for other Developers to compete with Facebook on a level playing field, including removal of the friends list API, friends permissions APIs, newsfeed APIs, user ID APIs, and others. Olivan directed numerous projects at Facebook that intentionally violated user privacy in order to give Facebook's products an unfair competitive advantage relative to other Platform apps. Olivan made, and directed Facebook employees to make, false statements and to maliciously suppress material facts from at least 2007 through 2015 regarding Facebook's management of Facebook Platform with the intention of inducing investment from Developers to build applications on Facebook Platform. Olivan did so knowing that these investments would be irreparably damaged. Olivan was aware these statements were false at the time they were made and that the facts suppressed would have materially qualified the misleading partial disclosures he authorized or personally made. Olivan engaged in this wrongful and malicious conduct precisely in order to damage (and with full knowledge of the proximate damage to) these 40,000 software applications, including Styleform's Apps, to fulfill his primary goals of removing competitive threats to Facebook's planned products and propping up Facebook's mobile advertising business by holding Developers hostage. Olivan was aware that these 40,000 or more software applications, including Styleform's Apps, had contracts with their end customers that would be breached or otherwise interrupted by Olivan's intentional, wrongful, malicious, oppressive, fraudulent and negligent conduct because the adhesion contract Developers, including Styleform, entered into with Facebook required them to maintain such contracts with their end customers. Further, Zuckerberg directed Olivan (along with Lessin) in 2012 to oversee Vernal's Platform team to make sure Facebook properly executed its goal of removing thousands of competitive threats by privatizing Graph API while continuing to represent the public availability of Graph API in order to gain leverage over Developers and extort them into purchasing Facebook's new mobile advertising product.

38. Defendant Samuel Lessin ("Lessin") is an individual residing in San Francisco, California. Lessin was the Director of Product and/or Vice President of Product Management of

Facebook, Inc. during the period in question and was responsible for deciding upon and implementing key components of Zuckerberg's fraudulent and anti-competitive schemes. Lessin actively approved, participated, ratified, directed and acquiesced in the conspiracies and schemes alleged herein, including directing subordinates to increasingly expand the definition of competitive applications whose access to data would be removed. In the summer and fall of 2012, Lessin worked with Zuckerberg and other Facebook executives like Sheryl Sandberg, Andrew Bosworth and Dan Rose to weaponize developers' reliance on Facebook Platform by threatening to break many software applications unless the developer made significant purchases in unrelated advertising using Facebook's new mobile advertising product. Lessin was instrumental in developing the plan whereby Facebook approached Developers to buy advertising under the threat that if they did not do so, Facebook would break their applications by removing access to public Platform data. Lessin made, and directed Facebook employees to make, false statements and to maliciously suppress material facts regarding Facebook's management of Facebook Platform with the intention of inducing investment from Developers to build applications on Facebook Platform. Lessin did so knowing these investments would be irreparably damaged. Lessin was aware these statements were false at the time they were made and that the facts suppressed would have materially qualified the misleading partial disclosures he authorized or personally made. Lessin engaged in this wrongful and malicious conduct precisely in order to damage (and with full knowledge of the proximate damage to) these 40,000 software applications, including Styleform's Apps, to fulfill his primary goals of removing competitive threats to Facebook's planned products and propping up Facebook's mobile advertising business by holding Developers hostage. Lessin was aware that these 40,000 or more apps, including Styleform's Apps, had contracts with their end customers that would be breached or otherwise interrupted by Lessin's intentional, wrongful, malicious, oppressive, fraudulent and negligent conduct because the adhesion contract Developers, including Styleform, entered into with Facebook required them to maintain such contracts with their end customers. Further, Zuckerberg directed Lessin (along with Olivan) in 2012 to oversee Vernal's Platform team to make sure Facebook properly executed its goal of propping up its mobile advertising business by privatizing

Graph API while continuing to represent the public availability of Graph API in order to gain leverage over Developers and extort them into purchasing Facebook's new mobile advertising product.

39. Defendant Michael Vernal ("Vernal") is an individual residing in San Francisco, California. Vernal was the Vice President of Engineering of Facebook during the period in question and was charged with direct oversight of Facebook Platform. As such, Vernal was responsible for deciding upon and implementing key components of Zuckerberg's fraudulent and anti-competitive schemes. Vernal actively approved, participated, ratified, directed and acquiesced in the conspiracies and schemes alleged herein, including architecting and overseeing the implementation plan to cause tens of thousands of software applications to cease functioning in order to oligopolize various software markets for the benefit of Facebook and Facebook's close partners. Zuckerberg directed Vernal to be the front man internally for this bait and switch scheme with full responsibility for its design and implementation such that many employees at Facebook were for years under the impression that the API restrictions were Vernal's idea. Vernal made, and directed Facebook employees to make, false statements and to maliciously suppress material facts from at least 2009 through 2015 regarding Facebook's management of Facebook Platform with the intention of inducing investment from Developers to build applications on Facebook Platform. Vernal did so knowing these investments would be irreparably damaged. Vernal was aware these statements were false at the time they were made and that the facts suppressed would have materially qualified the misleading partial disclosures he authorized or personally made. Vernal engaged in this wrongful and malicious conduct precisely in order to damage (and with full knowledge of the proximate damage to) these 40,000 or more apps, including Styleform's Apps, to fulfill his primary goals of removing competitive threats to Facebook's planned products and propping up Facebook's mobile advertising business by holding Developers hostage. Vernal was aware that these 40,000 or more apps, including Styleform's App, had contracts with their end customers that would be breached or otherwise interrupted by Vernal's intentional, wrongful, malicious, oppressive, fraudulent and negligent conduct because the adhesion contract Developers, including Styleform, entered into with Facebook required them

to maintain such contracts with their end customers.

40. Defendant Ilya Sukhar ("Sukhar") is an individual residing in San Francisco, California. Sukhar was the Vice President of Developer Products of Facebook during the period in question and was responsible for deciding upon and implementing key components of Zuckerberg's fraudulent and anti-competitive schemes. Sukhar actively approved, participated, ratified, directed and acquiesced in the conspiracies and schemes alleged herein, including architecting and overseeing the plan to achieve support among Facebook employees and Developers around the fabricated narrative Zuckerberg manufactured to conceal his various anti-competitive schemes. Zuckerberg directed Sukhar in the second half of 2013 and early 2014 to serve as the front man externally for the bait and switch scheme in light of Sukhar's respected reputation among the software developer community. Sukhar made, and directed Facebook employees to make, false statements and to maliciously suppress material facts from at least 2013 through 2015 regarding Facebook's management of Facebook Platform with the intention of inducing investment from Developers to build applications on Facebook Platform. Sukhar did so knowing these investments would be irreparably damaged. Sukhar was aware these statements were false at the time they were made and that the facts suppressed would have materially qualified the misleading partial disclosures he authorized or personally made. Sukhar engaged in this wrongful and malicious conduct precisely in order to damage (and with full knowledge of the proximate damage to) these 40,000 or more apps, including Styleform's Apps, to fulfill his primary goals of removing competitive threats to Facebook's planned products and propping up Facebook's mobile advertising business by holding Developers hostage. Sukhar was aware that these 40,000 or more apps, including Styleform's Apps, had contracts with their end customers that would be breached or otherwise interrupted by Sukhar's intentional, wrongful, malicious, oppressive, fraudulent and negligent conduct because the adhesion contract Developers, including Styleform, entered into with Facebook required them to maintain such contracts with their end customers. Sukhar worked with Zuckerberg directly to concoct a fabricated narrative around user trust in late 2013 and early 2014 that intentionally and maliciously concealed critical facts related to Facebook's anti-competitive data restrictions in order to avoid legal and public relations

ramifications for Zuckerberg's bait and switch scheme.

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

42. At all times herein mentioned, each of the Defendants was the agent and employee of each of the remaining Defendants and, in doing the things herein alleged, was acting within the course and scope of said agency and employment and in particular from direction authorized and required by Zuckerberg.

III. FACTS

43. Styleform is a software consulting business that builds applications for clients and for its own account on Facebook Platform using Graph API. Beginning in 2007, Styleform built and maintained a variety of applications on Facebook Platform. Styleform has continuously maintained applications on Facebook Platform to the present day and has an active Facebook Developer account. Further, the principal of Styleform has been a registered Facebook user continuously from 2007 through the present day.

44. In order to develop its Apps on Facebook Platform, Styleform was required to enter and did in fact enter into Facebook's Statement of Rights and Responsibilities ("SRR" or "Agreement"). The SRR is the "terms of service that governs [Facebook's] relationship with users and others who interact with Facebook. By using or accessing Facebook, [Styleform] agree[d] to this Statement...." Styleform was subject to the same SRR as all Developers on Facebook Platform, since all Developers are required to agree to the SRR before accessing any

Graph API endpoints.

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

46. In consideration of the rights to access Facebook's data, Styleform also committed to a wide range of obligations around which it incurred substantial cost, such as ensuring that Styleform would "provide customer support for its application," "make it easy for users to contact" Styleform or "remove or disconnect" Styleform's Apps. The terms of the Agreement between Styleform and Facebook required that the two parties share and maintain highly confidential, private and sensitive information of consumers, including personally identifiable information. This confidential and sensitive data includes the name, phone device ID, email address, private profile information, data uploaded to the Facebook site like photos and videos, location. Further, under the Agreement, Styleform was required to share with Facebook confidential and proprietary source code, including the inner workings and unique intellectual property behind their technologies at any time upon Facebook's request.

47. Facebook had a duty to disclose material facts affecting its ability to perform under the Agreement, including to continue to provide rights to the data it had been sending to Styleform given the Agreements between the parties. Facebook further had a duty to disclose material facts to Styleform in light of the confidential information shared between the parties.

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

49. Styleform further agreed that Facebook could "create applications that offer similar features and services to, or otherwise compete with, [Styleform's] applications"; that Facebook Platform may not always be free to use; and that Facebook could limit access to data or impose additional data-throttling restrictions if Styleform's user bases increased substantially. Styleform reasonably concluded that these requirements meant that Styleform in the future may be charged a fee to access data or otherwise participate in Facebook's economy, which fees would be charged consistently across all Developers based on publicly established pricing, and that the amount of data Styleform could access at any time may be rate-limited to assist Facebook in managing its costs in maintaining the API. Rate-limiting is common across most software APIs to ensure that an API user can only access a certain amount of data over a specified period of time. This assists the API provider, in this case Facebook, to manage costs associated with maintaining the API. Further, Styleform understood Facebook to mean that Facebook could compete with Styleform on a level playing field where the consumer decides which products succeed in the market.

50. Nowhere in the Agreement did Facebook state that access to data could be provided on an unequal basis or that Facebook reserved its rights to provide data on an unequal, privileged, punitive or arbitrary basis. Nowhere in the Agreement did Facebook state that it reserved its rights to remove entirely the Graph API, the core APIs that defined Facebook Platform for over seven years and induced Developers, including Styleform, to build applications on Facebook Platform instead of other operating systems like those offered by Google, Microsoft or Apple.

51. Facebook's public representations for seven years affirmed the reasonableness of Styleform's interpretation of its Agreement with Facebook. As the Agreement was drafted entirely by Facebook, if Facebook had intended by its terms to convey that it could provide access to data on unequal, privileged or arbitrary terms, or that it could shut down entirely access to entire categories of Graph API endpoints, it could have and should have done so.

52. To this day, Facebook's Platform Policies still include obligations around social data, stating that Developers can "Only use friend data (including friends list) in the person's

experience in your app." (See developers.facebook.com/policy, Section 3.3). This demonstrates that some Developers who have entered into special agreements with Facebook still have access to this social data notwithstanding that the data has been restricted to all other Developers. Certain large Developers with close relationships to Facebook and who paid Facebook substantial sums of cash or other financial consideration continue to have access to this data in some form, notwithstanding that it has been restricted to at least 35,000 other Developers.

53. Before and during the time Styleform was considering investing in Facebook Platform, Facebook repeatedly stated that it intended to have an open governance process around its terms of use and that Developers would participate in the evolution of their agreements with Facebook. For instance, on April 22, 2009, Zuckerberg released a video to Developers and users in which he stated that a community as "large and engaged [as Facebook] needs a more open process, and a voice in governance. That's why a month ago, we announced a more transparent and democratic approach to governing the Facebook site. Since that time, users and experts from around the world have read and offered comments on the documents that we've proposed, the Facebook Principles and the Statement of Rights and Responsibilities. We've read all of these comments and we've created new drafts of the documents.... Now we want you to vote and share with us which documents you think should govern Facebook. I hope you take a minute or two to vote and also to fan the Facebook Site Governance Page"[1] (see https://www.facebook.com/fbsitegovernance/videos/vb.69178204322/718903095373/?type=2&theater). These various representations led Styleform reasonably to conclude that Facebook intended to be a good actor in enforcing its Agreement with Styleform, would not take actions that would frustrate Styleform's ability to gain benefits under the agreement, and would not unilaterally change the manner in which the Agreement was implemented.

54. In entering into the Agreement, Styleform reasonably relied on the various official statements, announcements, policy documents and verbal representations of Facebook employees,

[1] In the quoted text here and elsewhere in the Complaint, official public representations by Facebook or its employees have been underlined for emphasis.

and, in particular, of Zuckerberg, and the Facebook Platform FAQ document Facebook had produced. Styleform could not have known that Zuckerberg decided to restrict access to the data necessary for Styleform's technology to work, as Facebook had exclusive access to this information and had taken measures to actively conceal this fact from Styleform, other Developers, and the public.

55. As a result of Defendants' public representations regarding Facebook Platform, Styleform began building Facebook applications for clients and embraced a business strategy whereby Facebook Platform became an important part of its overall business beginning in 2007. Styleform built the first Swedish Facebook App in partnership with a Swedish advertising agency, Pronto Communications. The application, "Rosa Bandet," or "Pink Ribbon" ("Pink Ribbon App") was sponsored by the client, Cancer Fonden, a leading Swedish cancer awareness foundation. The purpose of the Pink Ribbon App was to support breast cancer awareness and research by encouraging Facebook users to donate and display a pink ribbon on their Facebook profiles. The Pink Ribbon App required the full friends list API and other Graph API endpoints in order to function. The Pink Ribbon App raised over 200,000 Euro to support breast cancer research and spread to more than 250,000 Facebook users.

56. As a result of Defendants' public representations regarding Facebook Platform, Styleform developed another application with a Swedish advertising agency. This application was called "Klimatsmart," or "Climate Smart" ("Climate Smart App"). The purpose of the Climate Smart App was to support solutions to address climate change and improve the health of the planet. The Climate Smart App required the full friends list API and other Graph API endpoints in order to function. The Climate Smart App spread to more than 17,000 Facebook users. The Climate Smart App remains an approved Facebook App that Facebook considers active to this day, and thus Styleform continues to be harmed by Defendants' fraudulent and malicious weaponization of the Facebook Platform economy.

57. As a result of Defendants' public representations regarding Facebook Platform, Styleform developed another application called "Nyarsloften" or "New Year Resolutions" ("New Year Resolutions App"). The purpose of the New Year Resolutions App was to suggest New

Year Resolutions to your friends and track their progress in keeping their resolutions over time. The New Year Resolutions App required the full friends list API and other Graph API endpoints in order to function. The New Year Resolutions App remains an approved Facebook App that Facebook considers active to this day, and thus Styleform continues to be harmed by Defendants' fraudulent and malicious weaponization of the Facebook Platform economy.

58. Given that 250,000 Pink Ribbon App users, 17,000 Climate Smart App users, and hundreds of New Year Resolutions App users had entered into contract with Styleform, all of the Facebook friends of these approximately 267,000 customers were prospective customers of Styleform who could enter into contract with Styleform with a single click on a link sent by their friends. Styleform had a reasonable expectation of contractual benefit and prospective economic advantage with these 267,000 customers and their Facebook friends.

59. As a direct result of Defendants' malicious bait-and-switch schemes weaponizing Facebook Platform from at least 2009 through the present day, Styleform was forced to incur significant unnecessary expenses to maintain its applications, clients and business prospects, including but not limited to all activities surrounding the Pink Ribbon App, the Climate Smart App, and the New Year Resolutions App. Styleform's contractual relationships with its advertising agency clients suffered and ultimately the clients terminated their contracts with Styleform related to all Facebook applications built by Styleform and due to no fault of Styleform. Styleform was forced to maintain the software code, hosting and upgrades of the Facebook applications at its own expense.

60. Further, Styleform was forced to incur significant, additional unnecessary costs in maintaining the New Year Resolutions App. Styleform maintained this application and others in the hope that Facebook would eventually stabilize its Platform and stop making changes that disadvantaged small developers for the benefit of Facebook and its closest partner Developers. However, Styleform was not aware and could not have learned that while Facebook had represented a level competitive playing field and parity across all Developers, including Facebook itself, Facebook had at least by 2009 made the decision to manage its Platform in a manner that systematically disadvantaged smaller Developers for the benefit of Facebook and its closest

partner Developers.

61. Further, had Styleform been aware of Zuckerberg's decision to extort Developers on the Platform beginning in late 2012 to transition his advertising business from desktop computers to mobile phones, and further to privatize the very APIs that Styleform relied upon in order to effectuate the extortion scheme, Styleform would have ceased altogether operating in the Facebook Platform economy. Had Styleform been aware of these facts known only to Facebook and its closest partner Developers, Styleform would not have built applications on Facebook Platform or continued to maintain them until the present day.

62. On April 30, 2015, Facebook required all applications to "upgrade" to Graph API v. 2.0, which had the effect of eliminating the access of most Developers, including Styleform's access, to the most widely used and important Graph API endpoints. Styleform's Apps would not function at all without access to these Graph API endpoints, so Facebook's requirement that Styleform "upgrade" its Apps to Graph API v. 2.0 was not realistic or possible, and Facebook knew it was not realistic or possible. The Developer dashboard for Styleform's Apps included notices to "upgrade" when Facebook knew "upgrading" was not feasible or possible.

63. By deciding to end access to Graph API, Facebook made it impossible for Styleform to build a viable business with its Apps, to abide by the license agreements and purchase terms entered into by Styleform with its clients and the Apps' end users, and for Styleform to recoup any of its investment of capital, human labor, time, effort and energy. If Styleform had known that Facebook had made the decision to remove access to the Graph API in late 2012 but remarkably waited until April 2015 to actually end such access, then Styleform never would have invested capital and resources in building applications on Facebook Platform.

64. Each one of Styleform's Apps' users entered into a license agreement with Styleform. Facebook requires Developers to enter into license agreements with users of applications for Facebook. These license agreements must, among other things, require that the users of these applications adhere to Facebook's terms of service. All Developers must agree to these terms prior to accessing any Graph API endpoints.

65. Accordingly, Defendants knew, or should have known, about the existence of

Styleform's license agreements with its users, since Facebook required Styleform to enter into such license agreements. Further, Defendants circulated spreadsheets containing over 40,000 businesses who would violate their license agreements with their end users as a result of the Facebook Platform Extortion Scheme. These spreadsheets were shared directly with Zuckerberg and prepared at his request. The overwhelming majority of the businesses on these spreadsheets were law-abiding businesses who did not violate user privacy or trust and to which Facebook had never sent any notice of any policy or privacy violation.

66. On or about April 30, 2015, Facebook ended Developer access to the Graph API endpoints, including friend list and friend permissions data, to all Developers except those that entered into separate agreements with Facebook for special access, which was typically only granted once those Developers also agreed to make unrelated advertising purchases or provide other valuable consideration. Styleform was never given the opportunity to be extorted by Facebook and thus had no opportunity to continue to access the privatized Graph API endpoints. As a result, it became impossible for Styleform to build a business from its Apps.

67. On September 21, 2015, the Wall Street Journal reported that Facebook's decision to restrict access to Graph API caused a drug addiction researcher to halt his research efforts, shut down a voter-registration tool used by the 2012 Obama campaign, and decommissioned an App designed to help first generation college students connect with one another (see Deepa Seetharaman & Elizabeth Dwoskin, "Facebook's Restrictions on User Data Cast a Long Shadow; Curbs disrupt startups, academic research and even political strategy"," *The Wall Street Journal*, Sept. 22, 2015, at B1, available at http://www.wsj.com/articles/facebooksrestrictionsonuser datacastalong shadow1442881332). *The Wall Street Journal* also reported in the same article that Facebook reached an unspecified compromise with dating App Tinder that permitted some form of access to photos of mutual friends.

68. In all, over 5,000 businesses entered into special agreements with Facebook while 35,000 businesses had no opportunity to do so. For instance, Tinder provided highly valuable unrelated financial consideration, including intellectual property, to Facebook in exchange for its special access to APIs. Tinder was one of seven dating apps that Facebook agreed to give special

access in order to wipe out all other competitive dating applications from the Platform. Many dating apps have historically relied heavily on Facebook to identify potential dates. By restricting the APIs that enable this access to all but seven dating applications, Facebook gave Tinder and six other dating apps effective control of the entire dating industry. Zuckerberg directed his subordinates to enter into these arrangements in 2014 and 2015 because at the time he did not find the dating market attractive enough for Facebook to enter.

69. Philanthropy and lifestyle applications like those built by Styleform were considered more competitive than dating applications. In fact, Facebook has since launched its own applications related to the Apps built by Styleform after shutting down Styleform and many other businesses in these categories. Had Facebook refrained from the Facebook Platform Extortion Scheme, Styleform could have generated additional significant contracts with paying clients to build its business on Facebook Platform. Further, Styleform engaged in discussions with a potential acquirer to purchase Styleform, a substantial portion of the acquisition plan depended upon Styleform's business building Facebook applications, and the Facebook Platform Extortion Scheme negatively impacted these acquisition discussions and decreased the value of Styleform's business. Styleform could have been acquired for an amount in the range of the low seven figures in U.S. dollars but for Facebook's anti-competitive conduct. In total, Styleform was induced due to Defendants' fraudulent conduct to expend capital and uncompensated labor in developing and maintaining the Pink Ribbon App, the Climate Smart App, the New Year Resolutions App, and other software, from 2007 through at least 2015 in the mid six figures in U.S. dollars, to be determined at trial.

IV. ZUCKERBERG LAUNCHES FACEBOOK PLATFORM IN MAY 2007, PROMISING EQUAL ACCESS AND A LEVEL PLAYING FIELD

70. At 3PM PDT on May 24, 2007, Zuckerberg made a self-described revolutionary announcement to a crowded room of software developers in San Francisco. Zuckerberg announced the launch of Facebook Platform, which he had described weeks earlier in an interview with Fortune magazine as "the most powerful distribution mechanism that's been created in a generation." He went on in the Fortune interview to describe the motivation for

creating Facebook Platform in this way: "We want to make Facebook into something of an operating system so you can run full applications," specifying that this development was the internet-equivalent to what Microsoft did with Windows, which allowed other developers to build applications for PCs. (See http://archive.fortune.com/2007/05/24/technology/facebook.fortune/index.htm.)

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

72. Zuckerberg announced that the three key elements of Facebook Platform were "deep integration, mass distribution, and new opportunity." These were three key themes he would repeat throughout the day and for years to come in numerous public conversations and presentations. (See https://gigaom.com/2007/05/24/live-at-the-facebook-launch/.) Thus, Zuckerberg made three distinct representations of fact: (1) Developers would have deep integration with Facebook's social graph; (2) Developers would have Facebook's support in achieving mass distribution of their applications; and (3) Developers would have an opportunity to build a business on Facebook.

73. By 8PM that evening, these key elements were memorialized on Facebook's website with the official announcement "Facebook Platform Launches", stating "You can now build applications that have the same access to integration into the social graph as Facebook applications, such as photos, notes, and events.... The power of mass distribution is now in your hands. You can gain distribution for your applications through the social graph like never before.

Applications can be virally engineered to reach millions of Facebook users quickly and efficiently through the profile, news feed, and mini-feed.... With access to deep integration into the site, and mass distribution through the social graph comes a new opportunity for you to build a business with your application. You are free to monetize your canvas pages through advertising or other transactions that you control." (See "Facebook Platform Launches," http://web.archive.org/web/20070706002021/http://developers.facebook.com/news.php?blog=1&story=21). Facebook's announcement thus represented that (1) Developers have the "same access to integration" for applications such as photos and notes as Facebook employees; (2) Developers are able to distribute applications through Facebook Platform; and (3) Developers are able to monetize applications through Facebook Platform.

74. Zuckerberg went on to say: "The social graph is our base, and we've built a framework that is completely optimized for developing social applications within our environment.... We believe that there is more value for everyone in letting other people develop applications on top of the base we've built than we could ever possibly provide on our own.... This is good for us because if developers build great applications then they're providing a service to our users and strengthening the social graph.... This is a big opportunity. We provide the integration and distribution and developers provide the applications. We help users share more information and together we benefit." Zuckerberg thus represented that Facebook was committed long term to serving as a platform that enables Developers to build applications on a level playing field because it is a big opportunity for everyone.

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

76. Around 4PM during Zuckerberg's presentation, he announced five case studies from these early developer partners aimed at showing how easy it was for all developers to

integrate with Facebook Platform. Zuckerberg distributed case studies from Red Bull, Box.net, Lending Club, Microsoft and Slide.com. Zuckerberg continued to emphasize during this public, annual keynote to Developers that Facebook Platform is the single biggest and most revolutionary change to Facebook since its inception, stating: "Every once in a while a platform comes along that allows people to build a completely new application—sometimes even start new industries" (see https://gigaom.com/2007/05/24/live-at-the-facebook-launch/).

77. GigaOm, a leading Internet blogger, live blogged the event and further quoted Zuckerberg as saying: "With photo-sharing, he explained, 'it's not just the photos that spread, it's the whole photos application'. Third-party applications won't be treated like second-class citizens on Facebook, he says; users can add them to their profiles and drag them and drop them to their content. Applications can use Flash, JavaScript, and Silverlight if a user approves them. Outside applications can issue unlimited notifications to users, and fit into the Facebook environment by accessing a 'friend selector' that spits out each user's connections. Now Zuckerberg says you can serve ads on your app pages and keep all the revenue, sell them yourselves or use a network, and process transactions within the site, keeping all the revenue without diverting users off Facebook" (see https://gigaom.com/2007/05/24/live-at-the-facebook-launch/). Zuckerberg thus represented that (1) developer applications won't be second class citizens; (2) developer applications can access a user's connections and related user data made available in the social graph; and (3) developer applications can sell ads through the Facebook Platform.

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

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 in the Facebook website, distribution through the social graph and an opportunity to build a business.

* * *

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 the 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 possibilities of Facebook applications are illustrated in the Facebook Platform Application Directory, available at http://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 phishes 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.

* * *

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.

* * *

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. The version of Facebook Platform already lets developers monetize their applications as they like, whether they choose to offer it for free or to build a business on their application.

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

a. Developers would have "deep integration";

b. Developers would have access to the "social graph";

c. Developers would have "an opportunity to build a business."

d. Developers would have the same level of integration and ability to develop apps in the same manner as internal Facebook developers;

e. Facebook shall provide adequate tools necessary for Developers to build their applications;

f. Facebook shall help Developers achieve broad distribution of their applications;

g. So long as applications abide by Facebook's Terms of Service, Developer Policies and other binding commitments Developers make in order to participate in Facebook Platform, Facebook will remain neutral as to the applications built on its operating system;

h. Any application that does not violate its agreement with Facebook, phish or spam users, contain offensive material, or break the law shall be accepted in Facebook Platform;

i. Competing applications are welcome on Facebook's operating system,

including those that compete with Facebook's own applications;

j. Facebook will remain neutral among competing applications, including those that compete with Facebook;

k. Applications similar in purpose and content will be allowed to compete on a "level playing field," which is defined as open and fair market competition whereby users will ultimately decide which applications win the market, not Facebook or other third parties;

l. Implicit in this definition of fairness and market adoption based on consumer choice, Facebook represented it shall take no actions to promote its own applications, or preferred applications from Developers who have a special relationship with Facebook, in order to slant the playing field in a manner that makes it less likely for users ultimately to decide the winners in the market;

m. Facebook shall enable Developers to build businesses on their operating system by directly monetizing their applications on Facebook;

n. Developers shall *not* be required to purchase advertising on Facebook Platform in order to access Graph API endpoints;

o. Developers will be able to sell ads on their application pages; and

p. Developers will have a choice as to whether they monetize their application on Facebook's operating system.

V. DEVELOPERS RESPOND ENTHUSIASTICALLY TO FACEBOOK PLATFORM, BUT BY 2009, ZUCKERBERG IS ALREADY SECRETLY IDENTIFYING WAYS TO WEAPONIZE THEIR RELIANCE

80. The blogging community went into an immediate and prolonged frenzy over Zuckerberg's announcement. Paul B. Allen, founder of Ancestry.com and well-known Internet blogger, summed up the general sentiment expressed by countless bloggers when he wrote that same day, "I saw history in the making today…I was lucky enough to be in San Francisco for the Facebook F8 Platform launch event. This announcement was at least an 8.0 on the Richter scale. It was a whopper…. A huge new opportunity was presented to the few hundred people in the

room, including 65 companies that have spent the last few weeks developing applications for the launch of Facebook Platform. Facebook is inviting anyone to develop applications for their users on top of what Mark calls their 'social graph' – the core of their service which basically keeps track of real people and their real connections to each other.... [Facebook's] growth will be dramatically accelerated by the Platform announcement. If Facebook is adding 100,000 new users per day with its own few simple applications (like its photo sharing, a very simple service that has given Facebook twice as many photos as all other photo sharing sites combined), what will happen when thousands or tens of thousands of developers start building apps in Facebook and marketing them to more users? Facebook will reach 50 million, then 100 million, then 200 million users, and beyond. Rather than continue to try to develop features within its own proprietary, closed network, basically keeping all of its users to itself...Facebook intuitively gets the concepts that are so brilliantly discussed in Wikinomics (which are so non-intuitive to old school business types), and has chosen to open up its network for all to participate in...Application developers can now have access to core Facebook features, such as user profiles and user connections, and even publishing to the News Feed, all with the control and permission of Facebook users...When Facebook has 100 million users, in the not too distant future, having the ability to develop an App in their system will almost be like being able to get a link on Google's own home page." (See http://www.paulallen.net/prediction-facebook-will-be-the-largest-social-network-in-the-world/.)

81. To Developers, Facebook Platform represented not just an entirely new operating system, but an economy that could reorganize the entire Internet (potentially replacing Google as the dominant form of organizing the World Wide Web and replacing Windows and Macintosh as the primary operating system for developing software applications). The sentiment among Developers, as widely held throughout the industry and reported by popular sites like TechCrunch and the Wall Street Journal, was that if you weren't building for Facebook Platform, you were going to be left behind (see http://techcrunch.com/2007/05/24/facebook-launches-facebook-platform-they-are-the-anti-myspace/ and http://www.wsj.com/public/article/SB117971397890009177-wjdKPmjAqS_9ZZbwiRp_CoSqvwQ_20070620.html).

82. Facebook and the Developers who were selected to participate in the private beta of Facebook Platform quickly set out to make Developers comfortable with this grandiose vision and create a level of comfort to induce them to participate in this entirely new industry. For instance, on May 29, 2007, just five days after Zuckerberg's announcement of Facebook Platform, Venture Beat, the popular tech blog, interviewed iLike founder, Ali Partovi, who was also an early advisor and shareholder of Facebook:

> **Interviewer:** Tell me about your experiences with Platform so far. You've been working on putting iLike on Facebook for several months now. Yet on the integration since Friday morning, there have been bugs and other issues on iLike's end. What's the status?
>
> **Partovi:** So, first to give you the back-story on how we got involved. Over the past several months, we've pushed and pushed with Facebook asking for some sort of exclusive relationship. They repeatedly said they won't do an exclusive relationship but would rather create a level playing field where we could compete with other third parties. We then gave up a bit, and we were actually a bit late to the game learning about the platform in detail. But when we finally did get access, our President, Hadi Partovi (my twin brother) took very little time to decide this was a huge strategic priority. That was a month ago. We re-prioritized everything else, and started moving our people off other projects onto this. First two or three people, then a few more, and by the end it was a huge group of engineers pulling back-to-back all-nighters for a week-long sprint to the launch.
>
> **Interviewer:** What made iLike think that Facebook Platform would be a big deal? What stood out about it?
>
> **Partovi:** Hadi has a strong background in the concept of platforms…at 24 he became the head of product management in the IE group at Microsoft, and was a key player in the browser wars. A month ago, even though the Facebook Platform wasn't fully fleshed out, he saw just from the early beginnings of it that this could redefine web development. What he said was, 'in the history of computing, there was the personal computer, there was Windows, there was the web, and now the Facebook Platform'. You can imagine that I and most our company was pretty skeptical. But he makes these calls so we followed him. As to what stood out, it's a combination of three things: (1) the technology itself – Facebook Platform, like any platform, offers the developer building blocks to build apps faster than they could if they were starting from scratch, and to tap into a rich source of data & capabilities that would never otherwise be available; (2) the potential for viral spread – due to the way the Facebook news feed works, an app can spread across the community entirely by viral spread, as friends get notified when one person adopts it…this essentially bypasses the idea of trying to make your app 'viral' as a standalone, because Facebook is itself naturally viral; (3) the rhetoric from the

> Facebook management team, starting from the CEO himself, made it clear that they have a long-term commitment to a level playing field. For example, they absolutely refused to give us any special advantage, insisting that the market needs to see a level playing field…we offered them ownership in our company, money, etc. – but they had no interest. Furthermore, they built and launched their own 'video' app, but left it to 'compete' on its own merits alongside other third-party apps rather than making it 'pre-installed' for all Facebook users.[1] So #1 and #2 made this something we had to jump on, and #3 made us comfortable with the long-term strategic implications (see http://venturebeat.com/2007/05/29/qa-with-ilikes-ali-partovi-on-facebook/.)

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

84. Three days after Partovi's Q&A with Venture Beat, on June 1, 2007 Facebook released its own statement further clarifying its intentions with Facebook Platform, entitled "Platform is Here": "Last Friday, we promised more information, so here it is…. With this evolution of Facebook Platform, we've made it so that any developer can build the same applications that we can. And by that, we mean that they can integrate their application into Facebook—into the social graph—the same way that our applications like Photos and Notes are integrated" (see https://www.facebook.com/notes/facebook/platform-is-here/2437282130/). Thus, Facebook promised that Developers would be able to build applications in the same way that Facebook can by accessing the social graph. As recently as October 1, 2018, this official statement remained available on Facebook's official website.

85. Throughout the summer of 2007, Facebook remained on a charm offensive about its long-term commitment to developers on Facebook Platform. Facebook held numerous Hackathons and Developer Meetups in various cities to introduce new developers to Facebook

Platform, it launched a Developer Feed and Wiki on its website to educate the Developer community on the benefits of Facebook Platform and help them more seamlessly invest their capital and resources towards building applications on the Facebook Platform. Facebook also held contests with prizes for developers. Zuckerberg continued to emphasize the revolutionary impact Facebook Platform would have on the Internet as a whole during this time. For instance, on July 17, 2007, Zuckerberg was interviewed by Time Magazine:

> **Time**: the frenzy surrounding Facebook seems to have intensified quite dramatically over the past several months. What do you think is behind the company's newfound cachet?
>
> **Zuckerberg**: I think the most recent surge, at least in the press, is around the launch of Facebook Platform. For the first time we're allowing developers who don't work at Facebook to develop applications just as if they were. That's a big deal because it means that all developers have a new way of doing business if they choose to take advantage of it. There are whole companies that are forming whose only product is a Facebook Platform application. That provides an opportunity for them, it provides an opportunity for people who want to make money by investing in those companies, and I think that's something that's pretty exciting to the business community" (see http://content.time.com/time/business/article/0,8599,1644040,00.html).

