

No. 19-511

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In the  
**Supreme Court of the United States**

FACEBOOK, INC.,

*Petitioner,*

v.

NOAH DUGUID, individually and on behalf of  
himself and all others similarly situated,

*Respondent,*

and

UNITED STATES OF AMERICA,

*Respondent-Intervenor.*

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**On Writ of Certiorari to the  
United States Court of Appeals  
for the Ninth Circuit**

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**JOINT APPENDIX**

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September 4, 2020

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Petition for Writ of Certiorari Filed October 17, 2019  
Petition for Writ of Certiorari Granted July 9, 2020

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JA 1

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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No. 17-15320

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NOAH DUGUID, individually and on behalf of himself  
and all others similarly situated,

*Plaintiff-Appellant,*

v.

FACEBOOK, INC.,

*Defendant-Appellee,*

UNITED STATES OF AMERICA,

*Intervenor-Appellee.*

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**RELEVANT DOCKET ENTRIES**

Date Filed	#	Docket Text
02/23/2017	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Mediation Questionnaire due on 03/02/2017. Appellant Noah Duguid opening brief due 06/02/2017. Appellee Facebook, Inc. answering brief due 07/03/2017. Appellant's optional reply brief is due 14 days after service of the answering brief.

## JA 2

Date Filed	#	Docket Text
		[10330977] (JMR) [Entered: 02/23/2017 01:43 PM]
* * *		
09/01/2017	12	Submitted (ECF) excerpts of record. Submitted by Appellant Noah Duguid. Date of service: 09/01/2017. [10567378] [17-15320] (Lemberg, Sergei) [Entered: 09/01/2017 12:37 PM]
09/01/2017	13	Filed clerk order: The opening brief [11] submitted by Noah Duguid is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. The Court has reviewed the excerpts of record [12] submitted by Noah Duguid. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies

Date Filed	#	Docket Text
		must be in the format described in 9th Circuit Rule 30-1.6. [10567593] (SML) [Entered: 09/01/2017 02:10 PM]
* * *		
10/16/2017	20	Filed (ECF) Appellee Facebook, Inc. Unopposed Motion to extend time to file Answering brief until 12/01/2017. Date of service: 10/16/2017. [10619181] [17-15320]--[COURT UPDATE: Updated docket text to reflect content of filing. 10/18/2017 by SLM] (Clubok, Andrew) [Entered: 10/16/2017 02:40 PM]
10/18/2017	21	Filed clerk order (Deputy Clerk: TAH): The appellee's unopposed motion (Docket Entry No. [20]) for an extension of time in which to file the answering brief is construed as a motion to stay appellate proceedings pending the United States Court of Appeals for the District of Columbia Circuit's decision in ACA International v. Federal Communications Commission, et al., No. 15-1211 (argued on October 19, 2016). So construed, the motion is granted. This appeal is stayed until December 1, 2017. At or prior to the

Date Filed	#	Docket Text
		expiration of the stay, the appellee shall file the answering brief or a motion for appropriate relief. If the answering brief is filed, the optional reply brief will be due within 21 days after service of the answering brief. The filing of the answering brief or the failure to file a further motion will terminate the stay. [10622820] (AF) [Entered: 10/18/2017 03:56 PM]
11/06/2017	22	Filed (ECF) Appellee Facebook, Inc. Unopposed Motion to stay appellate proceedings. Date of service: 11/06/2017. [10644727] [17-15320] (Clubok, Andrew) [Entered: 11/06/2017 02:07 PM]
* * *		
11/09/2017	25	Filed clerk order (Deputy Clerk: TAH): The appellee's unopposed motion (Docket Entry No. [22]) to further stay appellate proceedings pending the United States Court of Appeals for the District of Columbia Circuit's decision in ACA International v. Federal Communications Commission, et al., No. 15-1211 (argued on October 19, 2016) is granted in part. This appeal is stayed until January 22, 2018.



Date Filed	#	Docket Text
		At or prior to the expiration of the stay, the appellee shall file the answering brief or a motion for appropriate relief. If the answering brief is filed, the optional reply brief will be due within 21 days after service of the answering brief. The filing of the answering brief or the failure to file a further motion will terminate the stay. [10649912] (AF) [Entered: 11/09/2017 02:43 PM]
01/19/2018	26	Filed (ECF) Appellee Facebook, Inc. Unopposed Motion for miscellaneous relief [Unopposed Motion to Continue the Stay]. Date of service: 01/19/2018. [10731208] [17-15320] (Clubok, Andrew) [Entered: 01/19/2018 02:39 PM]
01/22/2018	27	Filed clerk order (Deputy Clerk: TAH): The appellee's unopposed motion (Docket Entry No. [26]) to further stay appellate proceedings pending the United States Court of Appeals for the District of Columbia Circuit's decision in ACA International v. Federal Communications Commission, et al., No. 15-1211 (argued on October 19, 2016) is