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

87. Then on September 17, 2007, Facebook went even further by setting up a $10 million fund exclusively devoted to providing grants to Developers to build on Facebook Platform. Facebook and its partners in the fund would not even take equity in the Developer; they were offering free money to build applications on Facebook Platform with the only commitments being that the grantee use the money to build on Facebook Platform and that Facebook's partners would have the opportunity to invest first if they were interested in doing so. When asked why

Facebook was forming this fund, it replied: "We are forming this fund to help grow the Facebook application ecosystem. By decreasing the barrier to start a company, we hope to entice an even larger group of people to become entrepreneurs and build a compelling business on Facebook Platform. We hope this is also a funding model that other venture capitalists will follow" (see http://500hats.typepad.com/500blogs/2007/09/facebook-announ.html).

88. Facebook's conduct in providing free money to Developers to build applications on Facebook Platform implies a specific promise that it will support Developers' opportunity to build a compelling business on Facebook Platform and that it is committed long-term to the stability of Facebook Platform as an ecosystem that can support substantial investment and where investors who participate in that ecosystem can expect a level playing field upon which to generate a return on that investment.

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

90. As a result of Facebook's tremendous efforts in inducing Developers to build applications on Facebook Platform and promising them access to the Graph on neutral and equal terms, Facebook Platform quickly became, in the words of *AdWeek*, "the most viral software distribution system ever." The overall traffic to Facebook increased by 33% within three weeks of the announcement. By December, the Facebook user base had grown from 24 million at the time of the announcement to 58 million, a 141% increase. Where Facebook had been adding about 100,000 new users per day prior to Facebook Platform and the input of Developers it catalyzed, it

was now adding more than 250,000 users per day (see http://www.adweek.com/socialtimes/top-10-facebook-stories-of-2007/211540).

91. While it touted Facebook Platform to Developers around the world, Facebook did not state or even imply that access to Facebook Platform might later be rescinded or provided on an unequal basis. In fact, Facebook repeatedly promised that access would be provided on an equal basis relative to Facebook and other developers. However, during this time, Facebook, in fact, provided special, unequal access to the Social Graph to large Developers who were close partners of Facebook and made substantial unrelated advertising payments to Facebook to the systematic disadvantage of smaller Developers. This fact was not made known to or reasonably discoverable by the Developer community at large, including Styleform, at the time preferential access was being given as early as 2007.

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

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

94. Because Facebook's user growth skyrocketed from 2007 to 2009 and Facebook was becoming the dominant Platform on the Internet due to its Developer ecosystem, Facebook executives began secretly to discuss ways to undermine the success of Developers by promoting Facebook's own products to users and give Facebook's own products a competitive advantage

because of Facebook's unique position as the manager and policeman of its Platform. Thus, Facebook began extorting certain Developers privately and making changes to its APIs with the sole goal of stemming the growth of Developers it began to consider competitors.

95. For instance, in a related lawsuit, *Six4Three, LLC v. Facebook, Inc., et al.* (filed on April 10, 2015 in San Mateo Superior Court, Case No. 533328), Ali Partovi, the founder of iLike who was touting the benefits of Facebook Platform in 2007, testified that Facebook's senior executive in charge of Platform told him in a meeting in 2009 that if iLike did not sell to Facebook for a price much lower than its market value at the time, then Facebook would shut iLike down and destroy its business:

> I mean, the most salient thing I remember was that there – Ethan [Ethan Beard, former head of Facebook Platform] said at some point, you know - you know, that, "We," meaning Facebook, "could acquire you, but not for very much." And I remember asking, "Why not for very much?" and him saying, "Because we could just shut you down." And the reason this, you know, has stuck in my memory is because I took it as somewhat of a threat, and I - I don't know whether he intended it to be conveyed as a threat or just a, you know, passing observation on his part, but I remember immediately notifying other people on my team that now Facebook has articulated this explicit threat. I don't - it had never been articulated before, that they could - or that they would consider arbitrarily shutting us down. And, you know, when you're threatened, it only takes once. You don't forget it. So from that point on, we lived under that threat.

96. After this meeting between Partovi and Beard, Facebook then implemented actions to make it impossible for iLike to maintain parity with other products, including Facebook's own products, and ultimately iLike was forced to terminate hundreds of employees and sell to MySpace at a price far below its market valuation prior to Facebook's threat and subsequent anti-competitive conduct. Many other Developers experienced similar threats and anti-competitive actions from 2009 through present.

VI. FACEBOOK LAUNCHES GRAPH API IN 2010 TO CONTINUE TO INDUCE DEVELOPERS TO RELY ON FACEBOOK PLATFORM

97. On or about April 21, 2010, Facebook announced the launch of Graph Application Programming Interface ("Graph API") as a key new component of Facebook Platform at F8, its annual Developer conference. Graph API streamlined and formalized the process whereby Developers, with the consent of Facebook users, could perform actions, build software and in

some cases access user data with the consent of users.

98. Facebook represented that Developers could only access capabilities (referred to as "endpoints") with explicit permission from Facebook users. Examples of endpoints include a user's birthdate, favorite songs, or photos. During the announcement of Graph API, Facebook touted several features of Graph API endpoints in order to increase its appeal to Developers, including Styleform.

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

100. After Zuckerberg completed his keynote at F8 2010, Bret Taylor, a Facebook executive, further explained what Graph API meant for Developers: "With Graph API every object in Facebook has a unique ID, whether that object is a user profile, event, etc.…you just need to download an object with a new ID or download a connection with a new name. So to download my friends you just need to download /btaylor /friends… And this applies for every single object in Facebook. So let's say Facebook launches a new feature next year. We're not gonna make you download a new SDK. You just need to download an object with a new ID or download a connection with a new name. All of the code you already wrote will continue to work perfectly. This is a really significant change for our new platform that I'm sure you can appreciate. For the first time via the search capability of the Graph API, we're giving developers the capability to search over all the public updates on Facebook. I think this is gonna lead to a bunch of cool new applications and I'm really excited to see where people go with this.… We've

built our core of the Facebook Platform from the ground up with simplicity, stability, and the graph in mind. This graph that for the first time we're building together" (see https://www.youtube.com/watch?v=4SOcRKINiSM).

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

102. The software industry uses a common and well-known convention of referring to software by version number (e.g., version 1.0, 2.0, etc.) to signify the existence of separate versions of software and to identify a particular version of the software. When Facebook announced the launch of Graph API, it did not refer to Graph API as having different versions and did not specify a term for the availability of Graph API. Facebook did not specify a version or term for Graph API in order to give Developers the impression that it would indefinitely remain available to them to build a viable business, which takes many years to do in the software industry. Facebook thereby signified that Graph API's open, equal and neutral nature would not change or that if it did change, such change would occur on neutral, equal and fair terms with respect to all Developers. This representation was of course a deliberate decision on Facebook's part to continue to entice developers by conveying a sense of security around investing time, money and effort building applications on its revolutionary platform.

103. Facebook did not represent that it had reserved the right to terminate access to all of the social data in its Graph API or that it could provide such access on unequal or anti-competitive terms. In fact, Facebook repeatedly represented that the unique value of its operating system relative to Microsoft or Apple was that it was inherently social and open. The idea that

Facebook in the future would remove the "social" part of the Social Graph or the "open" part of the "Open Graph" could not have been reasonably anticipated by Styleform, as such a decision would (and ultimately did) hollow out the entire premise of Graph API. Quite to the contrary, Facebook repeatedly expressed its long-term commitment to Graph API and repeatedly expressed that it would provide data on a level playing field with equal terms to all Developers, relative both to one another and to Facebook itself.

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

105. On September 24, 2011, Facebook further extended its stated long-term commitment to Facebook Platform by expanding Open Graph to accelerate its reorganization of the disparate content on the Internet. (See http://mashable.com/2012/05/24/facebook-developer-platform-infographic/#fDCxuACag5qr.) In his keynote address at F8 2011 on September 24, 2011, Zuckerberg stated to a packed auditorium of developers: "The next era is defined by the apps and depth of engagement that is now possible now that this whole network has been established… In 2007 in our very first F8 I introduced the concept of the social graph, all of the relationships between people in the world. Last year we introduced the concept of the open graph as not only the map of all the relationships but all of the connections in the world…. This year, we're taking the next step: we're going to make it so that you can connect to anything you want in any way you want…. Sometimes I think about what we're doing with the open graph is helping to define a brand new language for how people connect…every year we take the next step and make some new social apps possible. Open graph enables apps that focus primarily on two types of

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

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

107. In large part due to the work of Developers, including Styleform, performed in reliance on Facebook's stated long-term commitment to Facebook Platform, Facebook exceeded 1 billion users in 2012.

VII. THE FTC FINDS IN 2011 AND 2012 THAT FACEBOOK HAS DESIGNED ITS PLATFORM IN A MANNER THAT VIOLATES PRIVACY AND ORDERS FACEBOOK TO FIX ITS FLAWED DESIGN

108. On or about July 27, 2012, the United States Federal Trade Commission ("FTC") entered a Decision and Order against Facebook (the "FTC Order"). The FTC Order was entered following a consent agreement between FTC and Facebook. The FTC Order stated that the FTC

had reason to believe Facebook has violated the Federal Trade Commission Act.

109. The FTC Order provided, among other things, that Facebook and its representatives "shall not misrepresent in any manner, expressly or by implication, the extent to which it maintains the privacy or security of covered information. . . ." The FTC Order defined "covered information" to include an individual consumer's photos, among other things. The FTC Order also provided that Facebook and its representatives "shall not misrepresent in any manner, expressly or by implication...the extent to which [Facebook] makes or has made covered information accessible to third parties."

110. The FTC Order was based on a complaint the FTC filed in 2011 against Facebook ("FTC Complaint") that alleged Facebook Platform violated user privacy by design in at least three ways: (1) by separating the privacy settings for data a user shared with friends in apps the user downloaded ("user data"), with the privacy settings for data the user shared with friends in apps ("Apps Others Use" settings) the friends downloaded ("friend data") (see, e.g., FTC Complaint, at 4-7); (2) by hiding the Apps Others Use settings to ensure most Facebook users were not aware that these settings were distinct from the main privacy settings (see *Id.*, at 4-9); and (3) by making the default setting for sharing data with Apps Others Use set to "on" so Facebook could funnel more data to Developers under the guise of user consent (see *Id.*, at 7-11).

111. At this time during 2011 and 2012 and at all times thereafter, there existed a fourth intentional design flaw unidentified by the FTC that significantly exacerbated the damage caused by the three flaws identified in the FTC Complaint: namely, Facebook deliberately failed to pass privacy settings for data transmitted via Facebook's APIs to Developers, implicitly signaling to Developers that all friend data was public and could be treated as such. Combined with the problematic design features identified by the FTC, this turned Facebook Platform into an unregulated firehose of data transfers without any ability for users to consent to, or Developers to manage, the privacy settings of users in a responsible fashion. Setting up the Platform as a firehose that violated user privacy was in Facebook's business interest since it enabled Facebook to attract more Developers initially to expand its user base more rapidly. Importantly, Developers had no control over this design by Facebook and many were not aware of this design until they

already had invested time, capital and labor in building applications on Facebook Platform.

112. Because a user would experience a privacy violation through a Developer app, it appeared in most cases as if the Developer was the one violating user privacy ***when in fact it was Facebook***.

113. By way of example, if User A uploaded a photo to Facebook and set the photo to "only me," only User A would be able to see the photo on Facebook.com or in the Facebook mobile app. However, because the Apps Others Use setting was hidden, not explained to users, and had the default set to "on" (issues the FTC had identified in its Complaint and Order), this meant that when User B used a Developer's app, User B would be able to see User's A photo that was set to "only me" if User B was friends with User A. This is because Facebook did not pass the privacy settings of a data object in the most widely used Graph API endpoints, and because Facebook had "auto-consented" User A to share this data in Apps Others Use without revealing this fact to User A. User B sees the photo and tells User A, and User A complains that the Developer is violating their privacy when in fact it was Facebook. The Developer could not have even known that User B was not supposed to see User A's photo since Facebook falsely represented it handled such settings prior to sending the photo to the Developer.

114. Even after the FTC investigation, Facebook did not comply with the FTC Order to eliminate this artificial distinction between "user data" and "friend data" that allowed Facebook to funnel data in a firehose to Developers without concern for privacy restrictions. To address the FTC Order, all Facebook had to do was: (1) combine the privacy settings for apps downloaded by a user and apps downloaded by the user's friends in the main privacy page (instead of hiding the Apps Others Use page); (2) change the default data-sharing setting from "on" to "off"; and (3) include the privacy setting of a piece of data when sending that data to developers through its APIs. There is very little technical difficulty in completing these three tasks.

115. Instead, Facebook shirked the FTC Order by expanding upon its intentionally flawed privacy design more urgently than ever to ensure Facebook had a valuable trading tool that would reward chosen Developers that Facebook extorted into making entirely unrelated purchases in Facebook's new mobile advertising product, purchases which saved Facebook's

business from collapsing in late 2012 and early 2013. In short, Zuckerberg weaponized the data of one-third of the planet's population in order to cover up his failure to transition Facebook's business from desktop computers to mobile ads before the market became aware that Facebook's 2012 and 2013 financial projections were false, due to Facebook having not accurately represented how quickly users were transitioning their time on the Internet from desktop computers to mobile phones.

116. Contrary to its public representations, when Facebook restricted the Graph API in 2015, it did not do so for the purpose of enhancing user privacy. Rather, Facebook had previously hid privacy controls and set the default sharing setting to "on" in violation of the FTC Order in order to funnel more data to Developers that agreed to Facebook's extortion scheme that tied Platform API access to unrelated purchases in Facebook's mobile advertising products. Facebook could have complied with the FTC Order, in 2012, by: (1) not hiding the "Apps Others Use" privacy page; (2) turning the default setting to "off"; and (3) by passing privacy information along with the data it sent through its APIs, an issue reported by Facebook employees for many years and which management willfully and deliberately decided not to fix in violation of the FTC Order. Instead, Facebook expanded the very violations at the center of the FTC's complaint leading up to the FTC Order for the purpose of improperly oligopolizing for itself and other large Developers various attractive software markets.

117. Thus, the true purposes of restricting Graph API, in 2015, were to distract from Facebook's previous four years of willful privacy violations, by casting itself as an unwitting victim along with users of wrongful Developers, and to provide cover for the last step in its extortion scheme: shutting down the apps of Developers who had either not agreed to its extortionary demands or who, like Styleform, had not even been given the "opportunity" to pay Facebook off for the continued access to data that they had been promised. As a result of these actions, users now have less control over this data. They are not permitted to share it with other applications they trust, but only with Facebook and a small group of Developers that pay Facebook large sums of money in unrelated advertising purchases or other financial consideration of strategic value to Facebook.

118. Not only does this situation violate the FTC Order, it is in violation of the General Data Protection Regulations of the European Union. And, if Facebook is not enjoined from this conduct, it will constitute a violation of a privacy law enacted in the summer of 2018 by the State of California which takes effect in 2020.

VIII. INSTEAD OF FIXING THE FLAWED DESIGN, ZUCKERBERG IMPLEMENTS AN EXTORTION SCHEME THAT WEAPONIZES USER DATA TRANSMITTED IN OVER 50 PUBLIC APIS, SHUTTING DOWN TARGETED COMPANIES UNLESS THEY MAKE MINIMUM PURCHASES IN FACEBOOK'S NEW MOBILE ADVERTISING PRODUCT

119. Beginning in 2011, Zuckerberg held discussions and meetings with Cox, Olivan, and Lessin (in addition to other Facebook executives like Sheryl Sandberg, Daniel Rose, Andrew Bosworth, and Colin Stretch) to determine how to build a business model for mobile phones. At the time, Facebook generated no revenues from mobile phones, but people were increasingly using them instead of their desktop computers. Facebook's user engagement and advertising revenue began to plummet by the middle of 2012 as a result of this transition to mobile phones.

120. By the middle of 2012, Zuckerberg asked his executives to prepare multiple strategies with corresponding financial models regarding how to leverage Facebook Platform, the Developer ecosystem, and user data to transition Facebook's business model to mobile phones. Sandberg, Lessin, Rose, Cox, Olivan, Purdy and others collaborated on this strategy and modeling effort, which included: charging Developers for access to APIs with a public price (Twitter's model); taking a revenue share from Developers' sales (Apple and Google's models); and a model that would formalize the Reciprocity Policy Zuckerberg had been testing informally with certain companies since 2011.

121. Zuckerberg, Sandberg, Cox, Lessin and others presented these various options to the Board of Directors in August 2012, at which time it was already clear to them that the fair and neutral mobile platform models of Twitter, Apple and Google would not accelerate revenues quickly enough to save Facebook's advertising business from experiencing significant long-term damage. By the fall of 2012, Zuckerberg had chosen the option of implementing the Reciprocity Policy formally, and this decision was communicated to the top Platform executive, Vernal, who

was tasked with implementing the Reciprocity Policy, as the new guiding principle of Facebook Platform.

122. The Reciprocity Policy required the Platform team to rank companies based on their level of competitiveness with Facebook's actual or potential future products. In 2012, any large companies Facebook considered competitors that built messaging apps, photo apps, and video apps were shut down from Graph API endpoints and in certain cases prevented from purchasing advertising on Facebook under the guise of the Reciprocity Policy, notwithstanding they never violated any actual policy, law or user privacy expectation.

123. In late 2012, Zuckerberg directed Defendants to begin testing the formal Reciprocity Policy with a handful of large Developers outside the messaging, photo and video app market. Instead of shutting these Developers down, Defendants told them they would be shut down in the future from Graph API endpoints *unless* they shared all their data back to Facebook and/or purchased each year a specified minimum amount of Facebook's new mobile advertising product, Mobile App Install Ads These Developers balked at the suggestion that they could be extorted to provide these demanded benefits to Facebook or be shut down from APIs that Facebook represented were available on fair, neutral and equal terms to all. Consequently, Zuckerberg directed Justin Osofsky to publicly announce the Reciprocity Policy, which occurred in a blog post on Facebook.com on January 25, 2013. Zuckerberg now had a published policy he could use as an excuse to shut down these Developers unless they purchased his Mobile App Install Ads and/or gave Facebook all their data.

124. However, the public Reciprocity Policy differed substantially in a number of material respects from Facebook's internal definition. The public Reciprocity Policy stated only that Developers that replicated core functionality, such as social network sites like LinkedIn or MySpace, could be shut out from Facebook Platform. It explicitly told all other Developers to "keep doing what they're doing" and made no mention of the fact that Zuckerberg had decided to privatize under threat of extortion more than 50 APIs representing the most widely used endpoints in Facebook Platform (see https://web.archive.org/web/2013 0125212302/https:// developers.facebook.com/blog/post/2013/01/25/clarifying-our-platform-policies/ and

https://web.archive.org/web/20130216042126/https://developers.facebook.com/policy/). Vernal had in fact planned to announce the API restrictions but Zuckerberg explicitly prevented him from doing so in order to induce further reliance and gain additional extortion leverage over Developers from 2013 through 2015.

125. From 2012 on, Defendants actively concealed material facts, made only misleading partial disclosures, and made materially false statements regarding the decisions Zuckerberg had in fact made in late 2012 concerning the Reciprocity Policy. Defendants began enforcing all aspects of Zuckerberg's decision, despite Facebook having only announced certain aspects of the decision while misleadingly withholding others. Defendants' conduct in this regard was undertaken in concert with certain large Developers who would benefit from such changes.

126. Zuckerberg sought the guidance and active assistance of the other individual Defendants to execute key components of the extortion scheme. Zuckerberg tasked Vernal with implementing an engineering plan to remove API access to tens of thousands of potentially competitive applications and to manage a whitelisting and blacklisting software system that automated this capability.

127. Zuckerberg tasked Lessin, Cox and Olivan with engaging other departments at Facebook around executing this plan to show which categories of applications were competitive with Facebook's current or future products in an effort to expand the extent to which Facebook could consider a broad range of applications to be directly competitive with Facebook and Facebook's close partners.

128. In the spring of 2013, Zuckerberg and Lessin tasked Archibong and others to oversee audits by Facebook employees Simon Cross, Jackie Chang and Konstantinos Papamiltiadis, among others, that identified over 40,000 Developers and ranked them based on the type of app they built and their level of competitiveness to Facebook. Defendants instructed Archibong and others to expand the definition of a competitive app to go far beyond social networks, as publicly represented, and far beyond messaging, video and photo applications, which Facebook had been shutting down in 2012. Defendants now instructed their subordinates that virtually every kind of consumer software application would be considered competitive

(except games and dating apps). App categories that Facebook now considered competitive and subject to the arbitrary and malicious Reciprocity Policy included sharing economy apps, lifestyle apps, birthday apps, contact management apps, utility apps, any apps where the user had a profile or a reputation score or ranking, and a wide range of others.

129. Based upon Defendants' preferences, Facebook employees: (1) shut down some Developers right away without notice; (2) notified other Developers that unless they agreed to be extorted and purchase a minimum amount of Mobile App Install Ads or provide other exorbitant consideration, they would in fact be shut down in the future; or (3) continued to induce still other Developers to rely on Graph API endpoints Zuckerberg had decided in late 2012 would be shut down after the extortion scheme had run its course. Many of the Developers in this third category entered into whitelist agreements with Facebook that enabled Facebook to extract more revenues from them in early and mid-2015 because they had built up even more reliance upon Facebook Platform in the intervening two years.

130. In all, by 2014 and 2015 over 5,000 Developers had entered into whitelist agreements with Facebook in order to benefit from the dramatic restriction of the consumer software industry that occurred when Facebook shut down all the popular Graph API endpoints on April 30, 2015, making it impossible for more than 35,000 other Developers to compete with the 5,000 who had been extorted to enter into agreements with Facebook.

IX. FROM 2012 ON, DEFENDANTS ENGAGE IN AN ACTIVE CONCEALMENT CAMPAIGN TO INDUCE FURTHER RELIANCE ON THESE 50 APIS IN ORDER TO GAIN MORE EXTORTION LEVERAGE

131. From late 2012 on, Defendants required that Facebook employees actively conceal the extortion scheme even from other Facebook employees and especially from Developers and the public. Defendants made various layers of management aware of this decision on a need-to-know basis periodically from late 2012 until late 2013 and, at all times, required such employees to actively conceal and/or make only misleading partial disclosures of these material facts. At times, Defendants required secrecy upon the threat of being fired.

132. During this time, Facebook sent many dozens of communications directly to

Styleform and hundreds of public communications intended for Developers that informed Styleform of certain material changes to Facebook Platform, many of which enticed Styleform to continue to rely on Facebook Platform.

133. Not until April 30, 2015, at the earliest, did any such communication indicate clearly that Facebook was eliminating access to APIs critical to the functioning of Styleform's business, notwithstanding Zuckerberg had secretly made a final decision to shut these APIs down in the fall of 2012. This concealment period between the fall of 2012 and April 2015 was the period in which Zuckerberg executed the most devastating extortion scheme in the history of the software industry, a scheme which is directly responsible for Facebook's ascendance as one of the most valuable companies in the world today.

134. From 2012 to 2015, Facebook held numerous meetups, conferences, hackathons, and the like in which Facebook employees trained developers like Styleform to access APIs that Defendants had already decided to restrict as part of their extortion scheme. Defendants directly and by way of their subordinates encouraged and enticed Developers to invest time, money, and resources in applications Defendants knew would not function in the near future based on decisions Zuckerberg had already made.

135. Facebook made many of these events and training sessions available online for Developers like Styleform who could not attend in person. Styleform relied on these training sessions and other statements in deciding and continuing to maintain and invest in its technology. Facebook continued to make the same representations around the benefits of Facebook Platform that it had made since 2007 and acted maliciously, intentionally, and recklessly in continuing to make such statements. Further, from 2012 throughout 2014, Facebook issued numerous official statements and announcements that touted the success of Developers on Facebook Platform and further encouraged Developers to invest resources to build applications around APIs Zuckerberg had already decided to stop providing on fair, equal and neutral terms.

136. By way of example, on June 20, 2012, Cox gave a keynote speech at a conference in which he touted the success of a company that accessed friend data when stating: "And on Ticketmaster, rather than trying to remember exactly which night your friends were going to the

concert…people can see that right there [on Ticketmaster] and then post back that they're going, which incidentally on average creates six extra dollars of spend on Ticketmaster." (https://www.youtube.com/watch?v=R2kkaDMAJmA). Such statements by Cox were deliberately misleading, reckless and/or negligent in enticing Developers to build similar applications to achieve the kinds of benefits Cox attributed to Ticketmaster, since Cox was in discussions with the Defendants to restrict this data. Cox's June 20, 2012 speech disclosed that Ticketmaster dramatically increased revenues by incorporating friend data, disclosing that friend data was valuable to businesses, and yet Cox made no mention that Facebook was removing the full friends list and friend data would only apply to existing app users, making it impossible for new Developers to build applications that compete with incumbents. This misleading partial representation inducing developers to use friend data would have been materially qualified by the fact that Cox already knew that friend data would be severely restricted.

137. By way of a further example, on October 20, 2012, Zuckerberg gave a speech in which he stated that Facebook had "over 300 or 400 million photos shared per day now, which is pretty crazy," and implied that photo sharing was a huge monetization opportunity on Facebook. Zuckerberg omitted any mention that he had already decided to restrict this data from certain Developers. (https://www.youtube.com/watch?v=5bJi7k-y1Lo). Further, on January 15, 2013, Zuckerberg described searching for photos extensively and noted that Facebook had over 240 billion photos, the largest online repository, conveniently omitting that access to such photos would be restricted when enticing listeners around the opportunity of Facebook's photo platform. (https://www.youtube.com/watch?v=c-E3cfPHjeY). Zuckerberg's October 20, 2012 speech disclosed that Facebook maintained the largest and highest quality photos database on the Internet, implying that this data was extremely valuable to developers, and yet Zuckerberg withheld that he had already decided to dramatically restrict access to this photos database and had already begun arbitrarily restricting access to this photos database. This partial representation inducing developers to build businesses using Facebook's photos database would have been materially qualified by the fact that Zuckerberg already knew (since he made the decision) that this database was going to be severely restricted.

138. By way of example, on February 28, 2013, Facebook published a training video on its official Facebook Developer YouTube Channel (https://www.youtube.com/user/FacebookDevelopers/about), which has over 80,000 subscribers and 9.8 million views. The training session, "Getting started with Facebook SDK for iOS," was hosted by Facebook Employee Eddie O'Neil. O'Neil teaches Developers how to build applications that access friend data by building one with the Developers in the audience. He shows how to make a request to "get back photo albums for five friends" and then towards the end shows the finished application, stating: "Here are all my friends…As I scroll here, you see that we haven't brought all the friend pictures in yet, but as we bring them in we'll stick them in that cache and hold on to them…when we come back to display this it's instantaneous," meaning that the App can show all the friends' photos in a single request to make it very easy for Developers to use this data in their applications (https://www.youtube.com/watch?v= t5lFzjDCYM4). Eddie O'Neil's February 28, 2013 training session teaching developers how to build applications using the full friends list was a partial disclosure of the availability of the full friends list that clearly was intended to induce developers to spend time and money using the full friends list. This partial representation inducing developers to build businesses using the full friends list would have been materially qualified by the fact that O'Neil was informed in late 2012 (and therefore already knew) that this database was going to be severely restricted. O'Neil's false statements and misleading partial disclosures were made at the direction of the Defendants. In fact, Zuckerberg had already decided to restrict access to friend data many months prior, and Mr. O'Neil was aware of this fact at the time he held this training session. As a result, Mr. O'Neil must have known at the time of this training session that he was teaching and encouraging Developers to invest capital and resources in building applications that would soon no longer function. The Defendants instructed Mr. O'Neil directly or via their subordinates to actively conceal this information from Developers. Styleform reasonably relied on many training videos like this one when making decisions to continue investment in Facebook Platform.

139. By way of example, on February 28, 2013, Facebook published another training video on its official Facebook Developer YouTube Channel. This training video was hosted by

Facebook employee Simon Cross from the "World Hack Moscow" event. Cross tells Developers that Facebook Platform is not about building apps within Facebook.com but rather integrating Facebook data "into your app on every platform…We're gonna spend time using our SDKs and APIs and integrating with Facebook at a code level." Cross then walks Developers step by step through the process of accessing photos ("Now we can go in and get their picture"). (https://www.youtube.com/watch?v=heTPmGb6jdc) (https://www.facebooksappeconomy.com/fullstory, around 11:00). Simon Cross' February 28, 2013 training session teaching developers how to access a user's friends' photos and profile pictures was a partial disclosure of the availability of a user's friends' photos and profile pictures that clearly was intended to induce developers to spend time and money using friends' photos in their applications. This partial representation inducing developers to build businesses using friends' photos would have been materially qualified by the fact that Cross knew or should have known that this database was going to be severely restricted, as his superiors decided to restrict it and began enforcing restrictions of it at least by 2012. Cross' false statements and misleading partial disclosures were made at the direction of the Defendants. In fact, Zuckerberg had already decided to restrict access to friend APIs many months prior, and Mr. Cross was aware of this fact at the time he held this training session. As a result, Mr. Cross must have known at the time of this training session that he was teaching and encouraging Developers to invest capital and resources in building applications that would soon no longer function. The Defendants instructed Mr. Cross directly or via their subordinates to actively conceal this information from Developers. Styleform reasonably relied on this training video and others like it when making decisions to continue investment in Facebook Platform.

140. By way of example, on June 20, 2013, Facebook published another training video hosted by Cross on its official Facebook Developer YouTube Channel, "Getting Started with Graph API". The video included instructions stating that its purpose was to serve as "An introduction to Facebook's Graph API which is the primary way to programmatically integrate with Facebook – publishing Open Graph stories, reading data about the current user – their details, their likes and interests and friends." The video documentation further states that it will

show Developers "how to build up deep graph queries which dive several layers deep into the Graph." The instructions also reference Developer documentation that continued to show Developers how to access data that the Defendants had already decided to restrict at: https://developers.facebook.com/docs/graph-api/overview. In the video, Cross walks Developers from start to finish through the process of requesting friend data permissions, enticing Developers with statements like the following: "Graph API Explorer makes it really easy to get started…Places, Pages, Photos, Events and Newsfeed stories as well as Users are all considered objects in the graph…. We can go deeper and deeper into the graph. We can also request the picture connection on each returned User object. This would allow me to show the profile picture of each of my friends and to get all of this data in a single request" (https://www.youtube.com/watch?v= WteK95AppF4). Developers watched this video 238,665 times as of March 7, 2017. Cross' June 20, 2013 training session teaching developers how to access a user's friends' photos and profile pictures was a partial disclosure of the availability of a user's friends' photos and profile pictures that clearly was intended to induce developers to spend time and money using friends' photos in their applications. This partial representation inducing developers to build businesses using friends' photos would have been materially qualified by the fact that Cross had already been informed by his superiors that the data he was inducing these developers to build businesses around was going to be severely restricted. Cross' false statements and misleading partial disclosures were made at the direction of the Defendants. In fact, Zuckerberg had already decided to restrict access to friend data many months prior to the video's creation in June of 2013; and Mr. Cross was aware of this fact at the time he held this training session. As a result, Mr. Cross must have known at the time of this training session that he was teaching and encouraging Developers to invest capital and resources in building applications that would soon no longer function. Mr. Cross actively concealed and omitted material facts around restrictions on this data that Facebook already decided upon around one year prior. The Defendants instructed Mr. Cross directly or via their subordinates to actively conceal this information from Developers. Styleform reasonably relied on this training video and others like it when making decisions to continue investment in Facebook Platform.

141. By way of example, on June 26, 2013, Facebook published a "Facebook Platform Case Study – Fab.com" on its official Facebook Developer YouTube Channel. Facebook and its partner Fab.com, an e-commerce app, touted the benefits of building on Facebook's social operating system. A Fab.com employee stated that with Graph API they can "take everything they have in the catalog and narrowly target to a customer" to "see a product on Facebook and then share with their friends." Facebook enticed Developers to access social data in this video but conveniently omitted all reference to the fact that the Defendants had decided many, many months ago to cease providing this data on fair and neutral terms. (https://www.youtube.com/watch?v=fEvq5BshZLo).

142. By way of another example, on September 18, 2013, Zuckerberg gave a speech during one of Facebook's Developer Days to over 600 attendees from 17 countries. Facebook published the speech on its official Facebook Developer YouTube Channel. Zuckerberg states: "A lot of people think about Facebook Platform as a way to get distribution for apps that you've built. But we want to help you do even more than that. We want to make it simple to build great apps that have identity, friends and all the stuff that you want built in really easily." (https://www.youtube.com/watch?v=rnnjQpyCJec). Zuckerberg's September 18, 2013 speech in which he stated that Facebook wants to "make it simple to build great apps that have identity, friends and all the stuff that you want built in really easily" was a partial disclosure of the availability of friend data and the other valuable Graph API data that clearly was intended to induce developers to spend time and money building their products and businesses around Facebook's friends data and other valuable Graph API data. This partial representation inducing developers to build these businesses using this data would have been materially qualified by the fact that Zuckerberg had decided more than a year prior to severely restrict the data he was inducing developers to use to build their businesses.

143. In fact, Zuckerberg had decided approximately a year earlier to restrict access to friend data, identity data and "all the stuff that [Developers] want[ed] built in." Zuckerberg intentionally, recklessly and/or negligently made this statement and many others like it during this period of time to induce Developers, including Styleform, to build applications that benefited

Facebook with full knowledge that Developers' investments in these applications would be irreparably damaged. Zuckerberg actively concealed his decision, made statements that plainly contradicted his decision, and omitted material information regarding his decision. Styleform reasonably relied on Zuckerberg's intentional, reckless and/or negligent false statements and had no other means of identifying this material information that the Defendants had been actively concealing from Styleform.

144. During this time from 2012 throughout 2014, Facebook made many other policy updates and announcements to keep Developers informed of material information, including announcements on its website and in videos, such as the "Facebook Policy Update" by Facebook employee Alison Hendrix published on Facebook's official YouTube Channel on August 27, 2013. (https://www.youtube.com/watch?v=NRziLMgbbOk).

145. Even as late as September 2014, Facebook continued to actively conceal material facts related to its photo sharing applications, as evinced in a video published on its official Facebook YouTube Channel, "Facebook Products for Photo apps," which makes no mention of the dramatic restrictions on friend data and photos data that the Defendants had secretly decided to implement more than two years prior (https://www.youtube.com/watch? v=R8M4oz1uA3o).

X. FROM 2012 TO 2015, FACEBOOK ENGAGES IN NUMEROUS PROJECTS THAT WILLFULLY VIOLATE USER PRIVACY TO ENHANCE THE EFFICACY OF ITS ANTI-COMPETITIVE EXTORTION SCHEME

146. While Lessin, Vernal, Purdy and Zuckerberg were overseeing competitive audits of more than 40,000 apps, Olivan oversaw various related projects that illegally monitored competitive Developers through means that repeatedly violated consumer privacy.

147. By way of example, as disclosed in an August 2017 Wall Street Journal article (https://www.wsj.com/articles/facebooks-onavo-gives-social-media-firm-inside-peek-at-rivals-users-1502622003), Facebook had a project to collect certain data from consumers who had downloaded the Onavo app, a virtual private network app downloaded by approximately 30 million people, which Facebook purchased in October 2013. Olivan directly oversaw this project to monitor the apps 30 million people opened and downloaded on their phones.

148. Facebook failed to disclose that it was accessing Onavo data from prior to the Onavo acquisition and further that it used Onavo data to measure what people do on their phones beyond Facebook's own suite of apps, including detailed information on things such as which apps people generally are using, how frequently, for how long, and whether more women than men use an app in a specific country. Facebook failed to disclose that it used this data for competitive intelligence of numerous apps.

149. Facebook's decision to purchase a large competitive application (WhatsApp) was heavily influenced by Olivan's ability to obtain this non-public information from Onavo. At all times, the employees involved in this project, including Olivan, were acting under the direction and approval of Zuckerberg. Had Facebook fully disclosed this deceptive practice publicly to users and Developers when it made public disclosures regarding its purchase of Onavo and its update to Onavo's Terms of Service, then Styleform would not have invested in or continued to invest in building its applications and business on Facebook Platform.

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

151. Further, Facebook deliberately ignored the privacy settings of a Facebook user's friend list in order to improve a certain prominent feature in the Facebook app and website. Facebook made partial public disclosures of this practice while withholding material facts that, if disclosed, would have materially qualified Facebook's public statement (see, e.g., https://gizmodo.com/facebook-figured-out-my-family-secrets-and-it-wont-tel-1797696163). At all times, the employees involved in this project were acting under the direction and approval of Zuckerberg, Cox, Lessin and Olivan. Had Facebook made a full public disclosure regarding whether it respected user privacy settings for *all* Facebook features, then Styleform would not have invested in or continued to invest in building its applications and business on Facebook Platform.

152. Further, Facebook implemented a project to turn on the Bluetooth setting in the background in order to locate users. Facebook made misleading partial disclosures regarding how and when it would turn on the Bluetooth feature and collect and store this data. Facebook did not fully disclose how this information would be used by Facebook. At all times, the employees involved in this project were acting under the direction and approval of Zuckerberg, Cox, Lessin and Olivan.

153. Further, in 2013 and 2014 Facebook deliberately implemented code to have a user's privacy setting lapse after a period of time, requiring the user to go through additional effort in order to have the user's privacy settings respected. Facebook made misleading partial disclosures around this time regarding privacy settings, but did not fully disclose that it had caused certain settings to lapse after a period of time. At all times, the employees involved in this project were acting under the direction and approval of Zuckerberg, Cox, Lessin and Olivan. Had Facebook fully disclosed its handling of this and related privacy issues, Styleform would not have invested in or continued to invest in its applications and business on Facebook Platform.

154. From 2007 through at least 2015, Facebook willfully, intentionally, recklessly, maliciously and negligently failed to pass privacy or age information when sending Developers Graph API data. This required Developers, including Styleform, to incur enormous costs in order to comply with user privacy settings and age restrictions. Facebook made repeated public

disclosures that withheld this fact. At all times, the employees involved in this project were acting under the direction and approval of Zuckerberg and Vernal. Had Facebook fully disclosed that it did not respect user privacy settings or age requirements when accessing information through third party apps, Styleform would not have invested in or continued to invest in its applications and business on Facebook Platform.

155. At least by 2013 and continuing at least through 2015, Facebook continued to explore and implement ways to track users' location, to track and read their texts, to access and record their microphones on their phones, to track and monitor their usage of competitive apps on their phones, and to track and monitor their calls. For example, Facebook expanded its program to access and monitor the microphone on Android phones in 2015 without securing the explicit consent of all users and while only providing misleading partial disclosures as to what information was being obtained and for what purposes it was being used (see, e.g., https://www.facebook.com/help/community/question/?id=974781930088 and https://www.cnbc.com/2017/10/30/facebook-denies-listening-to-user-conversations-via-microphones.html). As another example, Facebook has not fully disclosed the manner in which it preprocesses photos on the iOS camera roll, meaning if a user has any Facebook app installed on their iPhone, then Facebook accesses and analyzes (using facial and other image recognition) the photos the user takes and/or stores on the iPhone (see, e.g., https://www.facebook.com/help/community/question/?id=10209909027988265). Facebook's misleading partial disclosures regarding iPhone photo access and what information it gleans from the photos have been woefully deficient. At all times, the employees involved in this project were acting under the direction and approval of Zuckerberg, Cox, Lessin and Olivan.

156. All of these willful violations of consumer privacy were undertaken in order to give Facebook an advantage over competitors, including many thousands of Developers on Facebook Platform, either by illegally monitoring their growth or by enabling Facebook's own applications to perform tasks or release features that were impossible for law-abiding Developers to replicate.

XI. IN 2013 AND 2014, DEFENDANTS FABRICATE A FRAUDULENT PRO-PRIVACY NARRATIVE, WHICH THEY INTERNALLY NAME THE "SWITCHAROO PLAN," TO COVER UP THE EXTORTION SCHEME

157. Whenever the media reported that a Developer was shut out of Facebook Platform from 2013 to 2015, Facebook's public relations department would state the Developer violated the Reciprocity Policy and that Facebook could not comment further on specific enforcement decisions. This evasive approach provided sufficient cover long enough for the extortion scheme to transition Facebook's advertising business to mobile phones, but it could not last forever. Zuckerberg's scheme was wreaking havoc within Facebook, with employees who had become aware of the scheme decrying its immoral and unethical character and leaving the company in droves as a result. After all, Zuckerberg had required the Platform team, the department at Facebook that is supposed to be a fair and neutral policeman, to secretly treat as private over 50 APIs that the company continued to represent as publicly and freely available for more than two years.

158. Thus, Zuckerberg needed a way out of the predicament his extortion scheme had created. Remarkably, he found it in the violations of user privacy that his own firehose Platform design had created. Because the decision to shut down Developers for anti-competitive reasons coincided with reports in the media of rampant privacy violations (and because Developers were often the face of these privacy violations, since users learned of them inside the Developers' apps), Zuckerberg was able to tie these two media narratives together by arguing that the privacy violations were the result of various bad actor Developers. Remarkably, Zuckerberg's own privacy violations gave him a pro-privacy cover to tie up the loose ends of his extortion scheme with one of the most devastating anti-competitive acts in the history of the software industry: Graph API 2.0, which was announced on April 30, 2014 and took effect one year later on April 30, 2015, and which shut down more than 35,000 small-to-medium businesses under a pro-privacy justification that played no role whatsoever in Facebook's internal decision-making.

159. In mid-2013, Zuckerberg, Vernal and Facebook Director of Engineering Doug Purdy, aggressively sought to make Sukhar the front man, externally, for this pro-privacy narrative that was eventually peddled to the public on April 30, 2014, through the announcement

of "The New Facebook Login and Graph API 2.0." (Facebook Login is a tool that lets users login to other Developers' apps or websites using their Facebook user name and password.) This is because Sukhar was widely respected in the Developer community and would more likely be viewed as having genuine good faith intentions. Sukhar resisted being placed in this position until late 2013 because he knew the conduct was wrongful and malicious. However, in late 2013, Sukhar conceded and from that time on actively ratified, acquiesced in, and advanced key components necessary to the cover up and final execution of the extortion scheme from late 2013 through 2015.

160. From late 2013 through early 2014, Zuckerberg, Sukhar, Vernal, Purdy and others constructed a fraudulent narrative around 'user trust' designed to mask the true reasons Zuckerberg was shutting down the same 50 Graph API endpoints he had begun extorting Developers with in late 2012. The core strategy behind the fraudulent narrative was to conceal the 50 APIs being restricted behind the announcement of Facebook's new Login product, which was easier to provide a pro-privacy narrative around.

161. The new version of the login product, starting in April 2014 required Developers to ask permission to use certain Graph API endpoints *before* they release their apps, whereas previously once a Developer had agreed to Facebook's terms, it did not require any additional manual approval process to access certain APIs. The public rationale for this change was that it enabled Facebook to create another layer of privacy protection to ensure no bad actors accessed user data they did not need or were not supposed to access in violation of consumer privacy. In fact, the internal rationale for this change was to give Facebook the option to stymie a competitor before it grew large enough to be competitive with Facebook. Facebook did not always want to take this option, but it always wanted to have it.

162. Nonetheless, it was very easy to position this change to Facebook Login as pro-privacy, since Facebook could say that it wanted another layer of policing in light of the rampant privacy issues that had been reported (which, unbeknownst to the public, were in fact Facebook's own doing caused by its shirking the FTC Order while simultaneously, and intentionally, failing to pass privacy settings in its APIs). The fact that over 50 APIs had been shut down with Graph

API 2.0 was not even mentioned in the public announcement or in Zuckerberg's speech at F8 on April 30, 2014.

163. Instead, Facebook noted in its public announcement only that some "rarely used" APIs would be shut down. This statement was false, and Defendants knew it to be false at the time they made it. In fact, the endpoints shut down on April 30, 2015 (the very same ones Zuckerberg secretly restricted in October and November 2012) were the most widely used APIs in Facebook Platform.

164. Many of the endpoints Developers were required to request in Login Review were never granted to any Developers. For instance, the Newsfeed APIs were subject to Login Review, and Facebook granted access to the Newsfeed APIs zero times over a period of more than a year. Thus, Login Review was simply another mechanism to enforce these anti-competitive API restrictions in a way that would cover up the extortion scheme. Facebook continues this practice and continues to harm Styleform to this day with this latest Login Review update requiring the apps to make significant changes by August 1, 2018.

165. Facebook hired a public relations firm in 2014 and 2015 to the tune of almost $50,000 a month just to disseminate this fraudulent pro-privacy narrative that concealed the extortion scheme behind the new Facebook Login product. Defendants referred to the scheme as the "Switcharoo Plan" because it concealed the API restrictions behind the Login announcement while pulling the "switch" on Developers after more than two years of extorting them. Sukhar began testing the fraudulent narrative internally with Facebook employees in early 2014. Defendants then tested it with close partners shortly before the public announcement, emphasizing messaging centered on 'user trust' and 'user control'.

166. Zuckerberg personally decided to make user trust and control a theme at F8 and use those themes as pretenses for notifying Developers that their access to data would be removed. Zuckerberg personally decided to mask the true implications of his decision to restrict data access in his announcement and to suppress material information that made it impossible for Styleform and other Developers to understand the impact to their applications based on Zuckerberg's convoluted and contradictory announcement on April 30, 2014. Sukhar, Vernal and

others worked directly with Zuckerberg to suppress this material information in the announcement and to disseminate this fabricated narrative around user trust.

167. Zuckerberg tasked Sukhar and Vernal, among others, with propagating this fraudulent narrative internally to Facebook employees and externally to Developers and the public. Sukhar, Vernal and the other Defendants actively participated and conspired in the propagation of this fraudulent narrative.

168. Issues like user trust, user control, privacy and the rare use of certain Graph API data – all of which Zuckerberg and other Facebook employees stated publicly as reasons for restricting data access and breaking tens of thousands of applications – were not, in fact, the actual reasons for restricting data access at the time Zuckerberg made, and the Defendants participated in, the decision. Removing potential competitive threats and leveraging Platform to build Facebook's mobile advertising business were the primary or exclusive reasons for closing the Open Graph. Further, decisions were not made unilaterally but in combination and concert with other large Developers and exceptions were made for certain applications that are more susceptible to violating user trust or where user trust is in fact more important than in normal applications, such as applications that require payments. These exceptions demonstrate that user trust could not have been the actual reason for Facebook's decision to restrict Graph API data.

169. Zuckerberg and the Defendants directed their public relations team to feed reporters false information and in certain cases drafted reporters' stories themselves in order to disseminate this fabricated narrative among the public and Developer community.

170. In his announcement at F8 on April 30, 2014, Zuckerberg continued to conceal material facts, misleadingly reveal only partial information, and deliberately mislead Developers and the public. Zuckerberg announced during his keynote: "This is gonna be a different kind of F8. In the past we've had F8 when we've had a big product announcement or new direction we were going in. This always meant a lot of different changes for your apps. Now we're focused on building a stable mobile platform. You're trying to build great mobile apps and businesses. And we want to bring this community together once per year to talk about all the different things were doing to support you. We've heard from you that you want to use Facebook Platform to do 3

things. Help you build, grow and monetize your apps."

171. Thus, Zuckerberg reiterated the representation that Facebook had expressed to Developers, including Styleform, unequivocally for over seven years now: that Facebook is committed over the long-term to helping them build, grow and monetize their apps.

172. Zuckerberg continued: "As I said we're really focused on building a stable mobile platform. And one thing you may not know, is that all of our mobile apps are built on top of the very same platform and APIs that you guys use when you're writing Facebook and all our engineers use the same tools and read all the same documentation that you do…. It's really important for you and for all of our teams internally that we build stable and efficient infrastructure ***that you can rely on for the long term***. So this has been a really big focus for us…. I want to start today by going through a few things we're doing to make our platform even more stable and reliable for you to build, grow and monetize your apps. ***You want to be able to build something and know that it's gonna be able to work for a while***. So today for the first time we're introducing a 2-year stability guarantee for all of our core API platforms…so even if we change these core APIs in the future, we're guaranteeing that we're going to keep supporting them as is for at least two years and maybe longer from the time we make that change. We're still gonna experiment with new features and different things but we're gonna mark them as beta so you know what's gonna be part of this core stable platform. We're also introducing API versioning. This is something we want to make sure that all the apps we wrote two years ago keep working. This is something we wanted internally as we build on this platform, so now everything is gonna be versioned so you get to decide which version of the API you get to build against."

173. Accordingly, Zuckerberg made at least four representations of fact: (1) Facebook continued to provide a level playing field to Developers, including the ability to use the same tools as Facebook employees to develop their applications; (2) Facebook continued to be committed to providing developer access "that you can rely on for the long term"; (3) Facebook promised that for all of its Core API endpoints it would guarantee their stability for at least two years going forward; (4) Facebook promised that it would let Developers choose which version of the API they would like to access as it introduces API versioning ("This is something we want to

make sure that all the apps we wrote two years ago keep working. This is something we wanted internally as we build on this platform, so now everything is gonna be versioned *so you get to decide* which version of the API you get to build against.").

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

175. Zuckerberg's announcement contradicted active plans Facebook had been implementing for almost two years at Zuckerberg's personal direction. At no time in his announcement did Zuckerberg mention that all of the Graph API endpoints would be removed, notwithstanding that he had made the decision to do so two years prior and had personally overseen efforts by dozens of Facebook employees to implement the anti-competitive data restrictions.

176. Zuckerberg's statement that Developers would be able to choose which API to use, like Facebook employees, was simply false; and Zuckerberg knew this statement to be false at the time he made it. The Defendants had instructed their subordinates to implement a Core versus Extended API distinction and to version Graph API precisely to hide both the type of data they intended to restrict while also masking the true anti-competitive motivations for restricting it.

177. Zuckerberg's statement of a two-year stability guarantee was also false; and Zuckerberg knew it to be false at the time he made it. Zuckerberg and the Defendants had already decided that the social data in the Social Graph would only remain available for one year, not

two. In other words, the 2-year stability guarantee turned out not to apply to the original Graph API and only to future APIs, a critical fact that Zuckerberg omitted in his announcement. Thus, Facebook pulled the rug out from under the Developer community and took full economic advantage of the ecosystem Developers had built, but Zuckerberg's keynote address still generated sound bites consistent with his previous representations that Facebook was maintaining a fair and level playing field for Developers. Zuckerberg was forced to make statements he knew at the time to be false precisely because it was obvious to everyone in the Developer community, especially Zuckerberg, that Facebook had for seven years been making clear and unambiguous promises to Developers that they could rely on Facebook Platform over the long term to provide a fair playing field that offers its data on equal and neutral terms.

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

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

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

180. As a result of this and many other similar statements and actions by Facebook, hundreds of thousands of Developers began using Parse to build applications on Facebook Platform. Parse's platform on Facebook states: "From startups to the Fortune 500, hundreds of thousands of developers trust us."

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

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

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

184. Facebook is currently undertaking another bait-and-switch scheme, this time for the Facebook Messenger Platform. This scheme was designed by Zuckerberg in 2013, and Facebook is currently in the process of baiting developers into helping make Facebook's messaging service the most popular text messaging service in the world. Facebook made a

misleading partial disclosure of its intentions regarding Facebook Messenger Platform, but did not fully disclosure its intentions regarding Facebook Messenger Platform. Had Facebook disclosed this information in 2013 when Zuckerberg decided upon it, then Styleform would not have continued to invest in building their businesses or maintaining their apps because it would have signaled clearly to Styleform that Facebook Platform cannot be relied upon to build a viable business or stable product. This incident further demonstrates that the practice of baiting and switching Developers to build new lines of business for Facebook was not merely incidental or negligent, but is a key part of Zuckerberg's standard playbook when entering new markets. In the spring of 2018, Facebook implemented a similar review process to its Facebook Messenger Platform.

185. Styleform continues to receive updates from Facebook regarding further restrictions on Graph API version 2. For instance, Styleform received such a notice on August 1, 2018 to upgrade to Graph API v2.7, which requires submitting apps to Facebook App Review and requesting permission to access "user_friends," which Facebook defines as the friends of an app user who also have downloaded the App.

186. As a result of Defendants' concealment of their wrongful acts, the continuing nature of those acts, and Styleform's inability to discover them with the exercise of reasonable diligence, Styleform asserts the tolling of any applicable statute of limitations affecting the rights of action of Styleform.

COUNT I: BREACH OF CONTRACT
[Against Facebook, Inc. and Facebook Ireland Limited]

187. Plaintiff re-alleges and repleads the foregoing paragraphs as though set forth fully herein.

188. Plaintiff and Facebook were in a business relationship under the Agreement in which Facebook promised Plaintiff "all rights necessary to use the code, APIs, data, and tools you receive from us." (Section 9.8). Facebook defined "Platform" as "a set of APIs and services (such as content) that enable [Plaintiff] to retrieve data from Facebook or provide data to [Facebook]....By 'content' we mean anything...users post on Facebook.... By 'data' or 'user

data'...we mean any data, including a user's content or information that you or third parties can retrieve from Facebook or provide to Facebook through Platform.... By 'application' we mean any application or website that uses or accesses Platform." In exchange, Plaintiff provided a host of rights to Facebook, including but not limited to a right to analyze and generate advertising revenues from Plaintiff's applications (Section 9.17), place content around Plaintiff's applications (Section 9.16) and issue press releases around Plaintiff's applications (Section 9.12). Further, Plaintiff agreed to undertake a host of obligations under the agreement around which it incurred substantial cost.

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

190. Facebook entered into identical adhesion contracts with all of the Developers on its Platform. This necessarily entailed that Facebook provide a level playing field and guarantee a minimum degree of equal access and opportunity on Facebook Platform to build a stable product and business. However, beginning at least by 2009, Facebook violated this contractual representation and promise by systematically disadvantaging Plaintiffs and other smaller Developers.

191. Further, by April 30, 2015, Facebook failed to provide Plaintiff with the rights necessary to use Facebook's code, APIs, data, and tools in further breach of the agreement and after Plaintiff had incurred substantial cost in meeting all of its performance obligations under the Agreement.

192. Further, at all times after entering into the Agreement, Facebook failed to provide Plaintiff with access to Facebook's code, APIs, data and tools on terms that were equal and neutral relative to the terms provided to all other Developers, in breach of the Agreement.

193. Facebook's decision to willfully, intentionally and negligently mislead Plaintiff and tens of thousands of other Developers, as well as take other actions that frustrated the ability

of Plaintiff and other Developers to gain the benefits of their contracts with Facebook, violated the implied covenant of good faith and fair dealing insofar as Facebook's alleged conduct unfairly interfered with Plaintiff's right to receive the benefits of its agreement with Facebook and further fraudulently induced Plaintiff to enter into the Agreement in the first place.

194. Facebook's decision to willfully, intentionally and negligently mislead Plaintiff and tens of thousands of other Developers and take other actions alleged herein violated Facebook's implied duty to perform with reasonable care.

195. Plaintiff was harmed by Facebook's conduct and Facebook's breach of its agreement with Plaintiff was a substantial factor in Plaintiff's harm. If Facebook had performed and provided Plaintiff rights necessary to access Facebook's APIs, code, data and tools, and had done so on an equal basis with respect to other Developers and to Facebook itself, Plaintiff would not have been harmed.

196. Any limitation of liability provided for in Facebook's agreement with Plaintiff is unenforceable in accordance with California Civil Code § 1668, which declares unlawful contracts exempting persons from the consequences of their own fraud, willful injury or violation of the law, whether willful or negligent.

197. Any limitation of liability provided for in Facebook's agreement with Plaintiff is unenforceable as the limitation of liability clause, as drafted by Facebook, fails to insulate Facebook from liability resulting from Facebook's own negligence or fraud.

198. Any limitation of liability provided for in Facebook's agreement with Plaintiff is unenforceable as Facebook and Plaintiff had dramatically unequal bargaining strength, the agreement was provided on a "take it or leave it" basis and drafted entirely by Facebook, and greatly affects and implicates the public interest as it sets forth the rights of over two billion people and tens of millions of businesses.

199. Plaintiff was injured as a result of Facebook's breach of the agreement in an unascertained amount in excess of $25,000.00, to be established according to proof at trial. Accordingly, Facebook is liable to Plaintiff for damages. Plaintiff's damages as a result of the breach of contract include the loss of its investment and time spent in developing its technology

in reasonable reliance on its agreement with Facebook, the complete loss of its enterprise value, and its lost future profits in an aggregate amount to be ascertained at trial.

200. Facebook's standard adhesion contract provides that Developers and consumers outside the United States and Canada agree that their agreement is with Facebook Ireland Limited, a subsidiary owned 100% by Defendant Facebook, Inc. and controlled entirely by Facebook Inc. and Defendant Mark Zuckerberg such that Defendants maintain a complete unity of interest and ownership over Facebook Ireland Limited. Further, equity demands that a great injustice will result against Styleform if it is prevented from bringing suit against Facebook, Inc., the entity responsible entirely for the damage to Styleform's business. In light of the malicious, wrongful, fraudulent, oppressive and punitive conduct of Defendants, they should not be permitted to hide behind the veil of a subsidiary owned and controlled entirely by them.

201. Accordingly, Facebook is liable to Plaintiff for damages.

COUNT II: CONCEALMENT
[Against Facebook, Inc., Zuckerberg, Cox, Olivan, Lessin, Vernal and Sukhar]

202. Styleform re-alleges and repleads the foregoing paragraphs as though set forth fully herein.

203. From 2007 to at least 2015, Defendants repeatedly made misleading partial disclosures of fact while withholding other material facts that substantially qualified and often directly contradicted the misleading partial disclosures made by Facebook. Plaintiff relied on these misleading partial disclosures of fact, had no ability to discover the material facts being withheld, and if Plaintiff had discovered the material facts being withheld, Plaintiff would not have relied upon Facebook's operating system.

204. These and numerous other misleading partial disclosures that deliberately shared certain facts but withheld other related material facts induced investment by developers, including Plaintiff, notwithstanding Facebook's full knowledge that these investments would be irreparably damaged. These misleading partial disclosures were designed to unjustly enrich the Defendants and were made repeatedly by Facebook and certain of its executives on many occasions from May 2007 until at least April 30, 2015, including on the dates and times alleged herein, and in

particular in speeches by Defendants and official statements posted on Facebook's website.

205. Zuckerberg's decision to close Plaintiff's access to APIs in 2012 was material information that was not disclosed to Plaintiff. Had Facebook disclosed this material information to Plaintiff, Plaintiff would never had made or continued to make investments in building or maintaining its apps. Had Zuckerberg not intentionally misrepresented a host of material facts related to Facebook Platform and related to Zuckerberg's decision to restrict access to the most valuable information in Facebook Platform, Plaintiff would not have continued to invest in its applications and business on Facebook Platform.

206. Defendants further engaged in misleading partial disclosures of fact related to the fraudulent narrative they fabricated to mask the anti-competitive scheme. In early 2014, Zuckerberg directed Sukhar and Vernal to develop a narrative that disclosed that the Graph API endpoints would be completely removed from Facebook Platform. However, this partial disclosure omitted the fact that, although the data was being removed from public view, it was not being removed from Facebook Platform. Instead of being removed, the data was being privatized. Zuckerberg deliberately concealed the fact that the Graph API was being privatized in his April 30, 2014 announcement and instead made only a partial disclosure that the information was being removed. Facebook had already for over a year or more engaged numerous Developers to enter into special whitelist agreements to maintain private access to the data after it was publicly removed. The Developers who were offered special, whitelist access to the privatized Graph API endpoints were ones who either agreed to purchase hundreds of thousands of dollars in unrelated mobile ads or to provide other valuable consideration, such as intellectual property or data, to Facebook. Had Facebook disclosed at any time in 2012, 2013, or 2014 that the Graph API was being privatized in any of its numerous public disclosures regarding Graph API, of which it sent dozens to Plaintiff, then Plaintiff would have not invested in its applications and business on Facebook Platform.

207. Facebook and certain of its executives had a duty to speak truthfully and to disclose material information concerning the closing of access to data arising from Facebook's Agreement with Plaintiff to be Developers on Facebook Platform and Plaintiff's Agreement to

abide by Facebook's policies and procedures, as alleged above. Facebook's public justification that it was implementing the anti-competitive Graph API restrictions in order to protect user privacy and control only partially disclosed Facebook's justifications. Facebook concealed the anti-competitive Graph API restrictions behind a revamp of its Facebook Login product in order to cloak these changes under a narrative about user control and privacy. The narrative that Facebook removed the Graph API endpoints to give users more control is directly belied by the fact that after the changes were implemented, Facebook users could no longer enable their friends to access their information on apps other than Facebook. The control users previously had to enable their friends to access data about them from apps other than Facebook was transferred over to Facebook. This meant that only Facebook (and not Facebook's users) could now decide what data a user's friends could see about them on other apps. Everyone was forced to use Facebook, instead of these other apps, unless all Facebook users decided to re-upload all their digital data to these other apps. Had Facebook not concealed its anti-competitive Graph API restrictions behind the Login product announcement, Plaintiff would not have continued investing in its applications and business on Facebook Platform.

208. Further, Facebook provided full disclosure of these changes to certain Developers throughout 2012, 2013 and 2014 but did not fully disclose the nature of these changes to Plaintiff until at least April 30, 2015. Had Facebook made full disclosure to Plaintiff at the time it made full disclosure to certain other Developers, then Plaintiff would not have invested or continued to invest in its applications and business on Facebook Platform.

209. Further, Facebook's public disclosure that it made these changes out of respect for user privacy is undermined by numerous Facebook projects that deliberately, willfully, intentionally, recklessly and negligently violated privacy by only making misleading partial disclosures to Developers regarding how Facebook collected, stored and transmitted user data. Beginning at least by 2012, Olivan directed a range of projects under the supervision and direction of Zuckerberg, Cox and Lessin that deliberately, intentionally, maliciously, recklessly and negligently violated user privacy in order to effectuate Facebook's anti-competitive scheme of baiting Developers to rely on Facebook Platform only to shut them down in order to restrain

competition in a wide range of software markets. At all times, Olivan was acting under the direction and approval of Zuckerberg, Cox and Lessin, who authorized misleading partial disclosures of Facebook's conduct that would have been undermined had Facebook made a full disclosure of material facts.

210. Plaintiff relied on Facebook's misleading partial disclosures that it respected user privacy, as this was a key consideration in whether it was safe to build a business on Facebook's operating system. Had Facebook made full disclosures regarding any of its deceptive projects violating user privacy, Plaintiff would not have felt comfortable continuing to invest in building its business as Facebook's privacy failures directly impact Plaintiff in two key ways: (1) Facebook's privacy failures make it extremely difficult for Plaintiff to establish trust with its own customers; (2) Facebook's unfair competitive advantage gained by information obtained in violation of user privacy makes it extremely difficult for Plaintiff to compete on a level playing field. In short, Facebook deliberately and repeatedly undermining its public commitment to user privacy caused substantial harm to Plaintiff's customers and created a risk to Plaintiff's business. Had Plaintiff been aware of the full scope of any of these projects, Plaintiff could not have proceeded in good conscience with building its applications and business on Facebook Platform.

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

212. Defendants had a duty to speak truthfully and to disclose material information

concerning: its handling of user data in these various projects; its 2009 internal discussions around its decisions not to provide a level competitive playing field; and its 2011 or 2012 decision regarding the anti-competitive Graph API restrictions. This duty arose, *inter alia*, from Defendants' misleading partial disclosures of fact and misinformation made to Plaintiff and other Developers concerning the manner in which Facebook collects, stores and transmits data, including that Facebook maintained the data with respect for user privacy and transmitted it to developers on fair, equal and neutral terms. Defendants' duty to speak truthfully and to disclose material information concerning its handling of user data and its decision to close access to the Graph API also arose from the fact that Plaintiff and Facebook had shared confidential and highly sensitive information containing consumers' private information.

213. Defendants' duty to speak truthfully and to disclose material information concerning its handling of user data and its decision to close access to the Graph API also arose from the fact that Plaintiff and Facebook had entered into a commercial agreement in which Plaintiff each expended significant funds in order to build businesses using data Facebook sent to Plaintiff and gave Plaintiff all rights to use under the Agreement. This Agreement further required that Plaintiff permit Facebook to audit its highly confidential source code and intellectual property.

214. Defendants' duty to speak truthfully and to disclose material information concerning its handling of user data and its decision to close access to the Graph API also arose from the fact that Defendants made public representations around Facebook's management of user data that induced tens of thousands of Developers to build businesses on Facebook Platform for many years, greatly enriching Defendants all while Facebook was actively implementing plans to irreparably damage these Developers' investments.

215. The concealment of material facts by Defendants fraudulently induced Plaintiff to enter into its Agreement with Facebook, as Plaintiff would not have entered into the Agreement if Defendants had disclosed the material facts. At no time did Plaintiff rescind its Agreement with Facebook. Defendants benefited materially from their fraudulent, malicious and oppressive conduct, including but not limited to financial benefits tied to the growth of Facebook and the

dramatic reversal of its stock price as a result of restraining competition in a wide range of software markets and weaponizing Facebook Platform to force Developers to build Facebook's new mobile advertising business or risk being shut down.

216. Plaintiff invested considerable capital, labor, time, or effort into developing its technologies in reliance on Facebook's misrepresentations and misleading partial disclosures.

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

218. Plaintiff's reliance was foreseeable by Facebook as Zuckerberg has publicly stated Facebook's intent was to induce Developers to help generate revenues for Facebook, and Facebook's conduct for seven years was designed to induce such reliance.

219. Plaintiff was injured as a result of its reliance on Facebook's representations and material omissions, which Facebook knew to be false or acted recklessly in representing as true, in an unascertained amount in excess of $25,000.00, to be established according to proof at trial. In taking the actions alleged herein, Defendants acted with fraud, malice and oppression, and in reckless disregard of the rights of Plaintiff.

220. Accordingly, Defendants are liable to Plaintiff for damages.

COUNT III: INTENTIONAL MISREPRESENTATION

[Against Facebook, Inc., Zuckerberg, Cox, Olivan, Lessin, Vernal and Sukhar]

221. Plaintiff re-alleges and repleads the foregoing paragraphs as though set forth fully herein.

222. Defendants clearly and unambiguously represented to Plaintiff from May 2007 until at least April 30, 2015 that they were maintaining a fair and neutral operating system for Plaintiff to build software applications, including numerous representations of fact in official statements, announcements, documents and meetings as alleged herein.

223. These representations were made repeatedly by Defendants on many occasions

from May 2007 until at least April 30, 2015, including on the dates and times alleged herein, and in particular in speeches by Zuckerberg and other Facebook employees at the direction of Zuckerberg or one of the other Defendants and in official statements posted on Facebook's website.

224. These representations were false and were made with the intention to induce reliance upon them by Plaintiff and other Developers. Such representations were untrue, because Facebook later claimed that it had 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.

225. Defendants knew such representations to be false or made such representations recklessly and without regard for their truth when they made them or directed other Facebook employees to make them.

226. Beginning in 2012, Defendants engaged in conduct and decisions that directly contradicted these representations. Nonetheless, Defendants continued for over two years to make representations they knew to be false or made such representations recklessly and without regard for their truth. Defendants intended for Plaintiff and other Developers to rely on such representations and made such representations either directly to Plaintiff or in public fora with reasonable likelihood that such representations would be obtained by Plaintiff.

227. Defendants had a duty to speak truthfully and to disclose material information regarding their decision to restrict access to data in Facebook Platform arising from Facebook's Agreements with Plaintiff to be a Developer on Facebook Platform and Plaintiff's Agreements to abide by Facebook's policies and procedures, as alleged above.

228. Zuckerberg repeatedly made statements and directed employees to make statements from 2012 on that he knew to be false at the time he made them. Zuckerberg intended for Developers like Plaintiff to rely on such statements in order to induce them to generate revenues for Facebook and to avoid public relations and legal ramifications for Zuckerberg's malicious, oppressive, fraudulent, reckless, negligent and/or anti-competitive conduct.

229. Cox repeatedly made statements and directed employees to make statements from

2012 on that he knew to be false at the time he made them. Cox intended for Developers like Plaintiff to rely on such statements in order to induce them to generate revenues for Facebook and to avoid public relations and legal ramifications for Cox's malicious, oppressive, fraudulent, reckless, negligent and/or anti-competitive conduct.

230. Olivan repeatedly made statements and directed employees to make statements from 2012 on that he knew to be false at the time he made them. Olivan intended for Developers like Plaintiff to rely on such statements in order to induce them to generate revenues for Facebook and to avoid public relations and legal ramifications for Olivan's malicious, oppressive, fraudulent, reckless, negligent and/or anti-competitive conduct.

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

232. Vernal repeatedly made statements and directed employees to make statements from 2012 on that he knew to be false at the time he made them. Vernal intended for Developers like Plaintiff to rely on such statements in order to induce them to generate revenues for Facebook and to avoid public relations and legal ramifications for Vernal's malicious, oppressive, fraudulent, reckless, negligent and/or anti-competitive conduct.

233. Sukhar repeatedly made statements and directed employees to make statements from 2012 on that he knew to be false at the time he made them. Sukhar intended for Developers like Plaintiff to rely on such statements in order to induce them to generate revenues for Facebook and to avoid public relations and legal ramifications for Sukhar's malicious, oppressive, fraudulent, reckless, negligent and/or anti-competitive conduct.

234. Facebook's duty to speak truthfully and to disclose material information concerning the closing of access to data also arose from misleading partial disclosures of fact and misinformation made to Plaintiff and other Developers concerning the allegedly fair and equal access to data.

235. Further, upon Zuckerberg's personal instruction, Defendants engaged in a scheme from 2012 until 2015 to intentionally misrepresent critical facts about Facebook Platform and about Zuckerberg's decision to restrict data access on Facebook Platform. If Defendants had not engaged in this scheme to require dozens of employees to intentionally misrepresent material facts, Plaintiff would never have made an investment in the App, and would not have continued to invest in its applications and business on Facebook Platform.

236. Even when Zuckerberg announced the purported closing of the data on April 30, 2014, Zuckerberg still intentionally misrepresented his decision to restrict data access for widely used data in Graph API and only partially revealed misleading material facts while suppressing others, resulting in further investment from Plaintiff and many other Developers. The Defendants actively participated, ratified, served as agents and communicated key components of this intentional misrepresentation in Zuckerberg's announcement.

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

238. Defendants benefited materially from their fraudulent, malicious and oppressive conduct, including but not limited to financial benefits tied to the growth of Facebook and the dramatic reversal of its stock price as a result of oligopolizing for Facebook and its close partners the various markets associated with Facebook Platform.

239. Plaintiff invested considerable capital, labor, time or effort into developing its technologies in reliance on Facebook's representations.

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

241. Plaintiff's reliance was foreseeable by Defendants, as Zuckerberg has publicly

stated his intent in making such statements was to entice Developers to help generate revenues for Facebook. Further, Facebook's conduct for seven years was designed to induce and reinforce such reliance.

242. Plaintiff was injured as a result of its reliance on Facebook's representations and material omissions, which Facebook knew to be false or acted recklessly in representing as true, in an unascertained amount in excess of $25,000.00, to be established according to proof at trial. In taking the actions alleged herein, Defendants acted with fraud, malice and oppression, and in reckless disregard of Plaintiff's rights.

243. Accordingly, Defendants are liable to Plaintiff for damages.

COUNT IV: NEGLIGENT MISREPRESENTATION
[Against Facebook, Inc., Zuckerberg, Cox, Olivan, Lessin, Vernal and Sukhar]

244. Plaintiff re-alleges and repleads the foregoing paragraphs as though set forth fully herein.

245. Defendants made numerous representations of fact alleged in detail herein. These representations were untrue.

246. Regardless of their actual belief, Defendants must have made those representations without any reasonable ground for believing the representations to be true.

247. Defendants conveyed the representations in a commercial setting for a business purpose, namely inducing Developers to develop applications for Facebook.

248. Defendants made those representations with the intent to induce Developers, including Plaintiff, to develop applications, including the App, that used Graph API data, thereby adding features to Facebook, enhancing Facebook's functionality and user experience, and generating more revenue for Facebook.

249. Zuckerberg repeatedly made statements and directed employees to make statements from 2012 on without any reasonable grounds for believing the representations to be true. Zuckerberg intended for Developers like Plaintiff to rely on such statements in order to induce them to generate revenues for Facebook and to avoid public relations and or legal ramifications for Zuckerberg's malicious, oppressive, fraudulent, reckless, negligent and/or anti-

competitive conduct.

250. Cox repeatedly made statements and directed employees to make statements from 2012 on without any reasonable grounds for believing the representations to be true. Cox intended for Developers like Plaintiff to rely on such statements in order to induce them to generate revenues for Facebook and to avoid public relations and or legal ramifications for Cox's malicious, oppressive, fraudulent, reckless, negligent and/or anti-competitive conduct.

251. Olivan repeatedly made statements and directed employees to make statements from 2012 on without any reasonable grounds for believing the representations to be true. Olivan intended for Developers like Plaintiff to rely on such statements in order to induce them to generate revenues for Facebook and to avoid public relations and or legal ramifications for Olivan's malicious, oppressive, fraudulent, reckless, negligent and/or anti-competitive conduct.

252. Lessin repeatedly made statements and directed employees to make statements from 2012 on without any reasonable grounds for believing the representations to be true. Lessin intended for Developers like Plaintiff to rely on such statements in order to induce them to generate revenues for Facebook and to avoid public relations and or legal ramifications for Lessin's malicious, oppressive, fraudulent, reckless, negligent and/or anti-competitive conduct.

253. Vernal repeatedly made statements and directed employees to make statements from 2012 on without any reasonable grounds for believing the representations to be true. Vernal intended for Developers like Plaintiff to rely on such statements in order to induce them to generate revenues for Facebook and to avoid public relations and or legal ramifications for Vernal's malicious, oppressive, fraudulent, reckless, negligent and/or anti-competitive conduct.

254. Sukhar repeatedly made statements and directed employees to make statements from 2012 on without any reasonable grounds for believing the representations to be true. Sukhar intended for Developers like Plaintiff to rely on such statements in order to induce them to generate revenues for Facebook and to avoid public relations and or legal ramifications for Sukhar's malicious, oppressive, fraudulent, reckless, negligent and/or anti-competitive conduct.

255. Plaintiff was not aware that Defendants' representations were false, and Plaintiff developed their technologies in reliance on the truth of Facebook's representations.

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

257. Plaintiff was injured as a result of its reliance on Defendants' representations, in an unascertained amount in excess of $25,000.00, to be established according to proof at trial.

258. In taking the actions alleged herein, Defendants acted with fraud, malice and oppression, and in reckless disregard of the rights of Plaintiff.

259. Accordingly, Defendants are liable to Plaintiff for damages.

COUNT V: INTENTIONAL INTERFERENCE WITH CONTRACT
[Against Facebook, Inc., Zuckerberg, Cox, Olivan, Lessin, Vernal and Sukhar]

260. Plaintiff re-alleges and repleads the foregoing paragraphs as though set forth fully herein.

261. Plaintiff had entered into license agreements, contracts and/or subscriptions with its customers.

262. Defendants knew of these contracts, license agreements and/or subscriptions.

263. Defendants intentionally interfered with and disrupted these contracts by managing their Platform as a bait and switch extortion scheme from 2007 through at least 2015, despite knowing that interference with these contracts would be certain or substantially certain to occur.

264. Defendants further intentionally interfered with and disrupted Plaintiff's contracts with end users when it terminated Plaintiff's access to the Graph API, despite knowing that interference with these contracts would be certain or substantially certain to occur as a result of Defendants' acts in ending Plaintiff's access.

265. Plaintiff's contracts with users and customers were thereby disrupted by Defendants.

266. As a result, Plaintiff has suffered and will suffer damage in an unascertained amount in excess of $25,000.00 to be established according to proof at trial.

267. In taking the actions alleged herein, Defendants acted with fraud, malice and oppression, and in reckless disregard of the rights of Plaintiff.

268. Accordingly, Defendants are liable to Plaintiff for damages.

COUNT VI: INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS
[Against Facebook, Inc., Zuckerberg, Cox, Olivan, Lessin, Vernal and Sukhar]

269. Plaintiff re-alleges and repleads the foregoing paragraphs as though set forth fully herein.

270. Defendants interfered in the prospective economic relations between Plaintiff and its Apps' users and prospective users in the manner alleged herein.

271. Because 250,000 Pink Ribbon App users, 17,000 Climate Smart App users, and hundreds of New Year Resolutions App users had entered into contract with Styleform, all of the Facebook friends and connections of these approximately 267,000 customers were prospective customers of Styleform who could enter into contract with Styleform with a single click on a link sent by their friends. Styleform had a reasonable expectation of prospective economic advantage with the Facebook friends and connections of these 267,000 end users. Further, Styleform had economic relationships with the 267,000 end users that could have resulted in prospective economic advantage above and beyond any benefits that had already been reduced to contract.

272. Beginning by at least 2009 and accelerating in 2011, Facebook began experiencing substantial difficulty transitioning its service from desktop computers to mobile devices. The executive team was extremely concerned around the impact this transition would have on Facebook's revenues, particularly in light of the fact that Facebook was planning an initial public offering (IPO) of its shares around this time. In discussions in 2011 and 2012, Zuckerberg and other members of Facebook's management team, including Lessin, Olivan, Cox, Sandberg, and Bosworth, decided to remove any APIs in Facebook Platform that permitted mobile apps to obtain organic growth, including the Graph API endpoints. Organic growth enabled an app to acquire new users without having to purchase advertising. Facebook built features like the newsfeed APIs and full friends list in order to drive organic growth for Developers and

represented for many years that organic growth was a key reason a developer should build its business on Facebook Platform. Organic growth was primarily achieved through the newsfeed APIs and full friends list, because these APIs let potential new users of an app learn about and download the app from existing users without the app needing to purchase advertisements to reach that new user. Zuckerberg decided to implement the anti-competitive scheme in 2012 not only to restrain competition to make way for new Facebook products but also to hold hostage the tens of thousands of Developers that relied on Facebook Platform for organic growth. By eliminating the full friend list, friend permissions and newsfeed APIs, Zuckerberg placed tens of thousands of Developers in an impossible position: either spend hundreds of thousands of dollars each year buying ads with Facebook's new mobile advertising product or shut down the product or business. For Developers who could afford it, the choice was clear: give in to Zuckerberg's demands, pony up the cash, and stay in business.

273. Based in significant part upon the representations Defendants made from 2007 until 2014 that Facebook Platform was the most effective organic growth and distribution channel for applications, Plaintiff decided to build its business on Facebook Platform because Facebook represented that any friends of Plaintiff's users were qualified prospective customers who could enter into license agreements with Plaintiff with a single click or tap on a notification from a friend or a post in their newsfeed. There were on the order of millions of friends of the 267,000 end users Styleform had acquired across its three Apps. Therefore, Plaintiff had an objective and reasonable expectation of prospective economic relations with these prospective customers and Defendants interfered with Plaintiff's prospective economic advantage with these customers whenever they decided to hamper or shut down organic growth and distribution channels, which occurred from 2009 through 2015.

274. The conduct of Defendants was wrongful on a number of independent grounds, including violation of California's Unfair Competition law, the FTC Order, California's False Advertising Law, California's Cartwright Act, and the common law causes of action for intentional misrepresentation, negligent misrepresentation, and concealment.

275. Defendants knew of Plaintiff's relationships with the users or prospective users of

its Apps, and knew or should have known of the marketing and advertising activities described herein.

276. Defendants intentionally disrupted these relationships from 2009 through 2015. Particularly by 2012, Plaintiff's business was operating entirely on borrowed time with no possibility of obtaining economic advantage with prospective customers and yet Plaintiff had no way of knowing this was the case until at least 2015.

277. Further, Defendants intentionally disrupted these relationships when they decided from 2007 through at least 2015 to fail to provide proper privacy controls for Graph API endpoints.

278. Defendants intentionally disrupted Plaintiff's relationships with users and prospective users when they ended access to Graph API, despite knowing that interference with these relationships would be certain or substantially certain to occur as a result of Facebook's act in ending Plaintiff's access. Facebook employees regularly circulated spreadsheets to Facebook's top executives, including Zuckerberg, identifying Developers that would experience a major business disruption as a result of the changes. Employees passionately urged Facebook executives not to disrupt these businesses, and upon learning that Zuckerberg was not going to change his mind, quit the company or the Platform team in protest.

279. Defendants further intentionally interfered with and disrupted Plaintiff's relationships with its users and prospective users when it did terminate Plaintiff's access on April 30, 2015, despite knowing that interference with these relationships would be certain or substantially certain to occur as a result of Facebook's conduct in ending Plaintiff's access.

280. Plaintiff's relationships with its users and prospective users was thereby disrupted, and will be further disrupted.

281. As a result, Plaintiff suffered damage in an unascertained amount in excess of $25,000.00 to be established according to proof at trial.

282. In taking the actions alleged herein, Defendants acted with fraud, malice and oppression, and in reckless disregard of the rights of Plaintiff.

283. Accordingly, Defendants are liable to Plaintiff for damages.

COUNT VII: NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS

[Against Facebook, Inc., Zuckerberg, Cox, Olivan, Lessin, Vernal and Sukhar]

284. Plaintiff re-alleges and repleads the foregoing paragraphs as though set forth fully herein.

285. Defendants interfered in the prospective economic relations between Plaintiff and its Apps' users and prospective users in the manner alleged herein.

286. Defendants knew of Plaintiff's relationships with the users or prospective users of its Apps, and knew or should have known of the marketing and advertising activities described herein.

287. Defendants negligently disrupted Plaintiff's relationships with users and prospective users when they ended access to Graph API. Facebook employees regularly circulated spreadsheets to Facebook's top executives, including Zuckerberg, identifying Developers that would experience a major business disruption as a result of the changes. Employees passionately urged Facebook executives not to disrupt these businesses, and upon learning that Zuckerberg was not going to change his mind, quit the company or the Platform team in protest.

288. Defendants further negligently interfered with and disrupted Plaintiff's relationships with its users and prospective users when it did terminate Plaintiff's access on April 30, 2015, despite knowing that interference with these relationships would be certain or substantially certain to occur as a result of Facebook's conduct in ending Plaintiff's access.

289. Plaintiff's relationships with its users and prospective users was thereby disrupted, and will be further disrupted.

290. As a result, Plaintiff suffered damage in an unascertained amount in excess of $25,000.00 to be established according to proof at trial.

291. In taking the actions alleged herein, Defendants acted with fraud, malice and oppression, and in reckless disregard of the rights of Plaintiff.

292. Accordingly, Defendants are liable to Plaintiff for damages.

COUNT VIII: VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17500
[Against Facebook, Inc., Zuckerberg, Cox, Olivan, Lessin, Vernal and Sukhar]

293. Plaintiff re-alleges and repleads the foregoing paragraphs as though set forth fully herein.

294. Defendants clearly and unambiguously represented to Plaintiff from May 2007 until at least April 30, 2015 that they were maintaining a fair and neutral operating system for Plaintiff to build software applications, including, but not limited to, the specific representations in official statements, announcements, documents and meetings alleged herein, all of which Plaintiff believed and relied upon, along with thousands of other Developers.

295. Facebook further represented to all users and Developers that Facebook would at all time respect user privacy and pass privacy settings to Developers to ensure Developers could also respect user privacy settings. Facebook's representations to users that their data was secure in its Platform was false and Defendants knew these representations to be false. For instance, from 2007 through 2015 Facebook repeatedly and by design failed to pass a user's privacy settings on a piece of data via its Platform APIs. Moreover, Facebook deliberately took measures to architect its Platform in a manner that would blame Developers for Facebook's own failures and employees who passionately argued against this practice were silenced by Facebook executives.

296. These representations to users and Developers were made repeatedly by Facebook on many occasions from May 2007 until at least April 30, 2015, including on the dates and times alleged herein, and in particular in speeches by Zuckerberg and other Facebook employees at the direction of Zuckerberg or one of the Defendants and in official statements posted on Facebook's website. These representations were false. Defendants knew such representations to be false or made such representations recklessly and without regard for their truth when they made them or directed other Facebook employees to make them. The representations were made to deceive Plaintiff and any other person who might encounter the representations.

297. These representations were made to induce Developers to enter into contract with Facebook and to invest considerable time, capital and labor in building applications on Facebook

Platform. Plaintiff invested a substantial sum in the mid six figures in capital and labor building applications on Facebook Platform in reliance on these false representations.

298. These representations were further made to induce Developers to purchase advertising products from Facebook, which Styleform purchased at various times, in reliance on these false representations.

299. As a result, Defendants were unjustly enriched at the expense of Plaintiff in an unascertained amount in excess of $25,000.00 to be established according to proof at trial.

300. In taking the actions alleged herein, Defendants acted with fraud, malice and oppression, and in reckless disregard of the rights of Plaintiff.

301. Accordingly, Defendants are liable to Plaintiff for restitution and/or disgorgement, as well as injunctive relief.

COUNT IX: VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 16720 [Against Facebook, Inc., Zuckerberg, Cox, Olivan, Lessin, Vernal and Sukhar]

302. Plaintiff re-alleges and repleads the foregoing paragraphs as though set forth fully herein.

303. From 2007 through at least 2015, Defendants repeatedly represented that its Platform and its various APIs would be offered on neutral, equal and level terms with respect to all Developers, including with respect to Facebook. Defendants further represented that access to APIs and other Platform products would not depend in any way on a company's willingness or agreement to purchase a certain amount of advertising products from Facebook. Thus, for seven years, Defendants represented Platform APIs and advertising products as entirely separate and distinct products that were offered independently to Developers.

304. At least by 2012, Zuckerberg implemented an extortion scheme whereby he required Defendants to provide the Platform API products to certain Developers *only* if the Developers also purchased Facebook's new mobile advertising product. Further, Defendants coerced Developers to purchase Facebook's new mobile advertising product upon threat of being shut off from the Platform API products. At all times while Defendants coerced other Developers

under this tying scheme, they continued to falsely represent to the public, government regulators and other prospective buyers that these two product categories were entirely separate and distinct. It was the understanding of Facebook employees who were made aware of this extortion scheme, that Zuckerberg had decided to misrepresent the relationship between these products in order to induce further reliance that would give Facebook more leverage to extort these Developers to participate in the tying scheme.

305. Defendants have sufficient economic power in the market for social platforms and operating systems and the various APIs offered therein because for seven years they represented that the Platform APIs would not be tied to advertising purchases and, as a result, were able to build a dominant position in the market for social software platforms, including being the exclusive and sole provider of the Facebook Platform APIs, such that tens of millions of businesses rely on Facebook Platform and an overwhelming majority of all mobile and web applications globally are connected to Facebook Platform. This immense economic power was sufficient to coerce a significant number of Developers into purchasing mobile ads in order to prevent their products from breaking and their businesses from being shut down. At various times Facebook provided more than 5,000 Developers with special access to Platform APIs that was not provided to other Developers because of their willingness to purchase these advertising products Facebook represented as separate and distinct.

306. The tying arrangement has immensely restrained competition across a wide range of software markets, including messaging apps, professional services apps, utility apps, gifting apps, sharing economy apps, utility apps, file repository apps, payment apps, birthday reminder apps, photo and video apps, calendar apps, lifestyle apps, health and fitness apps, and now dating apps. At least 35,000 apps in operation prior to the tying scheme no longer exist and are therefore unable to purchase any advertising from Facebook, thereby restricting the overall quantity of participants and purchases in the advertising market. This has in fact immensely benefited Facebook's business, because, although the total number of potential customers for its advertising service has decreased, Facebook has been able to extract punitive rents from those Developers who participated in the tying scheme as a result of the fact that these Developers were not only

purchasing advertising, but also purchasing the ability to gain an unfair competitive advantage against other market participants. Thus, restricting the market for Facebook's mobile advertising products has actually increased Facebook's profits in that market.

307. Defendants represented Facebook's Platform APIs and its advertising products as separate and distinct in order to induce Developers to enter into contract with Facebook and to invest considerable time, capital and labor in building applications on Facebook Platform. Plaintiff invested a substantial sum in the mid six figures in capital and labor building applications on Facebook Platform in reliance on these false representations. These representations were further made to induce Developers to purchase advertising products from Facebook, which Styleform purchased at various times, in reliance on these false representations.

308. Further, Styleform engaged in other marketing activities in preparation for its public launches, such as purchasing advertising to test various ad campaigns in Facebook's new mobile advertising product. As a result of Facebook's anti-competitive scheme, Plaintiff was prevented from participating in Facebook's advertising market since the apps could not properly function. Tens of thousands of other Developers were prevented from participating in Facebook's new mobile advertising market as a result of Facebook's anti-competitive scheme.

309. As a result, Plaintiff suffered damage in an unascertained amount in excess of $25,000.00 to be established according to proof at trial.

310. In taking the actions alleged herein, Defendants acted with fraud, malice and oppression, and in reckless disregard of the rights of Plaintiff.

311. Accordingly, Defendants are liable to Plaintiff for damages.

COUNT X: VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200
[Against Facebook, Inc., Zuckerberg, Cox, Olivan, Lessin, Vernal and Sukhar]

312. Plaintiff re-alleges and repleads the foregoing paragraphs as though set forth fully herein.

313. Defendants' representations and conduct were designed to, and did, entice Plaintiff and other Developers to create applications for Facebook with representations of, among other things, a level playing field, fair competition, and a chance to build a business. Facebook decided

to open Graph API and certain types of data, and not others, precisely to induce Developers to build certain types of applications, including Styleform's philanthropy-based applications regarding cancer awareness and climate change. Defendants represented to Developers that their applications would be treated on a level playing field with any applications Facebook decided to launch in the future. Defendants also represented to developers that Facebook was committed over the long term to enable Developers to build businesses using their Facebook applications.

314. Defendants caused substantial harm to Plaintiff and other Developers when it then decided to leverage its Platform as a weapon in various bait and switch schemes from 2009 to 2011, 2012 to 2015 and again in 2018 in response to the Cambridge Analytica data crisis. Defendants baited, extorted and then eliminated many Developers under a privacy narrative that Facebook executives knew to be false when it was, in fact, Facebook itself who made it extremely difficult for Developers to adhere to user privacy settings by willfully failing to pass privacy settings to Developers in its APIs.

315. The efforts by Plaintiff and other Developers helped to drive user adoption of Facebook by enhancing the user experience, increase users' time on Facebook, and create additional advertising for Facebook, thus creating substantial additional revenue and user growth for Facebook's benefit.

316. Defendants' decision to restrict access to Graph API data does not enhance user privacy because and control because the privacy issues with Facebook Platform do not stem from the ability of users to control their data and take their data to other applications, but rather from Facebook's own decision as early as 2007 and continuing through 2018 to fabricate the consent of these users by (1) hiding the privacy settings for what data their friends can access about them in apps other than Facebook; (2) setting the sharing default to "on"; and (3) failing to pass privacy settings when transmitting data over its APIs.

317. By restricting access to Graph API, Facebook has oligopolized for itself and other large Developers that entered into special agreements with Facebook the ability to create applications competitive with those developed by Plaintiff and thousands of other Developers, which harms consumers, Developers, and competition with no countervailing benefit.

318. The harm to Plaintiff and other Developers by Defendants' representations and conduct outweighs the purported reasons, justifications, or motives for the representations and conduct by Facebook. Facebook's conduct was fraudulent and intended to deceive members of the public, including consumers, government regulators and Developers. Defendants' conduct alleged herein constitutes violations of common law tort and fraud, statutory fraud, the FTC Order, California's False Advertising Law, and California's Cartwright Act.

319. Plaintiff could not have reasonably avoided injury because Defendants notified Plaintiff it would be restricting data access only after Plaintiff had made considerable investment and Facebook had approved its Apps.

320. Defendants' decision to restrict Graph API data and provide it on unequal terms was also unlawful.

321. Defendants' decision to induce Plaintiff to invest in building its Apps on top of Graph API when Facebook was restricting access to Graph API and extorting Developers due to their reliance on Graph API was also unlawful.

322. Defendants' actions thus constitute business practices in violation of California's Unfair Competition Act, Bus. & Prof. Code § 17200.

323. As a result of their acts and omissions that constituted violations of California's Unfair Competition Act, Bus. & Prof. Code § 17200, Defendants have been unjustly enriched.

324. In taking the actions alleged herein, Facebook acted with fraud, malice and oppression, and in reckless disregard of the rights of Plaintiff.

325. Plaintiff suffered substantial injury as a result of Facebook's actions, including the loss of investment of time and money in developing its Apps, the loss of enterprise value and the loss of future profits, in amounts to be determined at trial.

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

327. Thus, Defendants were unjustly enriched at the expense of Plaintiff in an unascertained amount in excess of $25,000.00 to be established according to proof at trial.

328. Accordingly, Defendants are liable to Plaintiff for restitution and/or disgorgement, as well as injunctive relief.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all claims so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks this Court to enter judgment against Defendants Facebook, Inc., Facebook Ireland Ltd., Mark Zuckerberg, Christopher Cox, Javier Olivan, Samuel Lessin, Michael Vernal and Ilya Sukhar as follows:

A. A judgment or order declaring the conduct of Defendants Facebook, Inc. and Facebook Ireland Ltd., as alleged, constitutes breach of contract;

B. A judgment or order declaring that the conduct of Defendants Facebook, Inc., Zuckerberg, Cox, Olivan, Lessin, Vernal and Sukhar, as alleged, constitutes concealment;

C. A judgment or order declaring that the conduct of Defendants Facebook, Inc., Zuckerberg, Cox, Olivan, Lessin, Vernal and Sukhar, as alleged, constitutes intentional misrepresentation;

D. A judgment or order declaring that the conduct of Defendants Facebook, Inc., Zuckerberg, Cox, Olivan, Lessin, Vernal and Sukhar, as alleged, constitutes negligent misrepresentation;

E. A judgment or order declaring that the conduct of Defendants Facebook, Inc., Zuckerberg, Cox, Olivan, Lessin, Vernal and Sukhar, as alleged, constitutes intentional interference with contract;

F. A judgment or order declaring that the conduct of Defendants Facebook, Inc., Zuckerberg, Cox, Olivan, Lessin, Vernal and Sukhar, as alleged, constitutes intentional interference with prospective economic relations;

G. A judgment or order declaring that the conduct of Defendants Facebook, Inc., Zuckerberg, Cox, Olivan, Lessin, Vernal and Sukhar, as alleged, constitutes negligent

interference with prospective business relations;

H. A judgment or order declaring that the conduct of Defendants Facebook, Inc., Zuckerberg, Cox, Olivan, Lessin, Vernal and Sukhar, as alleged, violates California's False Advertising Law;

I. A judgment or order declaring that the conduct of Defendants Facebook, Inc., Zuckerberg, Cox, Olivan, Lessin, Vernal and Sukhar, as alleged, violates California's Cartwright Act;

A. A judgment or order declaring the conduct of Defendants Facebook, Inc., Zuckerberg, Cox, Olivan, Lessin, Vernal and Sukhar, as alleged, unlawful under California's Unfair Competition Law;

B. A judgment, order, or award of damages adequate to compensate Plaintiff;

C. A permanent injunction requiring Defendants Facebook, Inc., Zuckerberg, Cox and Olivan to: (1) restore the Graph API and enable users to fully control data access on Facebook and on third party applications; (2) implement proper privacy controls and measures in Facebook Platform to comply with the FTC Order, including (a) passing privacy settings for all Graph API v1.0 endpoints, (b) ceasing the practice of hiding the Apps Others Use privacy controls to create a single set of clear and consistent privacy controls, and (c) set the default sharing control to "off" rather than to "on"; (3) cease all projects in which Facebook fabricates the consent of users in order to access data they have not explicitly consented to sharing with Facebook, which harms all Developers and consumers who rely on Facebook and violates GDPR and California privacy law; (4) cease all App Review or Unified Review activities; and (5) cease all practices or occurrences on Facebook Platform where access to any product, free or paid, is predicated upon any other action or the delivery of any consideration which has not been published to all market participants in an arms-length transaction at standard public pricing terms.

D. A permanent injunction prohibiting Defendants Facebook, Zuckerberg, Cox and Olivan from interfering with Plaintiff's contracts and those of any other Developer;

E. A permanent injunction prohibiting Defendants Facebook, Zuckerberg, Cox and Olivan from interfering with Plaintiff's prospective economic relations and those of any other Developer;

F. An award of Plaintiff's reasonable attorneys' fees and costs;

G. Punitive damages and/or treble damages as provided by applicable law; and

H. Such other further relief as this Court or a jury may deem proper and just.

DATED: November 2, 2018

GROSS & KLEIN LLP

By: _____
Stuart G. Gross

Attorneys for Plaintiff Styleform IT

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 Facebock 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

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 phishes 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.

###

EXHIBIT 10

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Attorneys for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability company,

Plaintiff,

v.

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

Defendants.

Case No. CIV 533328

Assigned for all purposes to Hon. V. Raymond Swope, Dept. 23

EXHIBIT 11 TO THE DECLARATION OF LAURA E. MILLER IN SUPPORT OF DEFENDANT FACEBOOK, INC.'S EX PARTE APPLICATION FOR EXPEDITED RELIEF RE SIX4THREE'S CONTEMPT, INCLUDING AN ORDER TO SHOW CAUSE

Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

BIRNBAUM & GODKIN, LLP
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November 15, 2018

BY EMAIL

Laura Miller, Esq.
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Re: Styleform IT v. Facebook, Inc., et al.
California Superior Court, San Francisco County
Case No. CGC 18-571075

Dear Laura:

I write in response to your letter of November 13, 2018 accusing my firm and Mr. Gross's firm of violating the Protective Order in *Six4Three, LLC v. Facebook, Inc., et al.*, Case No. 533328 ("Miller Letter"). We take this accusation extremely seriously, and it is entirely without merit.

Your letter states that the Styleform Complaint relies "extensively on mischaracterizations of the confidential and highly confidential information that Facebook produced through discovery in [the Six4Three action] in direct violation of our Stipulated Protective Order in that case." Miller Letter, at 1. This is false. The allegations of the Styleform Complaint rely entirely on information in the personal knowledge of Styleform and/or information in the public domain. Your accusation that we have "inappropriately shared with Styleform Facebook's confidential and highly confidential documents" is similarly false. At no time did my firm, Mr. Gross's firm or anyone working with our firms produce to Styleform *any* confidential or highly confidential documents provided by Facebook in the Six4Three action. You have no basis for making this serious, unfounded accusation.

As a preliminary matter, the Styleform Complaint tracks the allegations of Six4Three's operative complaint, the Fifth Amended Complaint ("5AC"), filed on January 12, 2018. The complaints use virtually identical language in characterizing Defendants' conduct. The entirety of the 5AC has been public since it was filed. For almost a year now, Facebook has raised *no* concerns regarding potential violations of the Protective Order as a result of the allegations in the 5AC. Nor could Facebook do so in good faith. That Facebook has decided to make these accusations only *after* a new plaintiff has filed a complaint demonstrates quite clearly that this is a bad faith attempt to

intimidate us and our clients. That Facebook makes this accusation with unclean hands is made all the more evident from the examples you claim as "proof".

You state as proof of your accusation that Styleform alleges "Tinder provided highly valuable unrelated financial consideration, including intellectual property, to Facebook in exchange for its special access to APIs." Miller Letter, at 2 (Styleform Complaint, ¶ 68). You then contend that "[n]othing in the public domain addresses this alleged transfer of intellectual property from Tinder to Facebook as consideration for special access to APIs—because no such transfer ever occurred." *Id.* This is false. The 5AC alleges:

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

Indeed, *The Wall Street Journal*'s reporting of Tinder's special deal with Facebook was published on September 21, 2015, more than three years ago now.[1] The 5AC further alleges that "Developers were required to share their source code and other ***confidential intellectual property*** with Facebook at Facebook's request" and that "the companies who were offered special, whitelist access to the privatized Graph API Data were ones who either agreed to purchase hundreds of thousands of dollars in unrelated mobile ads, were friends of Zuckerberg, Sandberg or other Facebook executives, or provided other valuable consideration, ***such as intellectual property or data***, to Facebook." 5AC, ¶¶, 6, 167.

Your next piece of "evidence" fares no better. You contend that Styleform's allegation that Facebook paid a public relations firm to "disseminate this fraudulent pro-privacy narrative" relies on confidential materials to mischaracterize the PR firm's work for Facebook. Miller Letter, at 2 (Styleform Complaint, ¶ 165). Again, the public 5AC undermines your accusation entirely: "Zuckerberg and the Conspiring Facebook Executives directed their public relations team ***to feed reporters false information*** and in certain cases drafted reporters' stories themselves in order ***to disseminate this fabricated narrative*** among the public and Developer community." 5AC, ¶ 129.

Finally, you contend that confidential information is the "only possible source" for Styleform's allegation that Facebook executives stopped providing a level competitive playing field for developers in 2009, but concealed this decision from them. Miller Letter, at 3. To conclude that confidential information is the "only possible source" for this allegation requires willful blindness to numerous allegations in the 5AC. The complaint alleges repeatedly that Defendants failed to operate "a level competitive playing field" and "made and directed Facebook employees to make false statements and

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[1] *See* https://www.wsj.com/articles/facebooks-restrictions-on-user-data-cast-a-long-shadow-1442881332.

to maliciously suppress material facts from at least 2009 through 2015." 5AC, ¶¶ 24-27. Further, the 5AC cites numerous material misrepresentations specifically from 2009 as evidence of this claim. 5AC ¶¶ 63-64, 102.

Moreover, Styleform cites public testimony from the deposition of Ali Partovi in the Six4Three action as evidence of this allegation that you remarkably claim can only have been generated from a confidential source. Styleform Complaint ¶ 95-96. Partovi testified that "Facebook's senior executive in charge of Platform told him in a meeting in 2009 that if iLike did not sell to Facebook for a price much lower than its market value at the time, then Facebook would shut iLike down and destroy its business." *Id.* Partovi's testimony, which is clear and convincing evidence of the allegation you claim could only have come from a confidential source, is cited at length in the complaint. *Id.* Facebook elected *not* to move to seal this testimony in the Six4Three action.

Our client is entitled to plead its claims with specificity and your attempt to intimidate and prevent our client from doing so is not well taken. This is particularly necessary in light of Facebook's consistent arguments before the Court in the Six4Three action. Since April 2015, Facebook has contended that Six4Three has failed to plead its claims with any of the requisite particularity to survive demurrer. For instance, in the Ancillary Defendants' Demurrer to the 5AC, filed on May 3, 2018, Defendants argued:

> Six4Three's fraud claims lack factual support as to the Ancillary Defendants. Starting with concealment, the requirement that fraud must be pleaded with specificity applies equally to a cause of action for fraud and deceit based on concealment. Also, to plead tort liability based on false or incomplete statements, the pleader must set forth at least the substance of those statements. Intentional misrepresentation also must be pleaded with specificity. To meet this requirement, the complaint must plead facts that show how, when, where, to whom, and by what means the representations were tended.... Six4Three fails to allege the elements of fraud--negligent or otherwise--with any specificity. With respect to Mr. Cox, Six4Three alleges that he was indirectly responsible for unidentified misrepresentations to an unidentified audience over the course of six years. There is no specificity as to when, where, to whom, or by what means the alleged misrepresentations were made.... The allegations against Mr. Olivan fare no better. There are no allegations that Mr. Olivan made or directed any specific misrepresentations or omissions at all; rather, Six4Three accuses him, at an unidentified time and place, of directing the Platform team to shut down applications.... Finally, without identifying any specific misrepresentations or concealment, Six4Three accuses both Mr. Vernal and Mr. Sukhar of serving as the "front man" for the scheme. Even if Six4Three could plead specific facts against the Ancillary Defendants individually, Six4Three fails to plead a conspiracy to commit fraud. Six4Three never alleges that the Ancillary Defendants had actual knowledge that a tort was planned and concurred in the plan with knowledge of the unlawful purpose—there is no where, when, or how as

> to the Ancillary Defendants supposed agreement to some scheme, let alone specificity as to how they knowingly carried it out together. Ancillary Defendants' Demurrer to the 5AC, filed May 3, 2018, at 13-14 (citations and quotations omitted).

Facebook cannot intimidate my client against alleging violations of law with specificity and then cash the check of that intimidation tactic to prevail on demurrer or motion for summary judgment precisely because my client was prevented from alleging the particularities of the conduct, damage and harm caused by Defendants. This intimidation tactic is far outside the bounds of professional decorum and has no basis in the law.

Thus, regarding your requests: (1) we will not be withdrawing the Styleform Complaint; (2) we have adequately identified all documents relied upon in drafting the Styleform Complaint; and (3) we decline to identify all individuals and entities to whom the public complaint has been distributed.

Very truly yours,

David S. Godkin

DSG:cam
cc: Joshua Lerner, Esq. (By email)
Sonal Mehta, Esq. (By email)
Catherine Kim, Esq. (By email)
Service-Six4Three (By email)
Stuart G. Gross, Esq. (By email)
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November 15, 2018

BY EMAIL

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Re: Styleform IT v. Facebook, Inc., et al.
California Superior Court, San Francisco County
Case No. CGC 18-571075

Dear Laura:

I write in response to your letter of November 13, 2018 accusing my firm and Mr. Gross's firm of violating the Protective Order in *Six4Three, LLC v. Facebook, Inc., et al.*, Case No. 533328 ("Miller Letter"). We take this accusation extremely seriously, and it is entirely without merit.

Your letter states that the Styleform Complaint relies "extensively on mischaracterizations of the confidential and highly confidential information that Facebook produced through discovery in [the Six4Three action] in direct violation of our Stipulated Protective Order in that case." Miller Letter, at 1. This is false. The allegations of the Styleform Complaint rely entirely on information in the personal knowledge of Styleform and/or information in the public domain. Your accusation that we have "inappropriately shared with Styleform Facebook's confidential and highly confidential documents" is similarly false. At no time did my firm, Mr. Gross's firm or anyone working with our firms produce to Styleform *any* confidential or highly confidential documents provided by Facebook in the Six4Three action. You have no basis for making this serious, unfounded accusation.

As a preliminary matter, the Styleform Complaint tracks the allegations of Six4Three's operative complaint, the Fifth Amended Complaint ("5AC"), filed on January 12, 2018. The complaints use virtually identical language in characterizing Defendants' conduct. The entirety of the 5AC has been public since it was filed. For almost a year now, Facebook has raised *no* concerns regarding potential violations of the Protective Order as a result of the allegations in the 5AC. Nor could Facebook do so in good faith. That Facebook has decided to make these accusations only *after* a new plaintiff has filed a complaint demonstrates quite clearly that this is a bad faith attempt to

intimidate us and our clients. That Facebook makes this accusation with unclean hands is made all the more evident from the examples you claim as "proof".

You state as proof of your accusation that Styleform alleges "Tinder provided highly valuable unrelated financial consideration, including intellectual property, to Facebook in exchange for its special access to APIs." Miller Letter, at 2 (Styleform Complaint, ¶ 68). You then contend that "[n]othing in the public domain addresses this alleged transfer of intellectual property from Tinder to Facebook as consideration for special access to APIs—because no such transfer ever occurred." *Id.* This is false. The 5AC alleges:

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

Indeed, *The Wall Street Journal*'s reporting of Tinder's special deal with Facebook was published on September 21, 2015, more than three years ago now.[1] The 5AC further alleges that "Developers were required to share their source code and other ***confidential intellectual property*** with Facebook at Facebook's request" and that "the companies who were offered special, whitelist access to the privatized Graph API Data were ones who either agreed to purchase hundreds of thousands of dollars in unrelated mobile ads, were friends of Zuckerberg, Sandberg or other Facebook executives, or provided other valuable consideration, ***such as intellectual property or data***, to Facebook." 5AC, ¶¶, 6, 167.

Your next piece of "evidence" fares no better. You contend that Styleform's allegation that Facebook paid a public relations firm to "disseminate this fraudulent pro-privacy narrative" relies on confidential materials to mischaracterize the PR firm's work for Facebook. Miller Letter, at 2 (Styleform Complaint, ¶ 165). Again, the public 5AC undermines your accusation entirely: "Zuckerberg and the Conspiring Facebook Executives directed their public relations team ***to feed reporters false information*** and in certain cases drafted reporters' stories themselves in order ***to disseminate this fabricated narrative*** among the public and Developer community." 5AC, ¶ 129.

Finally, you contend that confidential information is the "only possible source" for Styleform's allegation that Facebook executives stopped providing a level competitive playing field for developers in 2009, but concealed this decision from them. Miller Letter, at 3. To conclude that confidential information is the "only possible source" for this allegation requires willful blindness to numerous allegations in the 5AC. The complaint alleges repeatedly that Defendants failed to operate "a level competitive playing field" and "made and directed Facebook employees to make false statements and

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[1] *See* https://www.wsj.com/articles/facebooks-restrictions-on-user-data-cast-a-long-shadow-1442881332.

to maliciously suppress material facts from at least 2009 through 2015." 5AC, ¶¶ 24-27. Further, the 5AC cites numerous material misrepresentations specifically from 2009 as evidence of this claim. 5AC ¶¶ 63-64, 102.

Moreover, Styleform cites public testimony from the deposition of Ali Partovi in the Six4Three action as evidence of this allegation that you remarkably claim can only have been generated from a confidential source. Styleform Complaint ¶ 95-96. Partovi testified that "Facebook's senior executive in charge of Platform told him in a meeting in 2009 that if iLike did not sell to Facebook for a price much lower than its market value at the time, then Facebook would shut iLike down and destroy its business." *Id.* Partovi's testimony, which is clear and convincing evidence of the allegation you claim could only have come from a confidential source, is cited at length in the complaint. *Id.* Facebook elected *not* to move to seal this testimony in the Six4Three action.

Our client is entitled to plead its claims with specificity and your attempt to intimidate and prevent our client from doing so is not well taken. This is particularly necessary in light of Facebook's consistent arguments before the Court in the Six4Three action. Since April 2015, Facebook has contended that Six4Three has failed to plead its claims with any of the requisite particularity to survive demurrer. For instance, in the Ancillary Defendants' Demurrer to the 5AC, filed on May 3, 2018, Defendants argued:

> Six4Three's fraud claims lack factual support as to the Ancillary Defendants. Starting with concealment, the requirement that fraud must be pleaded with specificity applies equally to a cause of action for fraud and deceit based on concealment. Also, to plead tort liability based on false or incomplete statements, the pleader must set forth at least the substance of those statements. Intentional misrepresentation also must be pleaded with specificity. To meet this requirement, the complaint must plead facts that show how, when, where, to whom, and by what means the representations were tended.... Six4Three fails to allege the elements of fraud--negligent or otherwise--with any specificity. With respect to Mr. Cox, Six4Three alleges that he was indirectly responsible for unidentified misrepresentations to an unidentified audience over the course of six years. There is no specificity as to when, where, to whom, or by what means the alleged misrepresentations were made.... The allegations against Mr. Olivan fare no better. There are no allegations that Mr. Olivan made or directed any specific misrepresentations or omissions at all; rather, Six4Three accuses him, at an unidentified time and place, of directing the Platform team to shut down applications.... Finally, without identifying any specific misrepresentations or concealment, Six4Three accuses both Mr. Vernal and Mr. Sukhar of serving as the "front man" for the scheme. Even if Six4Three could plead specific facts against the Ancillary Defendants individually, Six4Three fails to plead a conspiracy to commit fraud. Six4Three never alleges that the Ancillary Defendants had actual knowledge that a tort was planned and concurred in the plan with knowledge of the unlawful purpose—there is no where, when, or how as

> to the Ancillary Defendants supposed agreement to some scheme, let alone specificity as to how they knowingly carried it out together. Ancillary Defendants' Demurrer to the 5AC, filed May 3, 2018, at 13-14 (citations and quotations omitted).

Facebook cannot intimidate my client against alleging violations of law with specificity and then cash the check of that intimidation tactic to prevail on demurrer or motion for summary judgment precisely because my client was prevented from alleging the particularities of the conduct, damage and harm caused by Defendants. This intimidation tactic is far outside the bounds of professional decorum and has no basis in the law.

Thus, regarding your requests: (1) we will not be withdrawing the Styleform Complaint; (2) we have adequately identified all documents relied upon in drafting the Styleform Complaint; and (3) we decline to identify all individuals and entities to whom the public complaint has been distributed.

Very truly yours,

David S. Godkin

DSG:cam
cc: Joshua Lerner, Esq. (By email)
Sonal Mehta, Esq. (By email)
Catherine Kim, Esq. (By email)
Service-Six4Three (By email)
Stuart G. Gross, Esq. (By email)
James E. Kruzer, Esq. (By email)

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Attorneys for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability company,

Plaintiff,

v.

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

Defendants.

Case No. CIV 533328

Assigned for all purposes to Hon. V. Raymond Swope, Dept. 23

[PROPOSED] ORDER GRANTING DEFENDANT FACEBOOK INC.'S EX PARTE APPLICATION FOR EXPEDITED RELIEF RE SIX4THREE'S CONTEMPT, INCLUDING AN ORDER TO SHOW CAUSE

Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

[PROPOSED] ORDER TO SHOW CAUSE RE: CONTEMPT

Defendant Facebook, Inc. on November 26, 2018 applied *ex parte* for an order to show cause why plaintiff Six4Three, LLC, and its counsel should not be found in contempt and sanctioned for violating the Stipulated Protective Order entered by this Court on October 25, 2016, as well as multiple sealing orders. For the reasons set forth in Facebook's application, that application is GRANTED as follows:

1. The Court orders Six4Three to produce by 5:00 p.m. on November 29, 2018:
    a. All written or recorded communications between Six4Three, including without limitation Ted Kramer, Thomas Scaramellino, David Godkin, James Kruzer, Stuart Gross, and any other agent or representative of Six4Three, and any individual or entity regarding Facebook's confidential information. For the avoidance of doubt, this includes but is not limited to media organizations and governmental entities, including the Digital, Culture, Media and Sport Committee of the House of Commons.
    b. Documents (e.g., phone logs) sufficient to show all telephonic and/or video conference communications between Six4Three, including without limitation Ted Kramer, Thomas Scaramellino, David Godkin, James Kruzer, Stuart Gross, and any other agent or representative of Six4Three, and any individual or entity regarding Facebook's confidential information. For the avoidance of doubt, this includes but is not limited to media organizations and governmental entities, including the Digital, Culture, Media and Sport Committee of the House of Commons.
    c. Documents sufficient to show the identity of all individuals or entities with whom Ted Kramer, David Godkin, James Kruzer, and Stuart Gross, or any other agent or representative of Six4Three, discussed Facebook's confidential information.
2. The Court further orders the following individuals to be presented for deposition by Facebook regarding the circumstances and events that led to Mr. Kramer's production of documents to the DCMS Committee: Ted Kramer, David Godkin, Stuart Gross, and Thomas Scaramellino. The

Court orders that these depositions occur at a time in San Mateo County mutually agreeable to the parties, but in no event later than December 5, 2018.

3. The Court orders that Six4Three, Ted Kramer, and Six4Three's counsel Stuart G. Gross of Gross & Klein LLP and David S. Godkin of Birnbaum & Godkin, LLP show cause why they should not be found in contempt and sanctioned, up to and including terminating sanctions, for multiple violations of this Court's orders. Pursuant to this order, the Court orders Plaintiff and its counsel to file an opening brief in response to this order by December 7, 2018. Any responsive brief by Facebook must be filed by December 11, 2018.

4. The Court sets the matter for hearing on _____.

IT IS SO ORDERED.

Dated:

_____
Honorable V. Raymond Swope
Judge of the Superior Court of California

EXHIBIT 23

David Godkin (Admitted Pro Hac Vice)
Birnbaum & Godkin, LLP
280 Summer Street
Boston MA 02210
Telephone: (617) 307 6100
Facsimile: (617) 307 6101

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC,

Plaintiff,

v.

FACEBOOK, INC., a Delaware Corporation; MARK ZUCKERBERG, an individual; CHRISTOPHER COX, an individual; SAMUEL LESSIN, an individual; MICHAEL VERNAL, an individual; ILYA SUKHAR, an individual; and DOES 1-50, inclusive,

Defendants.

Case No.: CIV533328

Assigned for all purposes to Hon. V. Raymond Swope, Dept. 23

BIRNBAUM & GODKIN'S EX PARTE APPLICATION FOR AN ORDER SHORTENING TIME TO HEAR BIRNBAUM & GODKIN'S MOTION TO BE RELIEVED AS COUNSEL FOR PLAINTIFF SIX4THREE, LLC AND REQUEST TO STAY OF ALL DISCOVERY REQUESTS DIRECTED AT BIRBAUM & GODKIN PENDING A HEARING ON COUNSEL'S MOTION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF COUNSEL'S EX PARTE APPLICATION FOR ORDER SHORTENING TIME TO HEAR MOTION TO BE RELIEVED AS COUNSEL AND REQUEST FOR STAY; DECLARATION OF DAVID S. GODKIN IN SUPPORT OF BIRNBAUM & GODKIN'S EX PARTE APPLICATION FOR ORDER SHORTENING TIME TO HEAR MOTION TO BE RELIEVED AS COUNSEL AND REQUEST FOR STAY

Date: December 17, 2018
Time: 9:00 a.m.
Dept.: 23 (Hon. V. Raymond Swope)

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on the above date and time, or as soon thereafter as the matter may be heard, in Department 23 of the above-entitled court, located at 400 County Center, Redwood City, CA 94063, BIRNBAUM & GODKIN, LLP ("B&G"), Counsel for Plaintiff SIX4THREE, LLC, will and hereby does apply *ex parte* for an order shortening time to hear B&G's Motion to be Relieved As Counsel For SIX4THREE, LLC and to stay all discovery directed at B&G pending a hearing on B&G's motion to be relieved as counsel.

The application is brought on the ground that good cause exists both to hear B&G's motion on shortened time pursuant to Rule 3.1300(b) and to stay discovery directed at B&G pending a hearing on the motion to be relieved as counsel pursuant to Code of Civil Procedure, section 2019.020. In short, the Court is presently conducting discovery proceedings for the purposes of investigating allegations made by Defendant FACEBOOK, INC. ("FACEBOOK") against not only Plaintiff SIX4THREE, but against Plaintiff's counsel, B&G. Under such circumstances, B&G now has interests in the underlying matter that may be at odds with the interests of its client, SIX4THREE. Under Rules of Professional Conduct 3-700(B) and (C), where such an un-waivable conflict of interest exists between attorney and client, withdrawal is not merely permissive, it is mandatory.

Given the unquestionable conflict that has been created between B&G and its client, B&G is legally and ethically barred from advising or representing SIX4THREE under any circumstances, and certainly under the current circumstances where there are pending discovery requests being directed at both B&G and its client regarding the very allegations that have created the conflict now at issue. Because the conflict between attorney and client prevents such representation in the pending expedited discovery proceedings, B&G requests that the Court stay said proceedings until such time as the conflict is addressed and all parties involved are properly represented by counsel without conflict.

The application is necessary because it will not be possible for the pending expedited discovery proceedings to continue while Plaintiff SIX4THREE is effectively proceeding in propria persona due to the

fact that B&G is now legally and ethically barred from providing counsel in these proceedings. Of course, as a corporation, Six4Three cannot proceed in propria persona and needs to secure independent counsel in order to engage in the ongoing discovery, and B&G requests that the court stay discovery until such time as all parties are represented by independent counsel.

B&G respectfully requests that the Court: grant B&G's request for an order shortening time to hear B&G's Motion to Be Relieved As Counsel for Plaintiff SIX4THREE, and that the discovery proceedings directed at B&G and SIX4THREE be stayed until the hearing on that motion.

It is crucial to note that the court appointed forensic examiner in this matter, Stroz Friedberg, LLC, is now in possession of all hardware and passwords subject to discovery in the pending proceedings. With all documents subject to discovery in these proceedings thus preserved, there is no prejudice to the parties if the discovery proceedings are stayed pending a hearing on B&G's motion to be relieved as counsel.

This Application is based on the Application itself; the Memorandum of Points and Authorities and the statutory and case law cited therein; the Declaration of David S. Godkin; the pleadings, records, and papers on file in this action; and other oral and documentary evidence as may be presented at the time of hearing.

Pursuant to California Rules of Court, Rules 3.1203 and 3.1204, B&G gave timely notice of its intent to present this *ex parte* application to all counsel of record by email on Friday, December 14, 2018. (Declaration of David S. Godkin ("Godkin Decl.").)

DATED: December 14, 2018

BIRNBAUM & GODKIN, LLP

By _____

For David Godkin

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF BIRNBAUM & GODKIN'S MOTION TO BE RELIEVED AS COUNSEL FOR PLAINTIFF SIX4THREE, LLC AND REQUEST TO STAY OF ALL DISCOVERY REQUESTS DIRECTED AT BIRBAUM & GODKIN PENDING A HEARING ON THE MOTION

B&G moves for an order shortening time to hear B&G's motion to be relieved as counsel for Plaintiff SIX4THREE, and requests a stay of discovery requests directed at B&G pending a hearing on that motion because a conflict between B&G and its client, SIX4THREE, prevents B&G from further advisement or representation of Plaintiff SIX4THREE.

I. RELEVANT FACTS

On November 19, 2018, the Court set a briefing schedule on FACEBOOK's ex parte application for expedited briefing on a motion for sanctions and contempt arising out of FACEBOOK's allegations against SIX4THREE and its counsel, B&G. (Godkin Decl.)

Facebook's allegations against both Plaintiff and its counsel have placed B&G is a conflicted position with its client which requires mandatory withdrawal by counsel. Unfortunately, there is pending discovery requests directed at both Plaintiff and counsel. Given the conflict, SIX4THREE cannot comply with such requests with the advice of present counsel.

II. LEGAL ANALYSIS

A. Good Cause Exists To Hear The Motion To Be Relieved As Counsel On Shortened Time:

Pursuant to California Rule of Court 3.1300:

> Unless otherwise ordered or specifically provided by law, all moving and supporting papers must be served and filed in accordance with Code of Civil Procedure section 1005 and, when applicable, the statutes and rules providing for electronic filing and service.

However, the statutory time may be shortened:

(b) Order shortening time

> The court, on its own motion or on application for an order shortening time supported by a declaration showing good cause, may prescribe shorter times for the filing and service of papers than the times specified in Code of Civil Procedure section 1005.

"The court ... on application for an order shortening time **supported by a declaration showing good**

cause, may prescribe shorter times for the filing and service of papers than the times specified in Code of Civil Procedure section 1005." (Cal. Rules of Court, rule 3.1300(b).) Good cause exists to shorten time to file and hear B&G's Motion in this case for the reasons set forth below.

B. Counsel Has Fully Complied With California Rules Of Court, Rules 3.1202, 3.1204 And 3.1204:

Rule 3.1202(c) of the California Rules of Court provides that an ex parte application may be granted upon a showing of "of irreparable harm, immediate danger, or any other statutory basis for granting relief ex parte."

Rule 3.1203 of the California Rules of Court provides that "[a] party seeking an ex parte order must notify all parties no later than 10:00 a.m. the court day before the ex parte appearance, absent a showing of exceptional circumstances that justify a shorter time for notice."

Rule 3.1204(b) of the California Rules of Court provides that an ex parte application must be accompanied by a declaration regarding notice that states:

> (1) The notice given, including the date, time, manner, and name of the party informed, the relief sought, any response, and whether opposition is expected and that, within the applicable time under rule 3.1203, the applicant informed the opposing party where and when the application would be made;
>
> (2) That the applicant in good faith attempted to inform the opposing party but was unable to do so, specifying the efforts made to inform the opposing party; or
>
> (3) That, for reasons specified, the applicant should not be required to inform the opposing party.

There is good cause to grant this *ex parte* application under Rule 3.1202(c) of the California Rules of Court. Unless the Court grants this *ex parte* application, B&G will be forced into the untenable position of remaining as counsel for SIX4THREE in this matter while being legally and ethically barred from advising its client or representing the client in any way. The pending discovery proceedings cannot move forward if SIX4THREE is without counsel and, given the conflict created by Facebook's allegations against Plaintiff and its counsel, B&G is now legally and ethically barred from further consultation with SIX4THREE under Rules of Professional Conduct 3-700(B).

As explained above, the accusations by FACEBOOK and the resulting discovery requests directed at B&G and its client have created an un-waivable conflict between attorney and client. The nature of the allegations is such that FACEBOOK has invoked the crime-fraud exception under Evidence Code 956. Clearly, these allegations put the interests of B&G at odds with the interests of its client, and withdrawal is mandatory.

Hearing the motion on shortened time will allow the Court to timely address the serious conflict issues and attorney-client privilege issues that have been raised by Facebook's allegations, and are now requiring B&G to withdraw as counsel. Pending a hearing on the motion to withdraw, SIX4THREE is effectively without representation throughout these expedited discovery proceedings due to the conflict arising between attorney and client. To avoid such a situation, B&G respectfully requests that the Court hear B&G's motion to be relieved as counsel and stay discovery proceedings until such time as all parties are represented by independent counsel and discovery can resume.

Finally, Pursuant to Rule 3-700 (D), even after withdrawal, B&G will be subject to the orders of this Court with regards to the management of all papers, filings, and documents in the above-titled matter.

III. CONCLUSION

For the foregoing reasons, B&G respectfully requests that the Court GRANT this ex parte application.

Dated: December 14, 2018

BIRNBAUM & GODKIN, LLP

By _____

For David Godkin

David Godkin (Admitted Pro Hac Vice)
Birnbaum & Godkin, LLP
280 Summer Street
Boston MA 02210
Telephone: (617) 307 6100
Facsimile: (617) 307 6101

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC,

Plaintiff,

v.

FACEBOOK, INC., a Delaware Corporation; MARK ZUCKERBERG, an individual; CHRISTOPHER COX, an individual; SAMUEL LESSIN, an individual; MICHAEL VERNAL, an individual; ILYA SUKHAR, an individual; and DOES 1-50, inclusive,

Defendants.

Case No.: CIV533328

Assigned for all purposes to Hon. V. Raymond Swope, Dept. 23

DECLARATION OF DAVID GODKIN IN SUPPORT OF EX PARTE APPLICATION FOR AN ORDER SHORTENING TIME TO HEAR BIRNBAUM & GODKIN'S MOTION TO BE RELIEVED AS COUNSEL FOR PLAINTIFF SIX4THREE, LLC AND REQUEST TO STAY OF ALL DISCOVERY REQUESTS DIRECTED AT BIRBAUM AND GODKIN PENDING A HEARING ON COUNSEL'S MOTION

DATE: December 17, 2018
TIME: 2:00 p.m.
DEPT: 23 (Hon. V. Raymond Swope)

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

I, David S. Godkins, declare that:

1. I am an attorney duly licensed to practice in all courts of the State of Massachusetts and have received permission to appear pro hac vice in the above entitled matter.

2. I am a Partner with the law firm of BIRNBAUM & GODKIN, LLP, attorneys of record for Plaintiff's SIX4THREE, LLC herein. I have personal knowledge of the information set forth herein below, unless noted as based on information and belief, all of which is true and correct of my own personal knowledge, and if called upon to testify, I could and would competently testify thereto.

3. I submit this declaration in support of Birnbaum and Godkin's *ex parte* application for an order shortening time and request to stay discovery pending a hearing on the motion.

4. On November 19, 2018, the Court set a briefing schedule on FACEBOOK's ex parte application for expedited briefing on a motion for sanctions and contempt arising out of FACEBOOK's allegations against SIX4THREE and its counsel, B&G.

5. Facebook's allegations against both Plaintiff and its counsel have placed B&G is a conflicted position with its client which requires mandatory withdrawal by counsel.

6. There are pending discovery requests directed at both Plaintiff and counsel and neither counsel nor Plaintiff can comply with such requests with the advice of present counsel given the conflict.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on this 14th day of December 2018, in San Francisco, California.

/s/ DSG - original to follow
David S. Godkin

EXHIBIT 24

SUPERIOR COURT OF SAN MATEO COUNTY

400 County Center, Redwood City, CA 94063 | 1050 Mission Road, South San Francisco, CA 94080
www.sanmateocourt.org

Minute Order

SIX4THREE, LLC, A DELAWARE LIMITED LIABILIT COMPANY vs. FACEBOOK, INC, A DELAWARE CORPORATION, et. al.

CIV533328

12/17/2018 9:00 AM
Discovery Conference
Hearing Result: Held

Judicial Officer: Swope, V. Raymond
Courtroom Clerk: Rebecca Huerta
Location: Courtroom 8A
Courtroom Reporter: Megan Zalmai

Parties Present

GODKIN, DAVID S.	Attorney
GROSS, STUART G	Attorney
KIM, CATHERINE Y.	Attorney
LERNER, JOSHUA H	Attorney
MEHTA, SONAL N	Attorney
MILLER, LAURA E.	Attorney

Exhibits

Minutes

Journals

- At 9:50 a.m.- Court convenes.

Also present JAMES MURPHY, JAMES LASSART & JOSEPH LEVERONI appeared with and for David Godkin and Birnbaum & Godkin.
Also present DONALD SULLIVAN appeared with Stuart G Gross.
Also present PAUL GREWAL AND NATALIE NAGLE in house counsel for Facebook, et al.
Also present JACK RUSSO & CHRISTOPHER SARGENT on behalf of Third Party Theodore Kramer & Thomas Scaramellino.

The Court announces the order re-opening discovery for the limited purpose of investigating the breach of the Court orders is VACATED. The Court elaborates its reasoning for vacating the previous order.

The Court makes the following orders:

The forensic examiner should preserve and maintain custody of the data collected pursuant to Court order. The Court orders preservation and nothing shall be disclosed to the parties until further order of the Court. The forensic examiner shall not run any search terms at all unless necessary for the preservation of the data. Such preservation and necessity shall only be pursuant to Court order.

The Court will not appoint a third party discovery referee, nor will the Court appoint a discovery referee for depositions. Further, the Court orders that there shall be no depositions of lawyers in this case until further order of the Court. In addition, there shall be no depositions of Mr. Kramer or Mr. Scaramellino

until further order of the Court.

This Court believes it is improper to compel attorneys to be subjected to depositions in view of attorney-client privilege and attorney work product doctrine protections, in the absence of further briefing on motions, and without any two-step showing under the crime fraud exception pursuant to EC 956. The deposition of Mr. Scaramellino shall not go forward, because he is a member of the legal team, as well an investor in Six4Three. Also, the deposition of Mr. Kramer should not go forward.

Facebook has previously sought expedited briefing on termination sanctions, and contempt, which skips a number of procedural steps. This is improper. Therefore,, if it chooses to do so, Facebook may files its noticed motion for terminating sanctions on a noticed motion pursuant to CCP 2023.030 with the ordinary briefing schedule pursuant to CCP 1005(b).Further, if it elects to do so, Facebook may make an application for an order to show cause re contempt, with a properly prepared application and an affidavit pursuant to CCP 1211 and 1211.5, and pursuant to, CCP 1005(b) upon personal service.

The motions for attorney fees shall go forward on January 11, 2019 at 9:00 a.m.

Regarding the certification of destruction , Facebook needs to serve the notice of entry of order regarding the return and/or destruction of confidential documents in order for the 48 hour period to begin.

Ms.Mehta shall prepare formal order consistent with order herein.

At 10:51 a.m.- Court recesses.
At 11:29 a.m. - Court reconvenes. Above-noted counsel and parties present.

The Court modifies its previous announced order. The Court reads the modifications into the record.

Ms.Mehta shall prepare formal order consistent with order herein.

At 11:44 a.m. - Court goes off the record to address Mr. Godkin's ex parte application.
At 11:58 a.m. - Court reconvenes. Above-noted counsel and parties present.

BIRNBAUM & GODKIN'S REQUEST FOR ORDER SHORTENING TIME TO HEAR BIRNBAUM & GODKIN'S MOTION TO BE RELIEVED AS COUNSEL FOR PLAINTIFF SIX4THREE, LLC AND REQUEST TO STAY OF ALL DISCOVERY REQUESTED DIRECTED AT BIRNBAUM & GODKIN PENDING A HEARING ON COUNSEL'S MOTION is DENIED.

Mr. Murphy requests a hearing date for a motion to be relieved as counsel.
Birnbaum & Godkin's motion to be relieved as counsel of record for Six4Three LLC shall be heard on February 7, 2019 at 9:00 a.m.

Court and counsel discuss non-confidential communication between Mr. Godkin or his firm with the press and/or government agencies, whether national or international be voluntarily produced to Facebook. Mr. Murphy agrees to produce Mr. Godkin's/and or his firm's non-confidential emails as requested by the Court by January 7, 2019 close of business day.

Ms. Mehta shall prepare formal order consistent with order herein.

At 12:11 p.m.-Court adjourned.
Case Events

Others

Comments:

Future Hearings and Vacated Hearings

January 11, 2019 9:00 AM Motion for Attorney Fees
Swope, V. Raymond

January 11, 2019 9:00 AM Motion for Attorney Fees
Swope, V. Raymond

Canceled: April 18, 2019 9:00 AM Pretrial hearing
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated
Weiner, Marie S.

Canceled: April 25, 2019 9:00 AM Jury Trial
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated
Weiner, Marie S.

EXHIBIT 25

MC–051

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):	FOR COURT USE ONLY
Donald Sullivan SBN 191080 Wilson Elser Moskowittz Edelman & Dicker LLP 525 Market Street, 17th Flor San Francisco, California 94105 TELEPHONE NO.: 415-433-0990 FAX NO.: 415-434-1370 ATTORNEY FOR (Name): Attorneys for Plaintiff Stuart Gross and Gross & Klein	Electronically FILED by Superior Court of California, County of San Mateo ON 1/8/2019 By /s/ Crystal Swords Deputy Clerk
NAME OF COURT: San Mateo Superior Court STREET ADDRESS: 400 County Center MAILING ADDRESS: CITY AND ZIP CODE: Redwood City, California 94063 BRANCH NAME: Southern COurt	
CASE NAME: Six4Three, LLC v. Facebook, Inc., et al.	CASE NUMBER: CIV533328
NOTICE OF MOTION AND MOTION TO BE RELIEVED AS COUNSEL—CIVIL	HEARING DATE: February 7, 2019 DEPT.: 23 TIME: 9:00 a.m. BEFORE HON.: V. Raymond Swope DATE ACTION FILED: TRIAL DATE:

TO *(name and address of client)*: Six4Three, LLC
1267 Chestnut St., Apt. 6, San Franciso, California 94109

1. PLEASE TAKE NOTICE that *(name of withdrawing attorney)*: Stuart Gross an Gross & Klein LLP moves under California Code of Civil Procedure section 284(2) and California Rules of Court, rule 3.1362, for an order permitting the attorney to be relieved as attorney of record in this action or proceeding.

2. A hearing on this motion to be relieved as counsel will be held as follows:

a. Date: February 7, 20189	Time: 9:00 a.m.	Dept.: 23	Room:

b. The address of the court: ☐ same as noted above ☐ other *(specify)*:

3. This motion is supported by the accompanying declaration, the papers and records filed in this action or proceeding, and the following additional documents or evidence *(specify)*:
1. Memorandum of Points and Authorities In Support of Stuart Gross' and Gross & Klein's Motion to Be Relieved as Counsel for Plaintiff
2. Declaration of Stuart Gross In Support Thereof
3. [Proposed] Order Granting Motion to Be Relieved As Counsel for Six4Three LLC

(This motion does not need to be accompanied by a memorandum of points and authorities. Cal. Rules of Court, rule 3.1362.)

4. The client presently represented by the attorney is
a. ☐ an individual.
b. ☑ a corporation.
c. ☐ a partnership.
d. ☐ an unincorporated association.
e. ☐ a guardian.
f. ☐ a conservator.
g. ☐ a trustee.
h. ☐ a personal representative.
i. ☐ a probate fiduciary.
j. ☐ a guardian ad litem.
k. ☐ other *(specify)*:

(Continued on reverse)

Form Adopted for Mandatory Use
Judicial Council of California
MC-051 [Rev. January 1, 2007]

Code of Civil Procedure , § 284;
Cal. Rules of Court, rule 3.1362
www.courtinfo.ca.gov

CASE NAME:	CASE NUMBER:
Six4Three, LLC v. Facebook, Inc., et al.	CIV533328

NOTICE TO CLIENT

If this motion to be relieved as counsel is granted, your present attorney will no longer be representing you. You may not in most cases represent yourself if you are one of the parties on the following list:

- A guardian
- A conservator
- A trustee
- A personal representative
- A probate fiduciary
- A corporation
- A guardian ad litem
- An unincorporated association

If you are one of these parties, YOU SHOULD IMMEDIATELY SEEK LEGAL ADVICE REGARDING LEGAL REPRESENTATION. Failure to retain an attorney may lead to an order striking the pleadings or to the entry of a default judgment.

5. If this motion is granted and a client is representing himself or herself, the client will be solely responsible for the case.

NOTICE TO CLIENT WHO WILL BE UNREPRESENTED

If this motion to be relieved as counsel is granted, you will not have an attorney representing you. You may wish to seek legal assistance. If you do not have a new attorney to represent you in this action or proceeding, and you are legally permitted to do so, you will be representing yourself. It will be your responsibility to comply with all court rules and applicable laws. If you fail to do so, or fail to appear at hearings, action may be taken against you. You may lose your case.

6. If this motion is granted, the client must keep the court informed of the client's current address.

NOTICE TO CLIENT WHO WILL BE UNREPRESENTED

If this motion to be relieved as counsel is granted, the court needs to know how to contact you. If you do not keep the court and other parties informed of your current address and telephone number, they will not be able to send you notices of actions that may affect you, including actions that may adversely affect your interests or result in your losing the case.

Date: January 9, 2018

Donald Sullivan
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF ATTORNEY)

Attorney for *(name)*:

Donald P. Sullivan (SBN 191080)
Email: donald.sullivan@wilsonelser.com
WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP
525 Market Street, 17th Floor
San Francisco, California 94105
Telephone: (415) 433-0990
Facsimile: (415) 434-1370

Attorneys for Plaintiff's Counsel
STUART GROSS and GROSS & KLEIN LLP

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

SIX4THREE, LLC.,

Plaintiff,

v.

FACEBOOK, INC., a Delaware Corporation; MARK ZUCKERBERG, an individual; CHRISTOPHER COX, an individual; SAMUEL LESSIN, an individual; MICHAEL VERMAL, an individual; ILYA SUKHAR, an individual; and DOES 1-50, inclusive,

Defendants.

Case No.: CIV533328

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF STUART GROSS'S AND GROSS & KLEIN LLP'S MOTION TO BE RELIEVED AS COUNSEL FOR PLAINTIFF SIX4THREE, LLC

Stuart Gross and Gross & Klein LLP (collectively "G&K"), and their attorneys, hereby request entry of an order relieving them (including any and all attorneys affiliated with Gross & Klein LLP) as counsel for Plaintiff SIX4THREE, LLC ("SIX4THREE") in this matter pursuant to California Code of Civil Procedure section 284(2). The Court may allow withdrawal of counsel and counsel may request permission to withdraw if good cause exists pursuant to one or more of the grounds identified in California Rules of Professional Conduct, specifically Rule 3-700(b)(2) and, in the alternative, Rule 3-700(c)(2), and the client has not consented to the withdrawal after receiving counsel's request.

Good cause to permit G&K to withdraw as counsel for SIX4THREE in this case for several, independent reasons. First, as indicated in Birnbaum & Godkin, LLP's Memorandum of Points and Authorities in Support of its Motion to be relieved as counsel, there exists an

unwaivable conflict of interest between G&K and SIX4THREE. As the Court is aware, Defendant Facebook has made certain allegations against both Plaintiff SIX4THREE **and** Plaintiff's counsel (*i.e.*, G&K and Birnbaum & Godkin ("B&G")). Facebook is also seeking discovery directly against Plaintiff's counsel. Consequently, G&K is not permitted under the California Rules of Professional Responsibility to continue representing SIX4THREE.

The attorney-client relationship and corresponding privileges and ethical duties arising out of that sacrosanct relationship require that specific facts which give rise to this Motion are confidential and required to be kept confidential pursuant to California Business & Professions Code §6068(e), California Rule of Professional Conduct 3-100(A), and by the attorney-client privilege. (Cal. Evid. Code §§950 *et seq.*)

In *Aceves v. Superior Court*, the California Court of Appeal, Fourth District, reviewed and upheld a motion to be relieved as counsel filed under very similar circumstances. (*Aceves v. Superior Court* (1996) 51 Cal.App.4th 584.) The attorney in the underlying matter moved to be relieved as counsel based on the manifestation of an actual, un-waivable conflict between he and his client which "resulted in a complete breakdown in the attorney-client relationship," where, as here, the attorney-client privilege prevented the attorney from providing detailed grounds for the conflict, beyond his good faith representations to the court that such a conflict did in fact exist. (*Aceves v. Superior Court* (1996) 51 Cal.App.4th 584.) Citing *Uhl v. Municipal Court*, the Court of Appeal held that, for the purposes of a motion to withdraw, the attorney's representations to the court were sufficient to warrant relief (withdrawal) where the attorney described the conflict as one that, among other things, had "resulted in the complete breakdown in the attorney client relationship." (*Id.* at 592, citing *Uhl v. Municipal Court*, supra, 37 Cal.App.3d at 528.)

As the Court is aware, Defendant alleges that the recent developments regarding the release of documents was perpetrated not by SIX4THREE alone, but by SIX4THREE and G&K as co-conspirators. Defendant has further alleged that G&K has made false statements to the Court. Despite the fact that G&K has expressly denied, and continues to deny, these allegations, the allegations have nevertheless placed the personal interests of G&K at direct odds with

SIX4THREE, which is now not just a client, but an alleged co-conspirator. Withdrawal in mandatory under these circumstances.

As noted above, G&K's duty to protect the attorney-client privilege prevents disclosure of certain further details regarding this conflict of interest beyond G&K's good faith representations that such a conflict indeed exists and has subsequently caused a complete breakdown in the attorney client relationship between G&K and SIX4THREE, LLC. As the court in *Aceves* held:

> Where as here the duty not to reveal confidences prevented counsel from further disclosure and the court accepted the good faith of counsel's representations, the court should find the conflict sufficiently established and permit withdrawal. (*Id.*, citing *Uhl v. Municipal Court*, supra, 37 Cal.App.3d at 527-528 and *Leversen v. Superior Court*, supra, 34 Cal.3d at 539.)

It was reasonably foreseeable that the various accusations and their logical defenses would, aside from creating an obvious conflict of interest between attorney and client, also lead to a breakdown of the attorney-client relationship. Whereas the creation of an un-waivable conflict between attorney and client is itself enough to cause a breakdown in the attorney-client relationship, the specific nature of the accusations being lodged by FACEBOOK certainly places a strain on the ease of communication that the attorney-client relationship demands.

G&K submits that the very nature of Defendant's allegations against Plaintiff and Plaintiff's counsel, coupled with the fact that Defendant has directed discovery requests directly at Plaintiff's counsel, separate and apart from the client, constitute a prima facie case of an un-waivable conflict between attorney and client. B&G further submit that under *Aceves* and the cases cited therein, the court has sufficient information to grant B&G's motion to be relieved as counsel. However, in the event that the Court desires further information to ascertain the good faith basis for this motion and for withdrawal, it is requested that the Court have an *in camera* hearing outside of the presence of all other parties so that any information demonstrating good cause for this withdrawal which counsel can disclose may be supplied to the Court. (*Manfredi & Levine v. Superior Court* (1998) 66 Cal. App. 4th 1128, 1136-1137.)

Second, the breakdown in the relationship between G&K and SIX4THREE has been

exacerbated by the fact that SIX4THREE has breached its retainer agreement with G&K by failing to pay for the legal services G&K provided to it. Specifically, Stuart Gross apprised SIX4THREE in December of the fact that it had amassed arrearages of tens of thousands of dollars and demanded that SIX4THREE make payment to bring its account current. To date, SIX4THREE has not paid its legal fees and has only tendered $775.00 in filing fees. *See* Declaration of Stuart Gross ("Gross Decl.").

Third, G&K should be permitted to withdraw as counsel because, pursuant to the terms of its retainer agreement with SIX4THREE, G&K's retention is limited to acting as local counsel and at the direction of Birnbaum & Godkin, LLP. Specifically, G&K's retainer agreement with SIX4THREE states:

> The Client acknowledges that any action taken by the Firm will be at the direction of Birnbaum & Godkin, LLP ("Lead Counsel"). It its role as local counsel, the Firm will not be responsible for developing legal strategy, implementing legal strategy, monitoring filing deadlines, or otherwise directing the litigation. If, at any point in the Client's representation by the Firm, the Client would like to modify this scope of representation, the Client shall advise the Firm and a new retainer agreement shall be negotiated.

See Gross Decl. The retainer agreement between SIX4THREE and G&K has never been renegotiated and G&K's responsibilities for the representation are still limited to acting as local counsel at the direction of Birnbaum & Godkin. *See* Gross Decl. Accordingly, if Birnbaum & Godkin's Motion to be Relieved as Counsel is granted, G&K's Motion must also be granted.

For the above-stated reasons, G&K's Motion to be Relieved as Counsel for Plaintiff SIX4THREE should be granted.

Date: January 8, 2019

WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP

By: _____
Donald P. Sullivan
Attorneys for Plaintiff's Counsel
STUART GROSS and GROSS & KLEIN LLP

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of 18 years and not a party to the within action. My business address is 525 Market Street, 17th Floor, San Francisco, CA 94105.

On January 8, 2019, I served the foregoing document described as

NOTICE OF MOTION AND MOTION TO BE RELIEVED AS COUNSEL – CIVIL

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF STUART GROSS'S AND GROSS & KLEIN LLP'S MOTION TO BE RELIEVED AS COUNSEL FOR PLAINTIFF SIX4THREE, LLC

[PROPOSED] ORDER GRANTING ATTORNEY'S MOTION TO BE RELIEVED AS COUNSEL – CIVIL

on the interested parties in this action.

☐ by placing the original and/or ☒ a true copy thereof enclosed in (a) sealed envelope(s), addressed as follows:

SEE ATTACHED SERVICE LIST

☒ **BY REGULAR U.S. MAIL:** I deposited such envelope in the mail at 525 Market Street, San Francisco, California 94114. The envelope was mailed with postage thereon fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

☒ **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed in the Service List.

☐ **BY FACSIMILE MACHINE:** I Tele-Faxed a copy of the original document to the above facsimile numbers.

☐ **BY OVERNIGHT MAIL:** I caused said document(s) to be picked up by Federal Express Services at 555 S. Flower Street, Los Angeles, California 90071 for overnight delivery to the offices of the addressees listed on the Service List.

☐ **BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand to the above addressee(s).

///

☒ (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made.

Executed on January 8, 2019, at San Francisco, California.

Joyce Viampando

SERVICE LIST

SIX4THREE, LLC v. FACEBOOK, INC., et al.
CASE NO. CIV533328

Sonal N. Mehta
Joshua H. Lerner
Laura E. Miller
Catherine Y. Kim
DURIE TANGRI LLP
217 Leidesdorff Street
San Francisco, CA 94111

James A. Murphy
Joseph S. Leveroni
MURPHY, PEARSON, BRADLEY, & FEENEY
88 Kearney Street, 10th Floor
San Francisco, CA 94108

David S. Godkin
James Kruzer
BIRNBAUM & GODKIN, LLP
280 Summer Street
Boston, MA 02210

Jack Russo
Christopher Sargent
COMPUTER LAW GROUP, LLP
401 Florence Street
Palo Alto, CA 94301

Ted Kramer
SIX4THREE, LLC
1267 Chestnut Street, Apt. 6
San Francisco, CA 94109

Donald P. Sullivan (SBN 191080)
Email: donald.sullivan@wilsonelser.com
WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP
525 Market Street, 17th Floor
San Francisco, California 94105
Telephone: (415) 433-0990
Facsimile: (415) 434-1370

Attorneys for Plaintiff's Counsel
STUART GROSS and GROSS & KLEIN LLP

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

SIX4THREE, LLC.,

Plaintiff,

v.

FACEBOOK, INC., a Delaware Corporation; MARK ZUCKERBERG, an individual; CHRISTOPHER COX, an individual; SAMUEL LESSIN, an individual; MICHAEL VERMAL, an individual; ILYA SUKHAR, an individual; and DOES 1-50, inclusive,

Defendants.

Case No.: CIV533328

DECLARATION OF STUART GROSS IN SUPPORT OF HIS AND GROSS & KLEIN LLP'S MOTION TO BE RELIEVED AS COUNSEL FOR PLAINTIFF SIX4THREE, LLC

I, Stuart Gross, declare as follows:

1. I am a partner with the law firm of Gross & Klein, LLP and am presently counsel for Plaintiff SIX4THREE ("SIX4THREE") in the above-titled case. The following facts are within my personal knowledge and, if called as a witness, I would and could testify competently thereto. I make this declaration in support of my Motion to be Relieved as Counsel for Plaintiff SIX4THREE, LLC.

2. Withdrawal is appropriate under Code of Civil Procedure Section 284(2) in these circumstances because good cause exists pursuant to one or more of the grounds set out in Cal. Rules of Prof. Conduct, R. 3-700(B) and (C), and the client has not consented to relieve counsel after receiving counsel's request. Defendant's allegations directed at both Plaintiff and Plaintiff's counsel in addition to Defendant's attempts to direct discovery requests to me and Gross & Klein

LLP (collectively, "G&K"), separate and apart from my client, make a *prima facie* showing of an un-waivable conflict between attorney and client. In addition, a breakdown in communication between Plaintiff's counsel and Plaintiff have made it impossible to provide effective representation.

3. Good cause further exists because there has been a breakdown in the relationship between G&K and SIX4THREE such that the relationship has become unworkable. This breakdown has not only been caused by the nature of Facebook's allegations against Plaintiff's and Plaintiff's counsel, but also by the fact that SIX4THREE has breached its retainer agreement with G&K by failing to pay for the legal services G&K provided to it. Specifically, Stuart Gross apprised SIX4THREE in December of the fact that it had amassed arrearages of tens of thousands of dollars and demanded that SIX4THREE make payment to bring its account current. To date, SIX4THREE has not paid its legal fees and has only tendered $775.00 for filing fees.

4. Finally, good cause for granting the requested relief exists because, pursuant to the terms of its retainer agreement with SIX4THREE, G&K's retention is limited to acting as local counsel and at the direction of Birnbaum & Godkin, LLP. Specifically, G&K's retainer agreement with SIX4THREE states:

> The Client acknowledges that any action taken by the Firm will be at the direction of Birnbaum & Godkin, LLP ("Lead Counsel"). It its role as local counsel, the Firm will not be responsible for developing legal strategy, implementing legal strategy, monitoring filing deadlines, or otherwise directing the litigation. If, at any point in the Client's representation by the Firm, the Client would like to modify this scope of representation, the Client shall advise the Firm and a new retainer agreement shall be negotiated.

The retainer agreement between SIX4THREE and G&K has never been renegotiated and G&K's responsibilities for the representation are still limited to acting as local counsel at the direction of Birnbaum & Godkin.

5. More specific facts which give rise to this Motion are confidential and required to be kept confidential pursuant to Business & Professions Code §6068(e), California Rule of Professional Conduct 3-100(A), and by the attorney-client privilege (Cal. Evid. Code §§950 et seq.) In the event that the Court desires further information to ascertain the good faith basis for

this motion and for withdrawal, it is requested that the Court have an *in camera* hearing outside the presence of all other parties so that the facts demonstrating good cause for this withdrawal which counsel can disclose may be demonstrated to the Court. *See Manfredi & Levine v. Superior Court* (1998) 66 Cal.App.4th 1128, 1136-1137).

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Executed this 8th day of January 2019 at Sebastopol, California.

Stuart Gross

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of 18 years and not a party to the within action. My business address is 525 Market Street, 17th Floor, San Francisco, CA 94105.

On January 8, 2019, I served the foregoing document described as

DECLARATION OF STUART GROSS IN SUPPORT OF HIS AND GROSS & KLEIN LLP'S MOTION TO BE RELIEVED AS COUNSEL FOR PLAINTIFF SIX4THREE, LLC

on the interested parties in this action.

☐ by placing the original and/or ☒ a true copy thereof enclosed in (a) sealed envelope(s), addressed as follows:

SEE ATTACHED SERVICE LIST

☒ **BY REGULAR U.S. MAIL:** I deposited such envelope in the mail at 525 Market Street, San Francisco, California 94114. The envelope was mailed with postage thereon fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

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☐ **BY FACSIMILE MACHINE:** I Tele-Faxed a copy of the original document to the above facsimile numbers.

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☐ **BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand to the above addressee(s).

///

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☒ (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made.

Executed on January 8, 2019, at San Francisco, California.

Joyce Vialpando

SERVICE LIST

SIX4THREE, LLC v. FACEBOOK, INC., et al.
CASE NO. CIV533328

Sonal N. Mehta
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James Kruzer
BIRNBAUM & GODKIN, LLP
280 Summer Street
Boston, MA 02210

Jack Russo
Christopher Sargent
COMPUTER LAW GROUP, LLP
401 Florence Street
Palo Alto, CA 94301

Ted Kramer
SIX4THREE, LLC
1267 Chestnut Street, Apt. 6
San Francisco, CA 94109

EXHIBIT 26

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address)*:
David Godkin (Admitted Pro Hac Vice)
Birnbaum & Godkin, LLP
280 Summer Street
Boston, MA 02210
TELEPHONE NO.: (617) 307 6100 FAX NO.: (617) 307 6101
ATTORNEY FOR *(Name)*: Plaintiff

FOR COURT USE ONLY

Electronically
FILED
by Superior Court of California, County of San Mateo
ON 1/8/2019
By /s/ Crystal Swords
Deputy Clerk

NAME OF COURT: San Mateo Superior Court
STREET ADDRESS: 400 County Center
MAILING ADDRESS:
CITY AND ZIP CODE: Redwood City CA 94063
BRANCH NAME: Southern Court

CASE NAME:
Six4Three, LLC v. Facebook, Inc. et al.

CASE NUMBER:
CIV533328

NOTICE OF MOTION AND MOTION TO BE RELIEVED AS COUNSEL—CIVIL

HEARING DATE: February 7, 2019
DEPT.: 23 TIME: 9:00 A.M.
BEFORE HON.: V. Raymond Swope
DATE ACTION FILED:
TRIAL DATE:

TO *(name and address of client)*: Six4Three, LLC
1267 Chestnut St., Apt. 6 San Francisco, CA 94109

1. PLEASE TAKE NOTICE that *(name of withdrawing attorney)*: Birnbaum & Godkin, LLP moves under California Code of Civil Procedure section 284(2) and California Rules of Court, rule 3.1362, for an order permitting the attorney to be relieved as attorney of record in this action or proceeding.

2. A hearing on this motion to be relieved as counsel will be held as follows:

a. Date: February 7, 2019	Time: 9:00 A.M.	Dept.: 23	Room:

b. The address of the court: ☑ same as noted above ☐ other *(specify)*:

3. This motion is supported by the accompanying declaration, the papers and records filed in this action or proceeding, and the following additional documents or evidence *(specify)*:
1. Memorandum of Points and Authorities In Support of Birnbaum & Godkin, LLP's Motion to be Relieved as Counsel for Plaintiff Six4Three, LLC
2. [Proposed] Order Granting Motion to be Relieved as Counsel for Plaintiff Six4Three, LLC

(This motion does not need to be accompanied by a memorandum of points and authorities. Cal. Rules of Court, rule 3.1362.)

4. The client presently represented by the attorney is
a. ☐ an individual.
b. ☑ a corporation.
c. ☐ a partnership.
d. ☐ an unincorporated association.
e. ☐ a guardian.
f. ☐ a conservator.
g. ☐ a trustee.
h. ☐ a personal representative.
i. ☐ a probate fiduciary.
j. ☐ a guardian ad litem.
k. ☐ other *(specify)*:

(Continued on reverse)

Form Adopted for Mandatory Use
Judicial Council of California
MC-051 [Rev. January 1, 2007]

Code of Civil Procedure , § 284;
Cal. Rules of Court, rule 3.1362
www.courtinfo.ca.gov

CASE NAME:	CASE NUMBER:
Six4Three, LLC v. Facebook, Inc. et al.	CIV533328

NOTICE TO CLIENT

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- A guardian
- A conservator
- A trustee
- A personal representative
- A probate fiduciary
- A corporation
- A guardian ad litem
- An unincorporated association

If you are one of these parties, YOU SHOULD IMMEDIATELY SEEK LEGAL ADVICE REGARDING LEGAL REPRESENTATION. Failure to retain an attorney may lead to an order striking the pleadings or to the entry of a default judgment.

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NOTICE TO CLIENT WHO WILL BE UNREPRESENTED

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6. If this motion is granted, the client must keep the court informed of the client's current address.

NOTICE TO CLIENT WHO WILL BE UNREPRESENTED

If this motion to be relieved as counsel is granted, the court needs to know how to contact you. If you do not keep the court and other parties informed of your current address and telephone number, they will not be able to send you notices of actions that may affect you, including actions that may adversely affect your interests or result in your losing the case.

Date:

David Godkin/ Joseph Leveroni
(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY)

Attorney for *(name)*: Birnbaum & Godkin, LLP

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address)*:
David S. Godkin (Admitted Pro Hac Vice)
Birnbaum & Godkin, LLP
280 Summer Street
Boston MA 02210
TELEPHONE NO.: (617) 307 6100 FAX NO.:(617) 307 6101
ATTORNEY FOR *(Name)*: Plaintiff

FOR COURT USE ONLY

Electronically
FILED
by Superior Court of California, County of San Mateo
ON 1/8/2019
By /s/ Crystal Swords
Deputy Clerk

NAME OF COURT: San Mateo Superior Court
STREET ADDRESS: 400 County Center
MAILING ADDRESS:
CITY AND ZIP CODE: Redwood City, CA 94063
BRANCH NAME: Southern Court

CASE NAME: Six4Three, LLC v. Facebook, Inc. et al

CASE NUMBER: CIV533328

HEARING DATE: February 7, 2019
DEPT.: 23 TIME: 9:00 A.M.
BEFORE HON.: V. Raymond Swope
DATE ACTION FILED:
TRIAL DATE:

DECLARATION IN SUPPORT OF ATTORNEY'S MOTION TO BE RELIEVED AS COUNSEL—CIVIL

1. **Attorney and Represented Party.** Attorney *(name)*: David S. Godkin is presently counsel of record for *(name of party)*: Six4Three, LLC in the above-captioned action or proceeding.

2. **Reasons for Motion.** Attorney makes this motion to be relieved as counsel under Code of Civil Procedure section 284(2) instead of filing a consent under section 284(1) for the following reasons *(describe)*:

Withdrawal is appropriate under Code of Civil Procedure Section 284(2) in these circumstances because good cause exists pursuant to one or more of the grounds set out in Cal. Rules of Prof. Conduct, R. 3-700(B) and (C), and the client has not consented to relieve counsel after receiving counsel's request. Defendant's allegations directed at both Plaintiff and Plaintiff's counsel in addition to Defendant's attempts to direct discovery requests to B&G, separate and apart from its client, make a prima facie showing of an unwaivable conflict between attorney and client. In addition, a breakdown in communication between Plaintiff's counsel and Plaintiff have made it impossible to provide effective representation. More specific facts which give rise to this Motion are confidential and required to be kept confidential pursuant to Business & Professions Code §6068(e), California Rule of Professional Conduct 3-100(A), and by the attorney-client privilege (Cal. Evid. Code §§950 et seq.) In the event that the Court desires further information to ascertain the good faith basis for this motion and for withdrawal, it is requested that the Court have an *in camera* hearing outside of the presence of all other parties so that the facts demonstrating good cause for this withdrawal which counsel can disclose may be demonstrated to the Court. (*Manfredi & Levine v.Superior Court* (1998) 66 Cal. App. 4th 1128, 1136-1137.)

☐ Continued on Attachment 2.

3. **Service**
   a. Attorney has
      (1) ☐ personally served the client with copies of the motion papers filed with this declaration. A copy of the proof of service will be filed with the court at least 5 days before the hearing.
      (2) ☐ served the client by mail at the client's last known address with copies of the motion papers served with this declaration.
   b. If the client has been served by mail at the client's last known address, attorney has
      (1) ☐ confirmed within the past 30 days that the address is current
         (a) ☐ by mail, return receipt requested.
         (b) ☐ by telephone.
         (c) ☐ by conversation.
         (d) ☐ by other means *(specify)*:

(Continued on reverse)

Form Adopted for Mandatory Use
Judicial Council of California
MC-052 [Rev. January 1, 2007]

Code of Civil Procedure, § 284;
Cal. Rules of Court, rule 3.1362
www.courtinfo.ca.gov
Westlaw Doc & Form Builder

CASE NAME:	CASE NUMBER:
Six4Three, LLC v. Facebook, Inc.	CIV533328

3. b. (2) ☐ been unable to confirm that the address is current or to locate a more current address for the client after making the following efforts:
   (a) ☐ mailing the motion papers to the client's last known address, return receipt requested.
   (b) ☐ calling the client's last known telephone number or numbers.
   (c) ☐ contacting persons familiar with the client *(specify)*:

   (d) ☐ conducting a search *(describe)*:

   (e) ☐ other *(specify)*:

   c. Even if attorney has been unable to serve the client with the moving papers, the court should grant attorney's motion to be relieved as counsel of record *(explain)*:

4. The next hearing scheduled in this action or proceeding
   a. ☐ is not yet set.
   b. ☐ is set as follows *(specify the date, time, and place)*:

   c. ☐ concerns *(describe the subject matter of the hearing)*:

   ☐ Continued on Attachment 4.

5. The following additional hearings and other proceedings (including discovery matters) are presently scheduled in this case *(for each, describe the date, time, place, and subject matter)*:

   ☐ Continued on Attachment 5.

6. Trial in this action or proceeding
   a. ☐ is not yet set.
   b. ☐ is set as follows *(specify the date, time, and place)*:

7. **Other.** Other matters that the court should consider in determining whether to grant this motion are the following *(explain)*:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Date:

David S. Godkin
(TYPE OR PRINT NAME)

▶ David S. Godkin
(SIGNATURE OF DECLARANT)

8. Number of pages attached: _____

EXHIBIT 27

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE LLC,

Plaintiff,

vs.

FACEBOOK INC., et al.

Defendants.

Case No. CIV533328

ORDER: (1) GRANTING PLAINTIFF SIX4THREE, LLC'S EX PARTE APPLICATION FOR ORDER CONTINUING HEARING; (2) CONTINUING *SUA SPONTE* THE HEARING ON MOTIONS TO WITHDRAW; AND (3) SETTING CASE MANAGEMENT CONFERENCE

Assigned for All Purposes to
Hon. V. Raymond Swope, Dept. 23

Dept.: 23

Action Filed: April 10, 2015

On January 17, 2019, the Court set a briefing schedule on plaintiff SIX4THREE, LLC's ("Plaintiff") ex parte application for order continuing the hearing on the Individual Defendants and Plaintiff's motions for attorney fees and costs and Defendant FACEBOOK, INC.'s ("Defendant") motion to reopen discovery and to compel set for February 7, 2019 ("Plaintiff's Ex Parte") by email.

Having considered the papers filed in support of and opposition to Plaintiff's Ex Parte and good cause appears.

IT IS HEREBY ORDERED as follows:

Plaintiff's Ex Parte, filed January 22, 2019, is GRANTED, IN PART AND DENIED IN PART. The hearing set for February 7, 2019 on Individual Defendants and Plaintiff's motions for attorney fees and costs and Defendant's motion to reopen discovery and to compel is continued to March 15, 2019 at 10 am. Any outstanding opposition to any of these motions shall be filed and served no later than February 27, 2019 and any outstanding reply shall be filed and served no later than March 6, 2019.

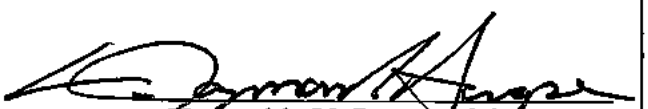
The Court, *sua sponte*, continues the hearing on Plaintiff counsel Stuart Gross and Gross & Klein LLP ("Gross") and Birnbaum & Godkin, LLP's motions to be relieved as counsel to February 22, 2019 at 9 am. Gross failed to file its supporting declaration on Judicial Council form MC-052. (Cal. Rules of Court, rule 3.1362(c).) Gross shall file and serve a rule compliant declaration no later than January 25, 2019. No substantive changes to this declaration are permitted. However, to the extent that any party believes Gross has made substantive changes, that party may file and serve a supplemental opposition, no more than five pages long, addressing only those changes no later than February 1, 2019, and Gross may file and serve a supplemental reply, no more than five pages long, addressing only the supplemental opposition no later than February 8, 2019. Notwithstanding the deadline to file a supplemental reply, the deadline to file and serve any reply in support of these motions remains the same as previously ordered. Given the representations of Gross that it served as local counsel for David S. Godkin, who was admitted *pro hac vice*, at the behest of Birnbaum & Godkin, LLP, the Court finds good cause for these two motions to be continued in order to be heard together.

///

The Court sets a case management conference for March 8, 2019 at 9 am.

IT IS SO ORDERED.

DATED: January 24, 2019



Honorable V. Raymond Swope
Judge of the Superior Court

EXHIBIT 28

D-23

FILED
SAN MATEO COUNTY

JAN 24 2019

Clerk of the Superior Court

By _____ DEPUTY CLERK

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

Six4Three, a Delaware limited liability company,

Plaintiff;

v.

Facebook, Inc., a Delaware corporation; **Mark Zuckerberg**, an individual; **Christopher Cox**, an individual; **Javier Olivan**, an individual; **Samuel Lessin**, an individual; **Michael Vernal**, an individual; **Ilya Sukhar**, an individual; and **Does 1–50**, inclusive,

Defendants.

Case No. CIV533328

Assigned for all purposes to Hon. V. Raymond Swope, Dep't 23

DECLARATION OF THEODORE KRAMER REGARDING PLAINTIFF SIX4THREE'S CONDITIONAL ACCEPTANCE OF BIRNBAUM & GODKIN AND GROSS & KLEIN'S MOTION TO BE RELIEVED AS COUNSEL FOR PLAINTIFF SIX4THREE, LLC

Date: February 22, 2019
Time: 9:00 a.m.
Department: 23

Action Filed April 10, 2015
Trial Date: None set

CIV533328
DECL
Declaration
1614436

I, Theodore Kramer, declare under penalty of perjury as follows.

1. My name is Theodore Kramer. I am over the age of 18. I make these statements in support of Plaintiff Six4Three's ("Plaintiff" or "643") Conditional Acceptance of Birnbaum & Godkin and Gross & Klein's Motion to be Relieved as Counsel. I have personal knowledge of the matters stated in this declaration, and I believe those matters to be true.

2. I am the CEO (and Managing Member) of Plaintiff 643 and make these statements on its behalf.

3. I believe we at 643, including the legal team, complied with Section 16 of the Protective Order and all other Court Orders. In coordination with counsel for 643, I took measures at the time the Dropbox sub-folder in which Facebook's highly confidential files were reviewed to prevent my access to those files and requested that counsel do the same. Prior to the United Kingdom Parliament ordering me to search my computer under its direct supervision, I had never accessed that Dropbox sub-folder. I have never reviewed any files or documents produced by Facebook with the "Highly Confidential" Bates Stamped designation.

4. Beyond our control (and certainly beyond my control), it is now apparent as a result of the events in the United Kingdom that at least some of the Dropbox cloud sub-folders did not have the proper permission settings or that the organization of the sub-folders in the Dropbox cloud account was not synced fully with the organization of the folders on the personal computers of the team members who had access to the account, or some other technical issue occurred that modified or undermined what I believed to be the permissions settings which I always understood were limited to the litigation team comprised of Birnbaum & Godkin and Gross & Klein who are both counsel to Plaintiff.

5. However, since it has become apparent that Birnbaum & Godkin and Gross & Klein were and are both no longer willing or able to represent 643 based on their statements to this Court that they have an "unwaivable conflict" resulting from Facebook's unfounded accusations against 643 and counsel, and in light of counsel's continued (and continuous) failure to substantively represent Plaintiff in the various motions and applications filed by Defendant

since late November 2018, I have made a concerted effort to secure substitute counsel for Plaintiff, contacting and interviewing over a dozen law firms in the process.

6. Besides the firm of Mr. Edward V. King Jr., King & Kelleher, LLP, who confirmed in a declaration that he will not take on the case unless given substantial time to get up to speed, I have been unable to find a firm which has demonstrated strong interest in the case, particularly in light of the potential need to get up to speed in a matter of weeks with pending but as yet unknown terminating sanctions or unknown contempt motions hanging collaterally over this proceeding.

7. Of these law firms, a significant number have expressed that they are unable to represent Plaintiff due to a conflict of interest generated by their previous or ongoing representation of Defendant Facebook, Inc.

8. Law Firm No. 1, with over 1,000 attorneys over a dozen international offices, declined the case due to its current representation of Facebook, Inc.

9. Law Firm No. 2, in San Francisco with nearly 100 attorneys, declined the case due to its current representation of Facebook, Inc.

10. Law Firm No. 3, in San Mateo with less than ten attorneys, declined the case due to a conflict of interest involving Facebook, Inc.

11. Law Firm No. 4, in San Francisco with almost forty attorneys, declined the case due to a conflict of interest involving Facebook, Inc.

12. Law Firm No. 5, in Mountain View with over 350 attorneys, declined the case due to its current representation of Facebook, Inc.

13. Law Firm No. 6, in Los Angeles with almost forty attorneys, informed me of a potential conflict owing to its ongoing involvement in a suit against Facebook, Inc.

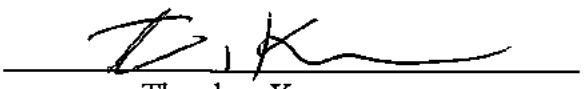
14. Given the continued inability or unwillingness of Plaintiff's counsel of record to represent Plaintiff, as well as the hardship of acquiring unconflicted substitute counsel to represent Plaintiff in this matter, I now realize that the original March 31, 2019 estimate in the Stipulation Regarding Hearing Dates on Pending and Potential Motions, submitted to the Court on December 26, 2018 was overly optimistic.

15. It is likely that Plaintiff will need a longer extension of time to acquire new counsel and allow them to get up to speed without prejudicing Plaintiff.

16. Specifically, on behalf of Plaintiff and as its CEO and Managing Member, I will conditionally accept and agree to the motion to withdraw filed by Birnbaum & Godkin and Gross & Klein if Plaintiff is given until **May 31, 2019** to retain new counsel.

17. I will continue diligent efforts to retain counsel, but I believe our current counsel should remain responsible for managing the electronically stored information ("ESI") on cloud accounts pending new counsel being appointed by Plaintiff.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was entered into on January 24, 2019 in San Francisco, California.



Theodore Kramer

EXHIBIT 29

D-23

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Attorneys for Third Parties
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Attorneys for Third Parties
GROSS & KLEIN LLP

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability company,

Plaintiff,

v.

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

Defendants.

Case No.: CIV 533328

Assigned for all purposes to Hon. V. Raymond Swope, Dept. 23

EX PARTE APPLICATION TO STAY DISCOVERY

Date:	March 28, 2019
Time:	10:00 a.m.
Dept.:	23
Judge:	Hon. V. Raymond Swope
Trial Date:	April 25, 2019

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on the above date and time, or as soon thereafter as the matter may be heard, in Department 23 of the above-entitled court, located at 400 County Center, Redwood City, CA 94063, BIRNBAUM & GODKIN, LLP ("B&G") and GROSS & KLEIN, LLP ("G&K"; collectively "COUNSEL"), Counsel for Plaintiff SIX4THREE, LLC ("SIX4THREE"), will and hereby does apply *ex parte* for an order staying the Court's March 15, 2019 Order Re: Defendant Facebook Inc.'s Motion to Open Discovery And To Compel and all other discovery directed at COUNSEL and SIX4THREE, pending the Court's decision on COUNSEL's motion to be relieved as counsel, taken under submission on March 13, 2019, and pending the determination of the writ COUNSEL intends to file challenging the Court's March 15, 2019 Order. A stay of discovery concerning the writ would necessarily include the determination of whether the writ would issue, as well as the duration of the writ review assuming the writ is accepted by the Court of Appeal.

The application is brought on the ground that good cause exists to stay discovery directed at COUNSEL and SIX4THREE pending a decision by this Court on the motion to be relieved as counsel pursuant to Code of Civil Procedure, section 2019.020, taken under submission on March 13, 2019. On March 22, 2019, COUNSEL filed an ex parte application requesting leave to supplement the motion to be relieved as counsel with new information that was not available at the time of the filing of the motion or the hearing. The Court has not ruled on the pending ex parte application.

In short, the Court's March 15, 2019 order reopens discovery and allows Defendant FACEBOOK, INC. ("FACEBOOK") to conduct discovery concerning "the revealing or discussing of Facebook's confidential information pursuant to Stipulated Protective Order, paragraph 6 and disclosures or providing thereof," including discovery of attorney-client communications between SIX4THREE and its counsel. Through the Court Order finding that the crime/fraud exception applies, FACEBOOK is presently permitted to conduct discovery proceedings for the purposes of investigating allegations made by FACEBOOK against not only Plaintiff SIX4THREE, but against Plaintiff's counsel, B&G and S&K. Under such circumstances, COUNSEL now has interests in the underlying matter that may be at odds with the interests of its client, SIX4THREE. Under Rules of Professional Conduct Rule 1.16, where such an un-waivable conflict of interest exists between attorney and client, withdrawal is

not merely permissive, it is mandatory.

Given the unquestionable conflict that has been created between COUNSEL and its client, COUNSEL is legally and ethically barred from advising or representing SIX4THREE under any circumstances, and certainly under the current circumstances where there are pending discovery requests being directed at both COUNSEL and its client regarding the very allegations that have created the conflict now at issue. Further, the Court Order permits the taking of COUNSEL's depositions. Because the conflict between attorney and client prevents such representation in the pending expedited discovery proceedings, COUNSEL requests that the Court stay said proceedings until such time as the Court rules on the pending motion to be relieved as counsel.

The application is necessary because it will not be possible for discovery to continue while Plaintiff SIX4THREE is effectively proceeding in *propria persona* due to the fact that COUNSEL is now legally and ethically barred from providing counsel in these proceedings. Of course, as a corporation, SIX4THREE cannot proceed in *propria persona* and needs to secure independent counsel in order to engage in the ongoing discovery, and COUNSEL requests that the court stay discovery until such time as all parties are represented by independent counsel.

Further, the application for an order staying discovery is necessary because COUNSEL intends to file a writ challenging the March 15, 2019 Court Order reopening discovery and allowing discovery of attorney-client communications. Allowing discovery to proceed concerning attorney-client communications whilst the writ is pending challenging the order allowing for the discovery of such communications is incompatible. Should the appellate court determine that the Court Order was in error and that the crime/fraud exception is not applicable, there would be no way to un-ring the bell. The attorney-client communications would already be disclosed and there would be no way to undo the discovery of such information. In short, given the sanctity of the attorney-client privilege and the potential to incorrectly eviscerate the attorney-client privilege to which there would be no remedy, the prudent course of action to ensure that no permanent harm is done to SIX4THREE and COUNSEL is to grant a stay of the March 15, 2019 order and of related discovery.

COUNSEL respectfully requests that the Court grant COUNSEL's request for an order staying the March 15, 2019 Order and any discovery directed at SIX4THREE and COUNSEL pending a

determination of the motion to be relieved as counsel and the duration of the writ.

This Application is based on the Application itself; the Memorandum of Points and Authorities and the statutory and case law cited therein; the Declaration of Joseph S. Leveroni; the pleadings, records, and papers on file in this action; and other oral and documentary evidence as may be presented at the time of hearing.

Pursuant to California Rules of Court, Rules 3.1203 and 3.1204, COUNSEL gave timely notice of its intent to present this *ex parte* application to all counsel of record by email on Monday, March 25, 2019. (Declaration of Joseph S. Leveroni ("Leveroni Decl.,").

DATED: March 27, 2019

MURPHY, PEARSON, BRADLEY & FEENEY

By _____
James A. Murphy
Joseph S. Leveroni
Attorneys for Defendant
BIRNBAUM & GODKIN, LLP

DATED: March 27, 2019

WILSON ELSER

By _____
Joseph S. Leveroni signing for
Donald P. Sullivan
Attorneys for GROSS & KLEIN, LLP

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF BIRNBAUM & GODKIN'S REQUEST STAY MARCH 15, 2019 ORDER AND ALL DISCOVERY REQUESTS DIRECTED AT COUNSEL

COUNSEL moves for an order staying the March 15, 2019 Order Re: Defendant Facebook Inc.'s Motion to Open Discovery and to Compel and any discovery requests directed at COUNSEL pending a determination of COUNSEL's motion to be relieved as counsel, taken under submission on March 13, 2019, and for the duration of the writ COUNSEL intends to file challenging the March 15, 2019 Order and determination that the crime/fraud exception applies to this circumstances of this case. A stay of discovery prevents COUNSEL from further advisement or representation of Plaintiff SIX4THREE.

I. RELEVANT FACTS

On March 15, 2019, while COUNSEL's motion to be relieved as counsel was under submission with the Court, the Court granted, in part, and denied, in part, FACEBOOK's Motion to Open Discovery and to Compel. Specifically, the Court ruled that the "opening of discovery is limited to the revealing or discussing of Facebook's confidential information pursuant to Stipulated Protective Order, paragraph 6 and disclosures or providing thereof." The Court granted FACEBOOK leave to serve requests for production or subpoena *duces tecum*, whichever is the appropriate method, on Mr. Gross, Mr. Godkin, Mr. Kramer, and Mr. Scaramellino, as set forth in Exhibit A to the order. The Court further ordered that the attorney-client privilege is waived pursuant to the crime-fraud exception.

As discussed in the previous request to stay discovery and the motion to be relieved as counsel, FACEBOOK's allegations against both Plaintiff and its counsel have placed COUNSEL is a conflicted position with its client which requires mandatory withdrawal by counsel. The same concerns warranting the Court *sua sponte* on January 16, 2019 to vacate the re-opening of discovery, including the depositions of SIX4THREE and its counsel and the production of documents, are equally present here. Given the conflict, SIX4THREE cannot comply with such requests with the advice of present counsel.

II. LEGAL ANALYSIS

A. Counsel Has Fully Complied With California Rules Of Court, Rules 3.1202, 3.1204 And 3.1204:

Rule 3.1202(c) of the California Rules of Court provides that an ex parte application may be granted upon a showing of "of irreparable harm, immediate danger, or any other statutory basis for

granting relief ex parte."

Rule 3.1203 of the California Rules of Court provides that "[a] party seeking an ex parte order must notify all parties no later than 10:00 a.m. the court day before the ex parte appearance, absent a showing of exceptional circumstances that justify a shorter time for notice."

Rule 3.1204(b) of the California Rules of Court provides that an ex parte application must be accompanied by a declaration regarding notice that states:

> (1) The notice given, including the date, time, manner, and name of the party informed, the relief sought, any response, and whether opposition is expected and that, within the applicable time under rule 3.1203, the applicant informed the opposing party where and when the application would be made;
>
> (2) That the applicant in good faith attempted to inform the opposing party but was unable to do so, specifying the efforts made to inform the opposing party; or
>
> (3) That, for reasons specified, the applicant should not be required to inform the opposing party.

There is good cause to grant this *ex parte* application under Rule 3.1202(c) of the California Rules of Court. First, unless the Court grants this *ex parte* application, COUNSEL will be forced into the untenable position of remaining as counsel for SIX4THREE in this matter while being legally and ethically barred from advising its client or representing the client in any way. The pending discovery proceedings cannot move forward if SIX4THREE is without counsel and, given the conflict created by FACEBOOK's allegations against Plaintiff and its counsel, COUNSEL is now legally and ethically barred from further consultation with SIX4THREE under Rules of Professional Conduct 1.16. The March 15, 2019 Court Order reopened discovery and permits the taking of SIX4THREE and its counsels'

As explained above, the accusations by FACEBOOK and the resulting discovery requests directed at COUNSEL and its client have created an un-waivable conflict between attorney and client. The nature of the allegations is such that FACEBOOK has invoked the crime-fraud exception under Evidence Code 956. The March 15, 2019 Court Order found that the crime/fraud exception applied to the allegations set forth by FACEBOOK and waived the attorney-client privilege on that basis. Clearly, these allegations put the interests of COUNSEL at odds with the interests of its client, and withdrawal is mandatory. Allowing discovery from both SIX4THREE and COUNSEL to proceed after waiving the

attorney-client privilege before ruling on the motion to be relieved as counsel puts COUNSEL in an untenable and conflicted position, wherein it cannot represent SIX4THREE while also being a third party witness.

Staying the discovery order will allow the Court to decide the motion to withdraw as counsel and allow SIX4THREE to obtain counsel that is not conflicted. After all, the limited scope of discovery permitted by the March 15, 2019 Court Order pertains to the identical attorney-client privilege issues that were raised by FACEBOOK's allegations that created the necessity for COUNSEL to withdraw as counsel in the first place. Pending a decision on the motion to withdraw, SIX4THREE is effectively without representation throughout these expedited discovery proceedings due to the conflict arising between attorney and client. To avoid such a situation, COUNSEL respectfully requests that the Court rule on COUNSEL's motion to be relieved as counsel and stay discovery proceedings until such time as all parties are represented by independent counsel and discovery can resume.

Further, Pursuant to Rule 1.9, even after withdrawal, COUNSEL will be subject to the orders of this Court with regards to the management of all papers, filings, and documents in the above-titled matter.

Finally, good cause exists to stay the discovery order pending the determination of the writ COUNSEL intends to file challenging that very order. Permitting the depositions of SIX4THREE and its counsel, as well as the production of documents, based on the Court Order waiving the attorney-client privilege based on the crime/fraud exception while the writ is pending would in effect deny COUNSEL an effective ruling of its writ challenging the Court Order applying the crime/fraud exception to the case at bar. Pursuant to Code of Civil Procedure § 2031.060(b), the "court, for good cause shown, may make any order that justice requires to protect any party or other person from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense." The requirement that SIX4THREE and COUNSEL disclose attorney-client communications while a challenge to Court Order waiving the attorney-client privilege is pending acceptance of the writ and determination by the Court of Appeal would in itself constitute "annoyance, embarrassment, or oppression," which the Court is expressly empowered to prevent. *Rosemont v. Sup. Ct.* (1964) 60 Cal.2d 711, 714. In effect, should the discovery be allowed to go forward while the writ was pending, it would make any possible reversal of the order

meaningless since the damage sought to be prevented by the writ, namely the violation of the sanctity of the attorney-client privilege, would have already occurred. The prudent course would be to stay discovery pending a ruling on the motion to withdraw as counsel and determination of COUNSEL's writ challenging the Court Order waiving the attorney-client privilege based on the crime/fraud exception. To allow the discovery to go forward would potentially create irrevocable damage to SIX4THREE.

III. CONCLUSION

For the foregoing reasons, COUNSEL respectfully requests that the Court GRANT this ex parte application.

DATED: March 27, 2019

MURPHY, PEARSON, BRADLEY & FEENEY

By _____
James A. Murphy
Joseph S. Leveroni
Attorneys for BIRNBAUM & GODKIN, LLP

DATED: March 27, 2019

WILSON ELSER

By _____
Joseph S. Leveroni signing for
Donald P. Sullivan
Attorneys for GROSS & KLEIN, LLP

KLI.3381844.docx

CERTIFICATE OF SERVICE

I, Jennifer Cuellar, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 88 Kearny Street, 10th Floor, San Francisco, California 94108.

On March 27, 2019, I served the following document(s) on the parties in the within action:

EX PARTE APPLICATION TO STAY DISCOVERY

DECLARATION OF JOSEPH S. LEVERONI IN SUPPORT OF EX PARTE APPLICATION TO STAY DISCOVERY

[PROPOSED] ORDER ON BIRNBAUM & GODKIN, LLP AND GROSS & KLEIN, LLP'S EX PARTE APPLICATION TO STAY DISCOVERY

X	**VIA HAND:** The above-described document(s) will be placed in a sealed envelope which will be hand-delivered on this same date by _____, addressed as listed below.

Superior Court of California County of San Mateo
Department 23
400 County Center
Redwood City, CA 94063

X	**VIA E-MAIL:** I attached the above-described document(s) to an e-mail message, and invoked the send command at approximately _____ AM/PM to transmit the e-mail message to the person(s) at the e-mail address(es) listed below. My email address is jcuellar@mpbf.com

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Attorneys for Theodore Kramer and Thomas Scaramellino

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Laura Miller - LMiller@durietangri.com
Catherine Kim - ckim@durietangri.com
Durie Tangri
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San Francisco, CA 94111
Email: SERVICE-SIX4THREE@durietangri.com

Attorneys for Facebook, Inc.

I declare under penalty of perjury under the laws of the State of California that the foregoing is a true and correct statement and that this Certificate was executed on March 27, 2019.

By _____
Jennifer Cuellar

D-23

James A. Murphy - 062223
JMurphy@mpbf.com
Joseph S. Leveroni - 304721
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Attorneys for Third Parties
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Donald.sullivan@wilsonelser.com
WILSON ELSER
525 Market Street, 17th Floor
San Francisco, CA 94105
Telephone: (415) 625-9249
Facsimile: (415) 434-1370

Attorneys for Third Parties
GROSS & KLEIN LLP

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability company ,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation and DOES 1-50, inclusive,

Defendants.

Case No.: CIV 533328

Assigned for all purposes to Hon. V. Raymond Swope, Dept. 23

DECLARATION OF JOSEPH S. LEVERONI IN SUPPORT OF EX PARTE APPLICATION TO STAY DISCOVERY

Date:	March 28, 2019
Time:	10:00 a.m.
Dept.:	23
Judge:	Hon. V. Raymond Swope
Trial Date:	April 25, 2019

I, Joseph S. Leveroni, declare that:

1. I am an attorney duly licensed to practice in all courts of the State of California, and am an Associate with the law firm of Murphy, Pearson, Bradley & Feeney, attorneys of record for BIRNBAUM & GODKIN, LLP herein. I have personal knowledge of the information set forth herein below, unless noted as based on information and belief, all of which is true and correct of my own personal knowledge, and if called upon to testify, I could and would competently testify thereto.

2. Defendant Facebook, Inc. is represented by counsel Laura Miller of Durie Tangri LLP, 217 Leidesdorff Street, San Francisco, California 94111; (415) 362-6666; jlerner@durietangri.com.

3. Theodore Kramer and Thomas Scaramellino are represented by Jack Russo and Christopher Sargent of the Computerlaw Group, LLP, 401 Florence Street, Palo Alto, California 94301; (650) 327-9800; jrusso@computerlaw.com; csargent@computerlaw.com.

4. On March 25, 2019, I emailed the Court, copying all counsel, seeking permission to file an ex parte application on behalf of BIRNBAUM & GODKIN, LLP and GROSS & KLEIN, LLP for an order staying discovery pending a ruling on their motion to withdraw as counsel for SIX4THREE, LLC and the duration of the writ that they intend to take on the Court's March 15, 2019 Order reopening discovery and determination that the attorney-client privilege was waived pursuant to the crime/fraud exception under Evidence Code § 956. See Exhibit A.

5. On March 26, 2019, the Court responded to all counsel stating that the ex parte application shall be filed and electronically served on the Court and all parties by March 27, 2019 at 10:00 a.m. and any opposition shall be filed and electronically served by March 28, 2019 at 10:00 a.m. The court further informed all parties that there will be no appearances on the ex parte application.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on this 27th day of March 2019, in San Francisco, California.

Joseph S. Leveroni

EXHIBIT A

From: ComplexCivil [mailto:complexcivil@sanmateocourt.org]
Sent: Tuesday, March 26, 2019 2:32 PM
To: Joseph Leveroni <JLeveroni@MPBF.com>; ComplexCivil <complexcivil@sanmateocourt.org>
Cc: SERVICE-SIX4THREE <SERVICE-SIX4THREE@durietangri.com>; Laura Miller <LMiller@durietangri.com>; Sullivan, Donald P. <Donald.Sullivan@wilsonelser.com>; David Godkin <godkin@birnbaumgodkin.com>; Steve Bolotin <sbolotin@morrisonmahoney.com>; kruzer@birnbaumgodkin.com; James Murphy <JMurphy@MPBF.com>; James Lassart <JLassart@MPBF.com>; Thomas Mazzucco <TMazzucco@MPBF.com>; jrusso@computerlaw.com; csargent@computerlaw.com; sgross@grosskleinlaw.com; Rebecca Huerta <rhuerta@sanmateocourt.org>
Subject: RE: Six4Three v. Facebook (CIV533328) - Six4Three Counsel of Record's Request for Hearing on Ex Parte Application

The Court has reviewed personal counsel for Birnbaum & Godkin's request below and personal counsel for Gross & Klein, Mr. Kramer, and Mr. Scaramellino's joinder.

The Court sets the briefing schedule: (1) a joint ex parte application shall be filed and electronically served on the Court and all other parties by tomorrow (3/27) at 10:00 a.m.; and (2) any opposition shall be filed and electronically served by Thursday (3/28) at 10:00 a.m. There will be no appearances on this ex parte application.

From: Joseph Leveroni <JLeveroni@MPBF.com>
Sent: Monday, March 25, 2019 2:46 PM
To: ComplexCivil <complexcivil@sanmateocourt.org>
Cc: SERVICE-SIX4THREE <SERVICE-SIX4THREE@durietangri.com>; Laura Miller <LMiller@durietangri.com>; Sullivan, Donald P. <Donald.Sullivan@wilsonelser.com>; Joseph Leveroni <JLeveroni@MPBF.com>; David Godkin <godkin@birnbaumgodkin.com>; Steve Bolotin <sbolotin@morrisonmahoney.com>; kruzer@birnbaumgodkin.com; James Murphy <JMurphy@MPBF.com>; James Lassart <JLassart@MPBF.com>; Thomas Mazzucco <TMazzucco@MPBF.com>; jrusso@computerlaw.com; csargent@computerlaw.com; sgross@grosskleinlaw.com; Rebecca Huerta <rhuerta@sanmateocourt.org>
Subject: Six4Three v. Facebook (CIV533328) - Six4Three Counsel of Record's Request for Hearing on Ex Parte Application

Dear Ms. Huerta and counsel,

Counsel for Birnbaum & Godkin, LLP seeks permission to file an *ex parte* application for an order staying all discovery proceedings involving Plaintiff Six4Three, LLC, its principals Theodore Kramer and Thomas Scaramellino, and/or Plaintiff's counsel Birnbaum & Godkin, LLP on two grounds: (1) discovery should be stayed pending a determination on Birnbaum & Godkin, LLP's writ of the Court's order re-opening discovery in this matter and (2) discovery should be stayed pending the Court's final ruling on counsel's motion to be relieved as counsel.

Due to an un-waivable conflict with client, Birnbaum & Godkin, LLP is legally barred from providing further legal counsel to its client. Because the Court granted opposing counsel's motion to open discovery without ruling on the motion to withdraw, Plaintiff's counsel has been forced into the impossible position of providing legal counsel to its client when it is statutorily and ethically barred from doing so.

Because Birnbaum & Godkin, LLP cannot provide legal assistance to its client in the re-opened discovery proceedings, it will be seeking a writ addressing the Court's ruling that the crime-fraud exception applies and the Court's order to re-open discovery. The *ex parte* application therefore requests an order staying all discovery proceedings pending a decision by the Court of Appeal on the writ.

In addition, the *ex parte* application seeks an order staying discovery on the additional ground that the Court has yet to rule on the pending motions to be relieved as counsel, which the Court took under submission on March 13, 2019. Birnbaum & Godkin, LLP seeks to withdraw as counsel while its motion to withdraw is pending decision by the Court because it is being forced to provide legal counsel to Plaintiff. As a result, counsel is seeking an order staying discovery proceedings until the Court rules on the motion to withdraw so that Plaintiff is not forced to go through such discovery proceedings with conflicted counsel.

Regards,

Joseph S. Leveroni

MURPHY PEARSON
BRADLEY & FEENEY

Joseph S. Leveroni
Associate

88 Kearny Street, 10th Floor
San Francisco, CA 94108

Office: 415.788.1900 x2879
Direct: 415.651.2879
Fax: 415.393.8087

website | bio | vCard | map | email

San Francisco **Sacramento** **Los Angeles** **Seattle**

EXHIBIT 30

ORIGINAL

FILED
SAN MATEO COUNTY
APR 23 2019
Clerk of the Superior Court
By _____ DEPUTY CLERK

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

BIRNBAUM & GODKIN, LLP, et al., Petitioners, v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO, Respondent; FACEBOOK, INC., et al., Real Parties in Interest.	A156945 San Mateo County Super. Ct. No. CIV533328

ALTERNATIVE WRIT OF MANDATE

To the Superior Court of the State of California, County of San Mateo, Greetings:

WE COMMAND YOU, forthwith upon receipt of this writ to either:

(a) Set aside and vacate your April 2, 2019 order denying petitioners' application to stay discovery, enter a new and different order staying discovery until such time as petitioners' motion to withdraw as counsel is decided, and hear and decide petitioners' motion to withdraw as soon as practicable; or

(b) In the alternative, show cause before this court, when ordered on calendar, why a peremptory writ of mandate should not issue.

The superior court shall make a decision whether to comply with the directive of paragraph (a) or (b) on or before April 26, 2019. If the superior court chooses to comply with the directive of paragraph (a), the alternative writ will be discharged and the petition will be dismissed as moot. If the superior court instead elects to show cause, the matter will be heard when ordered on calendar.

Petitioners shall inform this court by letter of the superior court's decision by April 29, 2019, and shall serve and file in this court any new or modified orders issued by the superior court.

Witness the Honorable Stuart R. Pollak, Presiding Justice of the Court of Appeal of the State of California, First Appellate District, Division Four.

Attest my hand and the Seal of this Court this 19th day of April, 2019.

CHARLES JOHNSON
Clerk of the Court

By: Channing Hoo
(Mr.) Channing Hoo
Deputy Clerk

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

BIRNBAUM & GODKIN, LLP, et al.,

Petitioners,

v.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO,

Respondent;

FACEBOOK, INC., et al.,

Real Parties in Interest.

A156945

San Mateo County Super. Ct.
No. CIV533328

ORDER ISSUING ALTERNATIVE WRIT OF MANDATE

THE COURT*:

The court has conducted a detailed review of the petition, the preliminary opposition, and the record. The court has concluded that the superior court erred in denying petitioners' application to stay discovery proceedings pending the ruling on petitioners' motion to withdraw as counsel.

Therefore, let an alternative writ of mandate issue commanding the superior court to set aside and vacate its April 2, 2019 order denying petitioners' application to stay discovery, and to enter a new and different order staying discovery until such time as petitioners' motion to withdraw as counsel is decided. The superior court is further directed to hear and decide petitioners' motion to withdraw as soon as practicable. Alternatively, the superior court shall show cause before Division Four of this court why it should not be compelled to vacate its April 2, 2019 order.

The superior court is advised that it must give the parties notice and an opportunity to be heard before issuing a new order in response to the alternative writ. (See *Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233, 1250, fn. 10 ["if a

* Pollak, P.J., Streeter, J., and Tucher, J.

trial court is considering changing an interim order in response to an alternative writ, it must give the respective parties notice and an opportunity to be heard."].)

The alternative writ is to be issued, served, and filed on or before April 19, 2019, and shall be deemed served when copies are sent by the clerk of this court to all parties and to the superior court.

On or before April 29, 2019, petitioner shall inform this court in writing whether the superior court has complied with the alternative writ, and shall serve and file any new notices, orders or other documents issued or filed by the superior court. If the superior court complies with the alternative writ, this court will promptly discharge it and summarily deny the petition as moot.

Otherwise, a written return to the alternative writ shall be served and filed on or before May 10, 2019. Petitioner may file a reply within seven (7) days of the filing of the return, and the matter will be heard before Division Four of this court when ordered on calendar.

Pollak, P.J.

APR 19 2019

Date: _____ _____ P.J.

EXHIBIT B

SUPERIOR COURT OF SAN MATEO COUNTY

400 County Center, Redwood City, CA 94063
1050 Mission Road, South San Francisco, CA 94080
www.sanmateocourt.org

Minute Order

SIX4THREE, LLC, A DELAWARE LIMITED LIABILIT COMPANY vs. FACEBOOK, INC, A DELAWARE CORPORATION, et. al.

CIV533328

06/07/2019 2:00 PM
Case Management Conference
Hearing Result: Held

Judicial Officer: Swope, V. Raymond
Courtroom Clerk: Rebecca Huerta

Location: Courtroom 8A
Courtroom Reporter: Geraldine Vandeveld

Parties Present

LERNER, JOSHUA H	Attorney
LEVERONI, JOSEPH STEPHEN	Attorney
MEHTA, SONAL N	Attorney
MILLER, LAURA E.	Attorney
RUSSO, JACK	Attorney
SARGENT, CHRISTOPHER	Attorney

Exhibits

Minutes

Journals

- Also present JOSEPH LEVERONI appeared on behalf of David Godkin and Birnbaum & Godkin.
Also present NATALIE NAGLE in house counsel for Facebook, et al.
Also present JACK RUSSO & CHRISTOPHER SARGENT on behalf of Third Party Theodore Kramer & Thomas Scaramellino.
Also present THEODORE KRAMER via courtcall.
Also present ZACHERY ABRAHMSON appeared on behalf of Facebook, et al.

At 2:06 p.m. - Court convenes.

Court and counsel discuss ex parte motion to compel being moot.

The Court discusses problem regarding billing/retention as to Vestigent which is now resolved.

The Court denies the request to re-open discovery until the retention of counsel for Six4Three, LLC.

The court orders for Mr. Kramer retain counsel for the corporation by June 28, 2019 by the end of business day at 5:00 p.m. A declaration is to be filed by Mr. Kramer regarding the retention of counsel by July 1, 2019.

Case Management Conference set for July 19, 2019 at 2:00 p.m.

Ms. Mehta shall prepare formal order for signature.

At 2:28 p.m.- Court adjourned.

Case Events

Others

Comments:

Future Hearings and Vacated Hearings

Canceled: June 07, 2019 2:00 PM Case Management Conference
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Off Calendar
Vandeveld, Geraldine
Swope, V. Raymond
Huerta, Rebecca
Courtroom 8A

June 28, 2019 2:00 PM Complex Case Status Conference
Swope, V. Raymond

July 19, 2019 2:00 PM Motion to Seal
Swope, V. Raymond

July 19, 2019 2:00 PM Motion to Seal
Swope, V. Raymond

July 19, 2019 2:00 PM Motion to Seal
Swope, V. Raymond

July 19, 2019 2:00 PM Motion to Seal
Swope, V. Raymond

July 19, 2019 2:00 PM Case Management Conference
Swope, V. Raymond

EXHIBIT 32

Jack Russo (Cal. Bar No. 96068)
Christopher Sargent (Cal. Bar No. 246285)
COMPUTERLAW GROUP LLP
401 Florence Street
Palo Alto, CA 94301
(650) 327-9800 office
(650) 618-1863 fax
jrusso@computerlaw.com
csargent@computerlaw.com

Attorneys for Third Parties
THEODORE KRAMER and
THOMAS SCARAMELLINO

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

Six4Three, a Delaware limited liability company,

Plaintiff;

v.

Facebook, Inc., a Delaware corporation; **Mark Zuckerberg**, an individual; **Christopher Cox**, an individual; **Javier Olivan**, an individual; **Samuel Lessin**, an individual; **Michael Vernal**, an individual; **Ilya Sukhar**, an individual; and **Does 1–50**, inclusive,

Defendants.

Case No. CIV533328

Assigned for all purposes to Hon. V. Raymond Swope, Dep't 23

DECLARATION OF THEODORE KRAMER RE ORDER REGARDING RETENTION OF COUNSEL BY PLAINTIFF SIX4THREE, LLC

[Signature by Fax]

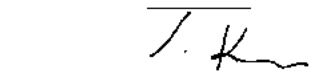
I, Theodore Kramer, declare as follows:

1. My name is Theodore Kramer, I am over the age of 18. I make the following statements pursuant to the Order Regarding Retention of Counsel by Plaintiff Six4Three, LLC of June 19, 2019. I have personal knowledge of the matters stated in this declaration, and I believe those matters to be true.

2. On June 28, 2019, I executed a retainer agreement with a law firm on behalf of Plaintiff Six4Three, LLC, for representation of Plaintiff in the present matter.

3. Six4Three's new counsel will promptly file a Notice of Appearance.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was entered into on July 1, 2019 in San Francisco, California.



Theodore Kramer

EXHIBIT 33

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER:
NAME: Reno F.R. Fernandez III (CA SBN 251934); Matthew J. Olson (CA SBN 265908)
FIRM NAME: MACDONALD | FERNANDEZ LLP
STREET ADDRESS: 221 Sansome Street, Third Floor
CITY: San Francisco STATE: CA ZIP CODE: 94104
TELEPHONE NO.: (415) 362-0449 FAX NO.: (415) 394-5544
E-MAIL ADDRESS: reno@macfern.com; matt@macfern.com
ATTORNEY FOR (name): Specially Appearing for Plaintiff Six4Three, LLC

FOR COURT USE ONLY

Electronically
FILED
by Superior Court of California, County of San Mateo
ON 7/2/2019
By /s/ Marcela Enriquez
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO
STREET ADDRESS: 400 County Center
MAILING ADDRESS: 400 County Center
CITY AND ZIP CODE: Redwood City, California 94063
BRANCH NAME: Southern Branch (Complex Civil Litigation)

PLAINTIFF: Six4Three, LLC, a Delaware limited liability company
DEFENDANT: Facebook, Inc., a Delaware corporation; et al.
OTHER:

CASE NUMBER:
CIV533328

NOTICE OF LIMITED SCOPE REPRESENTATION
☐ Amended

JUDGE: Hon. V. Raymond Swope
DEPT.: 23

[Note: This form is for use in civil cases other than family law. For family law cases, use form FL-950.]

1. Attorney *(name):* Macdonald Fernandez LLP
   and party *(name):* Six4Three, LLC
   who is the ☒ petitioner/plaintiff ☐ respondent/defendant ☐ other *(describe):*
   have an agreement that the attorney will provide limited scope representation in this case to the party.

2. The attorney will represent the party
   a. ☐ at the hearing on *(date):*
      ☐ and at any continuance of that hearing
      ☐ until submission of the order after hearing

   b. ☐ at the trial on *(date):*
      ☐ and at any continuance of that trial
      ☐ until judgment

   c. ☒ other *(specify nature and duration of representation):*

      We will defend a motion for sanctions if brought by the defendants as contemplated in their recent case management conference statement, and we will appear at the case management conference set for July 19, 2019, if it goes forward.

      This engagement is strictly limited. If we agree to perform any other or further work, this notice will be amended.

3. By signing this form, the party agrees to sign *Substitution of Attorney–Civil* (form MC-050) at the completion of the representation described above.

PLAINTIFF: Six4Three, LLC, a Delaware limited liability company DEFENDANT: Facebook, Inc., a Delware corporation; et al. OTHER:	CASE NUMBER: CIV533328

4. During the limited scope representation, parties and the court must serve papers on both the attorney named above and directly on the party. (Cal. Rules of Court, rule 3.36.) The party's name and address for purpose of service are as follows:

   Name: Six4Three, LLC

   Address *(for the purpose of service)*:
   Attn: Theodore Kramer
   1267 Chestnut Street, #6
   San Francisco, CA 94109

   Telephone:

   Fax:

This notice accurately states all current matters and issues on which the attorney has agreed to serve as an attorney for the party in this case. The information provided on this form is not intended to state all of the terms and conditions of the agreement between the party and the attorney for limited scope representation.

Date: July 2, 2019

Six4Three, LLC, Plaintiff
(TYPE OR PRINT NAME OF PARTY)

▶ T. K
(SIGNATURE OF PARTY)

Date: July 2, 2019

Reno F.R. Fernandez III, Partner
(TYPE OR PRINT NAME OF ATTORNEY)

▶
(SIGNATURE OF ATTORNEY)

PLAINTIFF: Six4Three, LLC, a Delaware limited liability company DEFENDANT: Facebook, Inc., a Delaware corporation; et al. OTHER:	CASE NUMBER: CIV533328

PROOF OF SERVICE BY FIRST-CLASS MAIL

1. I am at least 18 years old and **not a party to this action.** I am a resident of or employed in the county where the mailing took place, and my residence or business address is *(specify)*:
   221 Sansome Street, Thrid Floor
   San Francisco, CA 94104

2. I served copies of the *Notice of Limited Scope Representation* (form CIV-150) by enclosing each of them in a sealed envelope with first-class postage fully prepaid and *(check one)*:
   a. [ ] deposited the sealed envelopes with the United States Postal Service.
   b. [x] placed the sealed envelopes for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. Copies of the *Notice of Limited Scope Representation* (form CIV-150) were mailed:
   a. on *(date)*: July 2, 2019
   b. from *(city and state)*: San Francisco, California

4. The envelopes were addressed and mailed as follows:
   a. Name of person served:
      David Godkin,James Kruzer; Biarbaum & Godkin, LLP
      Street address: 280 Summer Street
      City: Boston
      State and zip code: MA 02210
   b. Name of person served:
      Jack Russo, Christopher Sargent;Computerlaw Group
      Street address: 401 Florence Street
      City: Palo Alto
      State and zip code: CA 94301
   c. Name of person served:
      Donald P. Sullivan; Wilson Elser
      Street address: 525 Market Street, 17th Floor
      City: San Francisco
      State and zip code: CA 94105
   d. Name of person served:
      Steven J. Bolotin; Morrison Mahoney LLP
      Street address: 250 Summer Street
      City: Boston
      State and zip code: MA 02210

[x] Names and addresses of additional persons served are attached. *(You may use form POS-030(P).)*

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date: July 2, 2019

Samantha Brown
(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

SHORT TITLE: Six4Three, LLC, a Delaware limited liability company v. Facebook, Inc., a Delaware corporation; et al.	CASE NUMBER: CIV533328

ATTACHMENT TO PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL (PERSONS SERVED)

(This Attachment is for use with form POS-030)

NAME AND ADDRESS OF EACH PERSON SERVED BY MAIL:

Name of Person Served	Address *(number, street, city, and zip code)*
Sonal Mehta, Joshua Lerner, Laura Miller, Catherine Kim; Durie Tangri LLP	217 Leidesdorff Street, San Francisco, CA 94111
Stuart Gross, Esq., Benjamin Klein, Esq.; Gross & Klein LLP	The Embarcadero, Pier 9, Suite 100, San Francisco, CA 94111
Thomas Mazzucco, Joseph Leveroni; Murphy Pearson Bradley & Feeney	88 Kearny Street, 10th Floor, San Francisco, CA 94108

EXHIBIT 34

MACDONALD | FERNANDEZ LLP
Reno F.R. Fernandez III (SBN 251934)
Matthew J. Olson (SBN 265908)
221 Sansome Street, Third Floor
San Francisco, CA 94104
Tel: (415) 362-0449
Fax: (415) 394-5544

Attorneys for Plaintiff,
SIX4THREE, LLC

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability company,

Plaintiff,

vs.

FACEBOOK, INC., a Delaware corporation; MARK ZUCKERBERG, an individual; 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

Request for
PEREMPTORY CHALLENGE

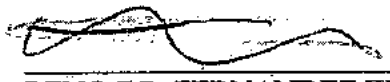
Pursuant to Code of Civil Procedure § 170.6

Reno F.R. Fernandez III, being duly sworn, deposes and says: That he or she is a party (or attorney for a party) to the within action (or special proceeding). That the Honorable V. Raymond Swope, the judge, court commissioner, or referee before whom the trial of the (or a hearing in the) action (or special proceeding) is pending (or to whom it is assigned) is prejudiced against the party (or his or her attorney) or the interest of the party (or his or her attorney) so that affiant cannot or believes that he or she cannot have a fair and impartial trial or hearing before the judge, court commissioner, or referee.

///

///

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 2nd day of July, 2019, at San Francisco, California.



RENO F.R. FERNANDEZ III

EXHIBIT 35

DURIE TANGRI LLP
SONAL N. MEHTA (SBN 222086)
smehta@durietangri.com
JOSHUA H. LERNER (SBN 220755)
jlerner@durietangri.com
LAURA E. MILLER (SBN 271713)
lmiller@durietangri.com
CATHERINE Y. KIM (SBN 308442)
ckim@durietangri.com
ZACHARY G. F. ABRAHAMSON (SBN 310951)
zabrahamson@durietangri.com
217 Leidesdorff Street
San Francisco, CA 94111
Telephone: 415-362-6666
Facsimile: 415-236-6300

Attorneys for Defendant
Facebook, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability company,

Plaintiff,

v.

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

Defendants.

Case No. CIV 533328

Assigned for all purposes to Hon. V. Raymond Swope, Dept. 23

OBJECTION TO SIX4THREE'S LIMITED SCOPE COUNSEL'S CIVIL PROCEDURE CODE SECTION 170.6 CHALLENGE

Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015

I. INTRODUCTION

Plaintiff Six4Three, LLC ("Six4Three"), its principal Ted Kramer, and its legal team, violated a fundamental tenet of civil discovery by orchestrating the public disclosure of highly confidential information produced by Facebook in discovery under a good-faith belief that, like all civil litigants in this country and the state of California, the opposing party would respect the protective order entered by the Court. In the now months-long shadow of their admitted betrayal of that basic principle of civil litigation, Six4Three further abused the process by delaying any investigation and remedial action based on its unrepresented status, and now, when time to get new counsel is up, to avoid having to answer to the Judge whose orders it violated.

Six4Three and its lawyers were caught orchestrating one of the largest and most damaging violation of a protective order in history. They developed a plan that required repeated violations of the Protective Order in this case and the subsequent orders intended to enforce the Protective Order. They executed that plan. The result is staggering: Facebook's highly confidential information—which Facebook produced based on the premise that the Court would be able to enforce its orders if they were not followed—is spread around the world.

Ever since they were caught, however, Six4Three and its lawyers have executed a second plan: Halt the progress of this case so that no discovery occurs so that no one ever knows the scope of their violations of this Court's orders. They have had no more regard for the Court after the breach of the Protective Order than they did before. The result is no less staggering: More than half a year after the breach, no discovery has occurred. Six4Three and its counsel have come up with excuse after excuse in order to halt discovery. As a result, the party and counsel least respectful of the orders in this case have been controlling the pace of the case.

Most recently, Macdonald Fernandez LLP's ("Macdonald Fernandez") peremptory challenge is untimely and otherwise unauthorized by Civil Procedure Code section 170.6. Section 170.6 does not allow a party to gain an unlimited extension to file a peremptory strike by replacing their lawyer. In cases with an all-purpose judicial assignment like this one, parties have 15 days to strike a judge. For Six4Three, that deadline passed eighteen months ago.

The analysis should stop there. But Macdonald Fernandez's challenge suffers from other fatal deficiencies. Macdonald Fernandez's representation of Six4Three is "strictly limited" to defending against a motion for sanctions. No such motion has been filed, and so there is no apparent scope to Macdonald Fernandez's representation of Six4Three. Thus, at present, the law firm lacks standing to bring this peremptory challenge. In addition, the Declaration of Reno F.R. Fernandez III claims that the judge assigned to this case is prejudiced against ***either*** Six4Three ***or*** Mr. Fernandez. But there is no dispute that any peremptory challenge filed by Six4Three would be untimely. Even if section 170.6 permitted Mr. Fernandez to challenge the judge that has been overseeing this litigation for a year and a half—it does not—Mr. Fernandez must clarify that he believes that the judge is prejudiced as to him, and not Six4Three alone.

Macdonald Fernandez's peremptory challenge should be denied.

II. FACTUAL BACKGROUND

Six4Three's lawsuit is now well into its fourth year. The case has seen multiple rounds of demurrers that limited Six4Three's far-ranging claims, a ruling that Six4Three spoliated evidence and so can claim only $412 in total revenue over its nearly 3-year existence, and a successful motion for summary adjudication limiting remedies based on the parties' agreed limitation of liability. The Honorable V. Raymond Swope has been singly assigned to this litigation for all purposes since January 29, 2018. *See generally* Order Reassigning Judge for All Purposes (Jan. 29, 2018).

Without belaboring history that this Court lived, in the fall of 2018, Mr. Kramer made contact with a member of the United Kingdom Parliament, encouraging him to send a formal request to Mr. Kramer for the confidential and highly confidential information that Facebook produced in this litigation. Mr. Kramer then traveled to London with Facebook's documents, where he turned them over to the member of Parliament, in direct violation of multiple orders of this Court.

Following this improper disclosure, Six4Three's counsel sought to withdraw, citing an unwaivable conflict. The Court granted the motion to withdraw on April 30, 2019. After Six4Three failed to secure substitute counsel in a timely manner, the Court ordered Six4Three to "to retain counsel so that you can defend against ***any*** actions that may be pursued by Facebook." Hr'g Tr. at 8:8–10 (June 7, 2019) (emphasis added). The Court set a deadline of June 28, 2019 for the retention of counsel, and

directed Six4Three's sole member, Ted Kramer, to file a declaration no later than July 1, 2019 stating that Six4Three had retained counsel or attesting to Six4Three's efforts to do so. *See* Order re: Retention of Counsel by Plaintiff Six4Three, LLC (June 19, 2019). On July 1, Mr. Kramer filed a declaration stating that on June 28, he had "executed a retainer agreement with a law firm on behalf of Plaintiff Six4Three, LLC, ***for representation of Plaintiff in the present matter***." Kramer Decl. re: Order re: Retention of Counsel by Plaintiff Six4Three, LLC ¶ 2 (July 1, 2019) (emphasis added). The following day, Macdonald Fernandez LLP entered a notice of appearance and a notice of limited scope representation stating:

> We will defend a motion for sanctions if brought by the defendants as contemplated in their recent case management conference statement, and we will appear at the case management conference set for July 19, 2019, if it goes forward. This engagement is strictly limited. If we agree to perform any other or further work, this notice will be amended.

See Notice of Limited Scope Representation (July 2, 2019). Facebook has not filed a motion for sanctions, and no other attorney has filed a notice of appearance on behalf of Six4Three.

III. ARGUMENT

A. Legal Standard

Civil Procedure Code section 170.6 imposes strict time requirements on peremptory challenges. *See* Civ. Proc. Code § 170.6(a)(2). Where a section 170.6 challenge is "directed to the trial of a civil cause ***that has been assigned to a judge for all purposes***, the motion shall be made to the assigned judge or to the presiding judge by a party ***within 15 days*** after notice of the all purpose assignment . . . ." *Id.* (emphases added).

A judge may not waive the untimeliness of a peremptory challenge, and an untimely challenge must be denied. *See Briggs v. Superior Court*, 87 Cal. App. 4th 312, 318 (2001) ("We are aware of no authority that a trial judge may 'waive' the untimeliness of a section 170.6 affidavit."). Indeed, because section 170.6 presents the potential for abuse and judge-shopping, "the courts are vigilant in enforcing the statutory restrictions on the number and timing of the motions permitted." Michael Paul Thomas, *Cal. Civ. Courtroom Handbook*, Peremptory Disqualification of Judge § 14.4 practice note (2019 ed.) (quoting *Peracchi v. Superior Court*, 30 Cal. 4th 1245, 1251–1253 (2003) ("We cannot permit a device

intended for spare and protective use to be converted into a weapon of offense and thereby to become an obstruction to efficient judicial administration.")).

B. Macdonald Fernandez's Peremptory Challenge Is Untimely Because This Case Is Singly Assigned for All Purposes.

Civil Procedure Code section 170.6 is clear: Where a civil action is singly assigned for all purposes, a peremptory challenge must be brought "within 15 days after notice of the all purpose assignment." Civ. Proc. Code § 170.6(a)(2). There is no exception to this requirement that permits an attorney making a new appearance to challenge the all purpose assignment 18 months after it occurs. Here, this case was singly assigned to Judge Swope for all purposes on January 29, 2018. *See* Order Reassigning Judge for All Purposes (Jan. 29, 2018). That order expressly stated that the case was reassigned "***for all purposes*** to the Honorable V. Raymond Swope in Department 23." *Id.* at 2 (emphasis added). Six4Three did not timely challenge that assignment and so waived its statutory right to do so. On this basis alone, the challenge should be rejected.

Macdonald Fernandez's peremptory challenge is plainly untimely and the firm's arguments to the contrary fail. The relevant provision of section 170.6(a)(2) states:

> If directed to the trial of a civil cause that has been assigned to a judge for all purposes, the motion shall be made to the assigned judge or to the presiding judge by a party within 15 days after notice of the all purpose assignment, or if the party has not yet appeared in the action, then within 15 days after the appearance.

Civ. Proc. Code § 170.6(a)(2). According to Macdonald Fernandez, because that provision references only a "party" and not an "attorney," it has no application for attorneys at all. The more natural reading of the statute is that a party must move within 15 days of assignment. Full stop. This reading is also the only reasonable or logical reading of the code.

Indeed, Macdonald Fernandez's reading of this provision would generate absurd results. ***First***, the reading would eviscerate the policy behind limiting peremptory challenges to a specific timeframe. If an attorney for a party in a case that has been singly assigned for all purposes is not bound by this provision, then there is ***no*** restriction on their ability to file the challenge. In other words, an attorney in a singly assigned case, according to Macdonald Fernandez, can file a Section 170.6 challenge at any

point (prior to the drawing of the name of the first juror at trial), regardless of when the case was assigned or when they make an appearance.

Second, Macdonald Fernandez's reading would promote judge-shopping. California's Supreme Court has rejected that result. In *Pappa v. Superior Court*, 54 Cal. 2d 350, 355 (1960), one codefendant peremptorily challenged a judge. Later, the other codefendant sought to do so and the Court rejected that attempt, noting that separate representation was no exception to section 170.6's "one motion to each 'side' policy":

> Nor does the fact that an attorney may exercise the privilege under section 170.6 mean that the limitation of one motion to each "side" may be ignored . . . . Otherwise, ***a party who exercised a challenge could continue to obtain disqualifications endlessly by the simple expedient of changing attorneys***.

Id. at 355–56 (emphasis added). For this reason, California's Rutter Guide teaches that "[a]lthough the Code states 'any attorney' may make a § 170.6 challenge, ***change of counsel does not create the right to exercise an additional challenge***." *See* William E. Wegner, et al., *Cal. Practice Guide – Civil Trials and Evidence* § 3:176 (The Rutter Group 2018 ed.) (emphasis added).

Unsurprisingly, Macdonald Fernandez gives no authority endorsing its interpretation of Civil Procedure Code section 170.6(a)(2). There is none. To the contrary, California's appellate courts recognize, "[t]he right to a peremptory challenge ***is subject to various conditions which have no stated exception for a late appearing counsel***." *People v. Superior Court (Smith)*, 190 Cal. App. 3d 427, 430 (1987) (emphasis added). This outcome is not unduly harsh, as a party may always rely on a challenge for cause where circumstances warrant. *See generally* Civ. Proc. Code § 170.1. But where a party or its lawyer seeks to invoke the limited statutory allowance of section 170.6, it must do so according to that section's strictures.

C. Macdonald Fernandez Lacks Standing to File This Peremptory Challenge Because Their Representation Is Illusory.

The Court should also reject Macdonald Fernandez's challenge because it is not clear that the firm represents Six4Three at present in this litigation. The terms of Macdonald Fernandez's limited-scope representation narrowly limit the firm's representation of Six4Three to an event that has not occurred. The firm's Notice of Limited Scope Representation states that Macdonald Fernandez "will

defend a motion for sanctions ***if brought by the defendants***" and that the firm "will ***appear*** at the case management conference set for July 19, 2019, ***if it goes forward***." Notice of Limited Scope Rep. at 1 (emphases added). But Defendants have not moved for sanctions. And Macdonald Fernandez's notice does ***not*** state that the firm will ***represent*** Six4Three at the July 19, 2019 conference, only that it will appear. *Id.* Because these conditions "strictly limit[]" Macdonald Fernandez's engagement, the firm has no apparent basis to represent Six4Three in this litigation. Accordingly, notwithstanding the firm's notice of appearance, it lacks standing to bring a Section 170.6 challenge. *See Avelar v. Superior Court*, 7 Cal. App. 4th 1270, 1274 n.4 (1992), *modified* (July 31, 1992) ("The provision that '[a]ny party to or attorney appearing in' a special proceeding may file a challenge cannot be reasonably construed to give a right to an attorney who appears for other than a party.") (alterations in original)).

D. Macdonald Fernandez's Declaration in Support of Its Peremptory Challenge Is Improper.

In addition to the timeliness and standing problems, the declaration submitted by Reno F.R. Fernandez III is deficient. Even if Macdonald Fernandez is correct that they may make a peremptory challenge on their own behalf as newly appearing attorneys (they cannot), there is no dispute that Six4Three has waived its own right to file a challenge. As a textual matter, Civil Procedure Code section 170.6 provides a peremptory challenge to a party or attorney when ***that party or attorney*** swears that a court is prejudiced against ***that party or attorney***. *See* Civ. Proc. Code § 170.6(a)(2). *See* Wegner, *supra* § 3:169 ("The only 'ground' that need be shown is that the party or attorney believes (a) the challenged judge is prejudiced against ***such party or attorney***[.]") (emphases added and omitted). But Mr. Fernandez's declaration includes multiple statements in the alternative, leaving ambiguous whether "he or she" believes that Judge Swope "is prejudiced against the party," Six4Three, "or his or her attorney," Macdonald Fernandez. Even under Macdonald Fernandez's misreading of section 170.6, the ***only*** relevant prejudice would necessarily be toward Macdonald Fernandez. If Macdonald Fernandez's challenge is based on an allegation of prejudice against the law firm, it must say so in a sworn declaration under penalty of perjury.

IV. CONCLUSION

Macdonald Fernandez's peremptory challenge is untimely and otherwise unauthorized by section 170.6 and should be rejected.

Dated: July 5, 2019

DURIE TANGRI LLP

By: _____

SONAL N. MEHTA
JOSHUA H. LERNER
LAURA E. MILLER
CATHERINE Y. KIM
ZACHARY G. F. ABRAHAMSON

Attorneys for Defendant
Facebook, Inc.

PROOF OF SERVICE

I am employed in San Francisco County, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a party to the within action. My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

On July 5, 2019, I served the following documents in the manner described below:

OBJECTION TO SIX4THREE'S COUNSEL'S SECTION 170.6 CHALLENGE

☒ BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Durie Tangri's electronic mail system from cortega@durietangri.com to the email addresses set forth below.

On the following part(ies) in this action:

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Attorney for Gross & Klein LLP

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 5, 2019, at San Francisco, California.

Christina Ortega

EXHIBIT 36

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability company,

Plaintiff,

v.

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

Defendants.

Case No. CIV 533328

Assigned for all purposes to Hon. V. Raymond Swope, Dept. 23

ORDER STRIKING PLAINTIFF COUNSEL MACDONALD FERNANDEZ LLP'S PEREMPTORY CHALLENGE APPLICATION PURSUANT TO CCP SECTION 170.6

IT IS HEREBY ORDERED that Plaintiff's peremptory challenge filed July 2, 2019 against Judge V. Raymond Swope, Department 23, is STRICKEN as untimely, and thus procedurally improper.

THE COURT FINDS as follows:

Plaintiff Six4Three LLC, the original Plaintiff in this lawsuit, has retained new counsel, who filed a peremptory challenge on July 2, 2019.

"It is settled that the challenged judge may rule on the timeliness of a peremptory challenge." *Micro/Vest Corp. v. Superior Court* (1984) 150 Cal.App.3d 1085, 1089; *Bambula v. Superior Court* (1985) 174 Cal.App.3d 653, 656. Code of Civil Procedure Section 170.4(b) provides that "if a statement of disqualification is untimely filed or if one its fact it discloses no legal grounds for disqualification, the trial judge against whom it was filed may order it stricken."

This lawsuit was deemed "complex" and single assigned for all purposes to Judge V. Raymond Swope, Department 23, by Order filed January 29, 2018, after certain Defendants exercise a peremptory challenge of the previously assigned judge.

The ability to exercise a peremptory challenge, which is a creature of statute, is limited by the statute itself. Section 170.6(a)(2) provides that where a judge is single assigned for all purposes, "the motion shall be made to the assigned judge or to the presiding judge by a party within 15 days after notice of the all purpose assignment, or if the party has not yet appeared in the action, then within 15 days after the appearance."

Plaintiff's peremptory challenge is untimely. Department 23 was single assigned as the all purpose judge in this case back in January 2018, over 1-1/2 years ago. Plaintiff's opportunity to exercise under Section 170.6 expired back in February 2018.

IT IS SO ORDERED.

Dated: JUL 08 2019

Honorable V. Raymond Swope
Judge of the Superior Court of California

EXHIBIT 37

MACDONALD | FERNANDEZ LLP
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Attorneys for Plaintiff,
SIX4THREE, LLC

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability company, Plaintiff, vs. FACEBOOK, INC., a Delaware corporation; MARK ZUCKERBERG, an individual; 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 **VERIFIED STATEMENT OF DISQUALIFICATION** (Code Civ. Proc. § 170.3(c)(1))

STATEMENT

COMES NOW counsel for Six4Three, LLC, Plaintiff herein, objecting to the trial and any hearing before the Honorable V. Raymond Swope (the "Judge") pursuant to Code of Civil Procedure § 170.3(c)(1), and respectfully represents as follows:

1. Plaintiff's counsel filed a peremptory challenge pursuant to Code of Civil Procedure § 170.6 on July 3, 2019.

2. On July 9, 2019, the Judge entered an order striking the peremptory challenge solely upon the grounds that it is untimely because the action was assigned to the Judge for all

purposes on January 29, 2018, and that a party must exercise a peremptory challenge within fifteen days of notice of an all purpose assignment, notwithstanding the fact that the within peremptory challenge was filed by counsel. Notice of entry of the order was given on July 11, 2019.

3. Plaintiff and its counsel contend that the order is in error for the reasons set forth in the Reply in Support of Peremptory Challenge filed on July 8, 2019, which is incorporated herein by reference. In particular, the all-purpose-assignment rule does not apply to a peremptory challenge filed by an attorney and, if the rule does apply to an attorney, the rule is satisfied because the challenge was filed within fifteen days of notice of the all purpose assignment to the attorney.

4. A writ of mandate will be taken pursuant to Code of Civil Procedure § 170.3(d).

5. This Statement of Disqualification is required pursuant to Code of Civil Procedure § 170.3(c)(1).

6. Plaintiff reserves its right to seek disqualification for cause pursuant to Code of Civil Procedure § 170.1.

WHEREFORE, Plaintiff and its counsel object to the Judge conducting a trial in this matter or holding any hearings, including the case management conference set for July 19, 2019.

DATED: July 12, 2019

MACDONALD FERNANDEZ LLP

By: _____
RENO F.R. FERNANDEZ III
Attorneys for Plaintiff,
SIX4THREE, LLC

VERIFICATION

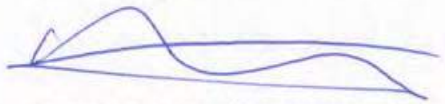
I, Reno F.R. Fernandez III, declare:

I am counsel for Six4Three, LLC, Plaintiff in the above-entitled matter. I made the aforesaid peremptory challenge.

I have read the foregoing Statement of Disqualification and know the contents thereof.

The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 12th day of July, 2019, in the City and County of San Francisco, California.



RENO F.R. FERNANDEZ III

PROOF OF SERVICE

I, the undersigned, hereby certify that I am a citizen of the United States of America and employed in the City and County of San Francisco, California; that I am over the age of eighteen years and not a party to the within action; that my business address is 221 Sansome Street, Third Floor, San Francisco, California 94104-2323.

On the date hereon, I served the foregoing document described as:

1. **VERIFIED STATEMENT OF DISQUALIFICATION** (Code Civ. Proc. § 170.3(c)(1))

on the following the persons and/or entities:

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Counsel for Birnbaum & Godkin, LLP

///

///

As follows:

[X] BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through the Macdonald Fernandez LLP electronic mail system from to the email addresses set forth above.

Executed on July 12, 2019, at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court, at whose direction the service was made and that the foregoing is true and correct.

Samantha G. Brown

EXHIBIT 38

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability company,

Plaintiff,

v.

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

Defendants.

Case No. CIV 533328

Assigned for all purposes to Hon. V. Raymond Swope, Dept. 23

DEFENDANT FACEBOOK, INC.'S OBJECTION TO MACDONALD FERNANDEZ'S VERIFIED STATEMENT OF DISQUALIFICATION

Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015

I. INTRODUCTION

Six4Three's limited-scope counsel's "Verified Statement of Disqualification" is improper and should be stricken. Statements of disqualification have no place in peremptory challenges: Such statements exist to facilitate challenges ***for cause***, which cannot proceed without a list of the facts "constituting the grounds for disqualification of the judge." *See* Civ. Proc. Code § 170.3(c)(1). But Six4Three's new lawyers at Macdonald Fernandez LLP have not filed such a challenge. And they have no grounds on which to do so. The Court should therefore strike Macdonald Fernandez's "verified statement" as improper.

II. ARGUMENT

A. Factual Background.

This Court is familiar with recent developments in this case. After this Court ordered Six4Three to find substitute counsel, Six4Three retained Macdonald Fernandez on June 28, 2019. *See* Decl. of Theodore Kramer re Order regarding Retention of Counsel by Pl. Six4Three, LLC ¶ 2 (July 1, 2019). The firm filed a notice of appearance on July 2. That same day, the firm also filed a peremptory challenge pursuant to Civil Procedure Code section 170.6. Facebook filed an opposition to the challenge, Macdonald Fernandez replied, and the Court struck the challenge as untimely on July 9, 2019. This dispute arises from Macdonald Fernandez's response to that July 9 Order.

Three days after the Court struck Macdonald Fernandez's peremptory challenge, the firm filed a "Verified Statement of Disqualification" pursuant to Code of Civil Procedure § 170.3(c)(1). Verified Statement at 1 (July 12, 2019). For the reasons that follow, that "verified statement" is improper and should be stricken.

B. Macdonald Fernandez's Verified Statement of Disqualification Is Improper and Should Be Stricken.

California's Code of Civil Procedure devotes a specific chapter to "Disqualifications of Judges." That chapter opens with the command that "[a] judge ***has a duty to decide*** any proceeding in which he or she is not disqualified." Civ. Proc. Code § 170 (emphasis added). The chapter goes on to grant courts the power to strike a statement of disqualification if "a statement of disqualification is untimely filed or if

on its face it discloses no legal grounds for disqualification[.]" Civ. Proc. Code § 170.4(b). Here, the Court can and should strike Macdonald Fernandez's statement.

Macdonald Fernandez styles its pleading as a statement pursuant to Civil Procedure Code section 170.3(c). *See* Verified Statement at 1. But that section governs challenges for cause—not peremptory challenges. *See California Judges Benchbook: Civil Proceedings - Before Trial* § 7.14 (Foundation for Judicial Education 2019) ("The grounds for disqualification of a judge ***for cause*** are set out in detail in CCP § 170.1 . . . , and the procedure to be followed is set out in CCP § 170.3.") (emphasis added). The text of the section makes this distinction clear: Section 170.3(c)(2) describes the options available to "a judge ***whose impartiality has been challenged by the filing of a written statement***[.]" Civ. Proc. Code § 170.3(c)(2) (emphasis added).

The statute's structure confirms this reading: Section 170.3(c)(1), which Macdonald Fernandez invokes, requires that the statement set forth "facts ***constituting the grounds for disqualification***[.]" *Id.* (emphasis added). That language is a direct reference to immediately preceding sections 170.1 ("***Grounds for disqualification***") and 170.2 ("***Circumstances not constituting grounds for disqualification***") (emphases added). Those sections, in turn, recite circumstances indicative of prejudice of bias. *See also* Civ. Proc. Code § 170.1(a) (listing "grounds for disqualification" that include, *inter alia*, when "[t]he judge has personal knowledge of disputed evidentiary facts" and when "[t]he judge has a financial interest in the subject matter in a proceeding"). Unsurprisingly, California's courts of appeal uniformly describe section 170.3(c) as the procedure used to strike judges for cause. *See Tri Counties Bank v. Superior Court (Amaya-Geunon)*, 167 Cal. App. 4th 1332, 1337 (2008) ("A party may seek a judge's disqualification ***for cause*** under the procedure set forth at section 170.3, subdivision (c)") (emphasis added).

The problem, of course, is that Macdonald Fernandez says that it has not filed a challenge for cause. The firm's "verified statement" purports to be "pursuant to Code of Civil Procedure § 170.3(c)(1)," but the firm expressly "***reserve[d] its right to seek disqualification for cause pursuant to Code of Civil Procedure § 170.1.***" Verified Statement ¶ 6 (emphasis added). Macdonald Fernandez's only gripe with the Court is that the Court (properly) struck the firm's untimely peremptory challenge. *See id.* ¶ 3. But that's not grounds for disqualification. On this point, section 170.2 could not be clearer:

"It shall not be grounds for disqualification that the judge: . . . (b) ***Has in any capacity expressed a view on a legal or factual issue presented in the proceeding***[.]" Civ. Proc. Code § 170.2(b) (emphasis added).[1] The Court's ruling on Macdonald Fernandez's peremptory challenge cannot support a challenge under section 170.3(c). *See supra*. For that reason, the firm's statement should be stricken.

III. CONCLUSION

For the reasons above, Macdonald Fernandez's improper "Verified Statement of Disqualification" should be stricken.

Dated: July 17, 2019

DURIE TANGRI LLP

By: _____

SONAL N. MEHTA
JOSHUA H. LERNER
LAURA E. MILLER
CATHERINE Y. KIM
ZACHARY G. F. ABRAHAMSON

Attorneys for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar

[1] Even if the firm ***could*** use section 170.3(c) to collaterally attack the Court's section 170.6 ruling—it cannot—Macdonald Fernandez's "verified statement" improperly purports to "incorporate[] by reference" the firm's Reply in Support of Peremptory Challenge. *See* Verified Statement ¶ 3. As this Court has held in other circumstances, California law does not permit such casual incorporation. *See* Order (1) Denying Defendant Facebook, Inc.'s Special Mot. to Strike at 10:22–23 (July 16, 2018) ("Plaintiff provides no legal authority to support incorporation of arguments raised in other motions."). Accordingly, neither this nor any court would consider the merits of Macdonald Fernandez's section 170.6 briefing in connection with the firm's section 170.3 challenge.

PROOF OF SERVICE

I am employed in San Francisco County, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a party to the within action. My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

On July 17, 2019, I served the following documents in the manner described below:

DEFENDANT FACEBOOK, INC.'S OBJECTION TO MACDONALD FERNANDEZ'S VERIFIED STATEMENT OF DISQUALIFICATION

☒ (BY OVERNIGHT MAIL) I am personally and readily familiar with the business practice of Durie Tangri LLP for collection and processing of correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained by Federal Express for overnight delivery.

☒ BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Durie Tangri's electronic mail system from cortega@durietangri.com to the email addresses set forth below.

On the following part(ies) in this action:

VIA OVERNIGHT MAIL & EMAIL

Reno F.R. Fernandez III
Matthew J. Olson
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221 Sansome Street, Third Floor
San Francisco, CA 94104
Reno@MacFern.com
Matt@MacFern.com

Attorneys for Plaintiff Six4Three, LLC

VIA EMAIL ONLY

Stuart G. Gross
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VIA EMAIL ONLY

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VIA EMAIL ONLY

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Joyce.Vialpando@wilsonelser.com
Dea.Palumbo@wilsonelser.com

Attorney for Gross & Klein LLP

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 17, 2019, at San Francisco, California.

Christina Ortega

EXHIBIT 39

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability company,

Plaintiff,

v.

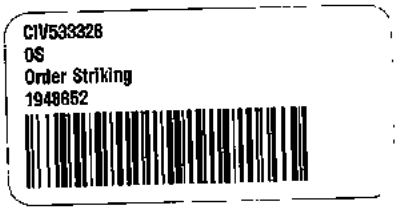
FACEBOOK, INC., a Delaware corporation; MARK ZUCKERBERG, an individual; CHRISTOPHER COX, an individual; JAVIER OLIVAN, an individual; SAMUEL LESSIN, an individual; MICHAEL VERNAL, an individual; ILYA SUKHAR, an individual; and DOES 1-50, inclusive,

Defendants.

Case No. CIV 533328

Assigned for all purposes to Hon. V. Raymond Swope, Dept. 23

ORDER STRIKING PLAINTIFF COUNSEL MACDONALD FERNANDEZ LLP'S VERIFIED STATEMENT OF DISQUALIFICATION FILED JULY 12, 2019



IT IS HEREBY ORDERED that Plaintiff SIX4THREE, LLC'S ("Plaintiff") Verified Statement of Disqualification, filed July 12, 2019, ("Statement") against Judge V. Raymond Swope, Department 23, is STRICKEN.

THE COURT FINDS as follows:

First, Plaintiff's stated basis for disqualification is its contention that the Court's grounds for issuing an order striking the peremptory challenge as untimely is in error. (Statement, supra, at ¶¶ 2, 3.) This is an improper grounds for seeking disqualification. "If the alleged bias set forth in the statement of disqualification is merely based on dissatisfaction with the judge's rulings, the judge properly strikes the statement because it does not show legal cause for the challenge." (CJER, Cal. Benchguide: Disqualification of Judge (Revised 2010) § 2:25.) On its face, the Statement "discloses no legal grounds

for disqualification" and it is therefore stricken. (Code Civ. Proc. § 170.3, subd. (b).)

Second, Plaintiff failed to personally serve the Statement "on the judge alleged to be disqualified, or on his or her clerk, provided that the judge is present in the courthouse or in chambers." (Code Civ. Proc., § 170.3, subd. (c)(1).) Furthermore, the filed proof of service of the Statement does not reflect personal service on the judge or his clerk.

IT IS SO ORDERED.

Dated: JUL 18 2019

Honorable V. Raymond Swope
Judge of the Superior Court of California

EXHIBIT 40

CIV-150

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NUMBER:	FOR COURT USE ONLY
NAME: Reno F.R. Fernandez III (CA SBN 251934); Matthew J. Olson (CA SBN 265908) FIRM NAME: MACDONALD I FERNANDEZ LLP STREET ADDRESS: 221 Sansome Street, Third Floor CITY: San Francisco STATE: CA ZIP CODE: 94104 TELEPHONE NO.: (415) 362-0449 FAX NO.: (415) 394-5544 E-MAIL ADDRESS: reno@macfern.com; matt@macfern.com ATTORNEY FOR (name): Specially Appearing for Plaintiff Six4Three, LLC		Electronically FILED by Superior Court of California, County of San Mateo ON 8/6/2019 By /s/ Marcela Enriquez Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO STREET ADDRESS: 400 County Center MAILING ADDRESS: 400 County Center CITY AND ZIP CODE: Redwood City, California 94063 BRANCH NAME: Southern Branch (Complex Civil Litigation)		
PLAINTIFF: Six4Three, LLC, a Delaware limited liability company DEFENDANT: Facebook, Inc., a Delware corporation; et al. OTHER:		CASE NUMBER: CIV533328
NOTICE OF LIMITED SCOPE REPRESENTATION [x] Amended		JUDGE: Hon. V. Raymond Swope DEPT.: 23

[Note: This form is for use in civil cases other than family law. For family law cases, use form FL-950.]

1. Attorney *(name)*: Macdonald Fernandez LLP
   and party *(name)*: Six4Three, LLC
   who is the [x] petitioner/plaintiff [ ] respondent/defendant [ ] other *(describe)*:
   have an agreement that the attorney will provide limited scope representation in this case to the party.

2. The attorney will represent the party
   a. [ ] at the hearing on *(date)*:
      [ ] and at any continuance of that hearing
      [ ] until submission of the order after hearing

   b. [ ] at the trial on *(date)*:
      [ ] and at any continuance of that trial
      [ ] until judgment

   c. [x] other *(specify nature and duration of representation)*:
      We will:
      i. defend a motion for sanctions (if brought by the defendants as contemplated in their recent case management conference statement) and assist with responding to any related discovery (before or after any such motion is brought, but related to the same alleged facts and circumstances as the expected sanctions motion);
      ii. respond to any currently pending motions to seal;
      iii. prosecute or defend any proceedings under Sections 170 through 170.9 of the Code of Civil Procedure and any extraordinary writs or petitions for review taken from the decision thereof; and
      iv. appear at case management conferences.

      This engagement is strictly limited. If we agree to perform any other or further work, this notice will be amended.

3. By signing this form, the party agrees to sign *Substitution of Attorney–Civil* (form MC-050) at the completion of the representation described above.

PLAINTIFF: Six4Three, LLC, a Delaware limited liability company DEFENDANT: Facebook, Inc., a Delware corporation; et al. OTHER:	CASE NUMBER: CIV533328

4. During the limited scope representation, parties and the court must serve papers on both the attorney named above and directly on the party. (Cal. Rules of Court, rule 3.36.) The party's name and address for purpose of service are as follows:

   Name: Six4Three, LLC

   Address *(for the purpose of service)*:
   Attn: Theodore Kramer
   1267 Chestnut Street, Apt. 6
   San Francisco, CA 94109

   Telephone:

   Fax:

This notice accurately states all current matters and issues on which the attorney has agreed to serve as an attorney for the party in this case. The information provided on this form is not intended to state all of the terms and conditions of the agreement between the party and the attorney for limited scope representation.

Date: August 6, 2019

Six4Three, LLC, Plaintiff, by Theodore Kramer
(TYPE OR PRINT NAME OF PARTY)

▶ T. K
(SIGNATURE OF PARTY)

Date: August 6, 2019

Matthew J. Olson
(TYPE OR PRINT NAME OF ATTORNEY)

▶
(SIGNATURE OF ATTORNEY)

PLAINTIFF: Six4Three, LLC, a Delaware limited liability company DEFENDANT: Facebook, Inc., a Delware corporation; et al. OTHER:	CASE NUMBER: CIV533328

4. During the limited scope representation, parties and the court must serve papers on both the attorney named above and directly on the party. (Cal. Rules of Court, rule 3.36.) The party's name and address for purpose of service are as follows:

   Name: Six4Three, LLC

   Address *(for the purpose of service)*:
   Attn: Theodore Kramer
   1267 Chestnut Street, Apt. 6
   San Francisco, CA 94109

   Telephone:

   Fax:

This notice accurately states all current matters and issues on which the attorney has agreed to serve as an attorney for the party in this case. The information provided on this form is not intended to state all of the terms and conditions of the agreement between the party and the attorney for limited scope representation.

Date: August 6, 2019

Six4Three, LLC, Plaintiff, by Theodore Kramer
(TYPE OR PRINT NAME OF PARTY)

(SIGNATURE OF PARTY)

Date: August 6, 2019

Matthew J. Olson
(TYPE OR PRINT NAME OF ATTORNEY)

(SIGNATURE OF ATTORNEY)

PLAINTIFF: Six4Three, LLC, a Delaware limited liability company DEFENDANT: Facebook, Inc., a Delaware corporation; et al. OTHER:	CASE NUMBER: CIV533328

PROOF OF SERVICE BY FIRST-CLASS MAIL

1. I am at least 18 years old and **not a party to this action.** I am a resident of or employed in the county where the mailing took place, and my residence or business address is *(specify):*
   221 Sansome Street, Third Floor
   San Francisco, CA 94104

2. I served copies of the *Notice of Limited Scope Representation* (form CIV-150) by enclosing each of them in a sealed envelope with first-class postage fully prepaid and *(check one):*
   a. [ ] deposited the sealed envelopes with the United States Postal Service.
   b. [x] placed the sealed envelopes for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. Copies of the *Notice of Limited Scope Representation* (form CIV-150) were mailed:
   a. on *(date):* August 6, 2019
   b. from *(city and state):* San Francisco, California

4. The envelopes were addressed and mailed as follows:
   a. Name of person served:
      David Godkin,James Kruzer; Birnbaum & Godkin, LLP
      Street address: 280 Summer Street
      City: Boston
      State and zip code: MA 02210
   b. Name of person served:
      Jack Russo, Christopher Sargent;Computerlaw Group
      Street address: 401 Florence Street
      City: Palo Alto
      State and zip code: CA 94301
   c. Name of person served:
      Donald P. Sullivan; Wilson Elser
      Street address: 525 Market Street, 17th Floor
      City: San Francisco
      State and zip code: CA 94105
   d. Name of person served:
      Steven J. Bolotin; Morrison Mahoney LLP
      Street address: 250 Summer Street
      City: Boston
      State and zip code: MA 02210

[x] Names and addresses of additional persons served are attached. *(You may use form POS-030(P).)*

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date: August 6, 2019

Samantha G. Brown
(TYPE OR PRINT NAME OF DECLARANT)

▶ _____
(SIGNATURE OF DECLARANT)

SHORT TITLE: Six4Three, LLC, a Delaware limited liability company v. Facebook, Inc., a Delaware corporation; et al.	CASE NUMBER: CIV533328

ATTACHMENT TO PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL (PERSONS SERVED)

(This Attachment is for use with form POS-030)

NAME AND ADDRESS OF EACH PERSON SERVED BY MAIL:

Name of Person Served	Address *(number, street, city, and zip code)*
Sonal Mehta, Joshua Lerner, Laura Miller, Catherine Kim; Durie Tangri LLP	217 Leidesdorff Street, San Francisco, CA 94111
Stuart Gross, Esq., Benjamin Klein, Esq.; Gross & Klein LLP	The Embarcadero, Pier 9, Suite 100, San Francisco, CA 94111
Thomas Mazzucco, Joseph Leveroni; Murphy Pearson Bradley & Feeney	88 Kearny Street, 10th Floor, San Francisco, CA 94108