Date Filed	#	Docket Text
		granted in part. This appeal is stayed until March 23, 2018. At or prior to the expiration of the stay, the appellee shall the answering brief or a status report and motion for appropriate relief. If the answering brief is filed, the optional reply brief will be due within 21 days after service of the answering brief. The filing of the answering brief or the failure to file a further motion will terminate the stay. [10732877] (AF) [Entered: 01/22/2018 11:58 AM]
03/09/2018	28	Filed (ECF) Appellee Facebook, Inc. Unopposed Motion for miscellaneous relief [Unopposed Motion to Continue the Stay]. Date of service: 03/09/2018. [10793081] [17-15320] (Clubok, Andrew) [Entered: 03/09/2018 02:21 PM]
03/09/2018	29	Filed clerk order (Deputy Clerk: TAH): The appellee's unopposed motion (Docket Entry No. [28]) to further stay appellate proceedings is granted. The previously established briefing schedule is vacated. Appellate proceedings are stayed until the

Date Filed	#	Docket Text
		<p>United States Court of Appeals for the District of Columbia Circuit decides ACA International v. Federal Communications Commission, et al., No. 15-1211, or until further order of this court. The appellee shall file a status report on June 7, 2018 and every 90 days thereafter while ACA International v. Federal Communications Commission, et al., is pending. Status reports should include any change in the status of ACA International v. Federal Communications Commission, et al., and the estimated date of decision, if known. The appellee shall notify this court by filing a status report within 7 days of the decision. Failure to file a status report will terminate the stay of appellate proceedings. The briefing schedule will be reset in a future order. [10793458] (AF) [Entered: 03/09/2018 03:56 PM]</p>
* * *		
03/23/2018	32	<p>Filed (ECF) Appellee Facebook, Inc. Stipulated Motion for miscellaneous relief [Notification of Decision in ACA</p>

Date Filed	#	Docket Text
		International v. FCC, No. 15-1211 (D.C. Cir.) and Proposed Stipulated Briefing Schedule]. Date of service: 03/23/2018. [10810224] [17-15320] (Clubok, Andrew) [Entered: 03/23/2018 10:54 AM]
* * *		
04/09/2018	34	Filed clerk order (Deputy Clerk: TAH): The appellee's unopposed motion (Docket Entry No. [32]) to terminate the stay of appellate proceedings and to reset the briefing schedule is granted. On or before May 9, 2018, appellant may submit a substitute opening brief. Upon receipt of any substitute opening brief, the Clerk will strike the appellant's previously filed opening brief (Docket Entry No. [11]). The answering brief is due June 8, 2018. The optional reply brief is due within 21 days after service of the answering brief. [10828930] (AF) [Entered: 04/09/2018 11:06 AM]
* * *		
05/09/2018	39	Submitted (ECF) Opening Brief for review. Submitted by Appellant Noah Duguid. Date of

Date Filed	#	Docket Text
		service: 05/09/2018. [10867073] [17-15320] (Lemberg, Sergei) [Entered: 05/09/2018 01:40 PM]
05/10/2018	40	Filed clerk order: The substitute opening brief [39] submitted by Noah Duguid is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. [10868102] (KT) [Entered: 05/10/2018 10:23 AM]
* * *		
08/07/2018	46	Submitted (ECF) Answering Brief for review. Submitted by Appellee Facebook, Inc.. Date of service: 08/07/2018. [10969048] [17-15320] (Engel, Susan) [Entered: 08/07/2018 01:50 PM]
08/07/2018	47	Filed clerk order: The answering brief [46] submitted by Facebook, Inc. is filed. Within 7 days of the filing of this

Date Filed	#	Docket Text
		order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. [10969562] (LA) [Entered: 08/07/2018 04:50 PM]
* * *		
09/21/2018	51	Filed (ECF) Appellant Noah Duguid citation of supplemental authorities. Date of service: 09/21/2018. [11021414] [17-15320] (Lemberg, Sergei) [Entered: 09/21/2018 03:43 PM]
* * *		
10/05/2018	56	Filed clerk order: The answering brief [55] submitted by USA is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version

Date Filed	#	Docket Text
		submitted electronically. Cover color: red. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. [11037156] (KT) [Entered: 10/05/2018 01:41 PM]
* * *		
11/08/2018	59	Submitted (ECF) Supplemental Brief for review. Submitted by Appellee Facebook, Inc.. Date of service: 11/08/2018. [11082760] [17-15320] (Engel, Susan) [Entered: 11/08/2018 08:05 PM]
11/09/2018	60	Filed clerk order: The supplemental answering brief [59] submitted by Facebook, Inc. is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: tan. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate

JA 12

Date Filed	#	Docket Text
		CM/ECF. [11083078] (KT) [Entered: 11/09/2018 09:59 AM]
* * *		
11/16/2018	62	Submitted (ECF) Amicus brief for review and filed Motion to become amicus curiae. Submitted by Chamber of Commerce of the United States of America. Date of service: 11/16/2018. [11090577] [17-15320] (Dvoretzky, Shay) [Entered: 11/16/2018 11:35 AM]
* * *		
12/28/2018	70	Submitted (ECF) Reply Brief for review. Submitted by Appellant Noah Duguid. Date of service: 12/28/2018. [11136275]-- [COURT ENTERED FILING to replace entry [69].] (LA) [Entered: 12/28/2018 03:32 PM]
12/28/2018	71	Filed clerk order: The reply brief [70] submitted by Noah Duguid is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies



Date Filed	#	Docket Text
		shall be submitted to the principal office of the Clerk. [11136277] (LA) [Entered: 12/28/2018 03:34 PM]
* * *		
03/06/2019	77	Filed text clerk order (Deputy Clerk: AF): Chamber of Commerce of the United States of America motion to become amicus curiae (Docket Entry No. [62]) is granted. [11217629] (AF) [Entered: 03/06/2019 09:25 AM]
03/07/2019	78	Filed clerk order: The amicus brief [62] submitted by Chamber of Commerce of the United States of America is filed. No additional paper copies are required. [11219830] (KT) [Entered: 03/07/2019 01:44 PM]
03/11/2019	79	ARGUED AND SUBMITTED TO J. CLIFFORD WALLACE, EUGENE E. SILER and M. MARGARET MCKEOWN. [11222955] (SME) [Entered: 03/11/2019 01:43 PM]
* * *		
06/13/2019	81	FILED OPINION (J. CLIFFORD WALLACE, EUGENE E. SILER and M. MARGARET MCKEOWN)

Date Filed	#	Docket Text
		REVERSED AND REMANDED. Judge: MMM Authoring. FILED AND ENTERED JUDGMENT. [11329429] (AKM) [Entered: 06/13/2019 07:57 AM]
07/29/2019	82	Filed (ECF) Appellee USA petition for panel rehearing and petition for rehearing en banc (from 06/13/2019 opinion). Date of service: 07/29/2019. [11379533] [17-15320]--[COURT UPDATE: Edited docket text to reflect content of filing. Attached PDF of opinion. 07/29/2019 by QDL] (Powell, Lindsey) [Entered: 07/29/2019 12:36 PM]
08/22/2019	83	Filed order (J. CLIFFORD WALLACE, EUGENE E. SILER and M. MARGARET MCKEOWN) The panel unanimously votes to deny the petition for panel rehearing. Judge McKeown votes to deny the petition for rehearing en banc, and Judges Wallace and Siler so recommend. The full court has been advised of the petition for rehearing and rehearing en banc and no judge has requested a vote on whether

JA 15

Date Filed	#	Docket Text
		to rehear the matter en banc. Fed. R. App. P. 35. The petition for panel rehearing and the petition for rehearing en banc are denied. [11406441] (OC) [Entered: 08/22/2019 09:41 AM]
* * *		
09/12/2019	88	MANDATE ISSUED.(JCW, EES and MMM) [11429427] (RR) [Entered: 09/12/2019 10:53 AM]
* * *		

JA 16

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA**

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No. 4:15-cv-00985-JST

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NOAH DUGUID, individually and on behalf of himself  
and all others similarly situated,

*Plaintiff,*

v.

FACEBOOK, INC.,

*Defendant,*

UNITED STATES OF AMERICA,

*Intervenor.*

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**RELEVANT DOCKET ENTRIES**

Date Filed	#	Docket Text
03/03/2015	1	CLASS ACTION COMPLAINT; Jury Trial Demanded against Facebook, Inc., (Filing Fee: \$400.00, receipt number 0971-9330060). Filed by Noah Duguid. (Attachments: #(1) Exhibit, #(2) Exhibit, #(3) Exhibit, #(4) Exhibit, #(5) Exhibit, #(6) Civil Cover Sheet) (Kent, Trinette) (Filed on 3/3/2015) (Entered: 03/03/2015)
* * *		

Date Filed	#	Docket Text
03/03/2015	3	Certificate of Interested Entities by Noah Duguid re 1 Complaint, (Kent, Trinette) (Filed on 3/3/2015) (Entered: 03/03/2015)
* * *		
03/24/2015	11	ORDER REASSIGNING CASE. Case reassigned to Judge Hon. Jon S. Tigar for all further proceedings. Magistrate Judge Jacqueline Scott Corley no longer assigned to the case.. Signed by Executive Committee on 3/24/15. (as, COURT STAFF) (Filed on 3/24/2015) (Entered: 03/24/2015)
* * *		
05/18/2015	24	MOTION to Dismiss; - <i>Facebook, Inc.s Notice of Motion and Motion to Dismiss Plaintiffs Complaint Pursuant to Federal Rule of Civil Procedure 12(B)(6) and Memorandum in Support</i> filed by Facebook, Inc.. Motion Hearing set for 7/30/2015 02:00 PM in Courtroom 9, 19th Floor, San Francisco before Hon. Jon S. Tigar. Responses due by 6/1/2015. Replies due by 6/8/2015. (Attachments: # 1 Proposed Order, # 2 Notice Constitutional Question, # 3

Date Filed	#	Docket Text
		Request Judicial Notice, # 4 Declaration Deeley Declaration, # 5 Exhibit 1, # 6 Exhibit 2, # 7 Exhibit 3, # 8 Exhibit 4, # 9 Exhibit 5, # 10 Exhibit 6) (Deeley, Elizabeth) (Filed on 5/18/2015) (Entered: 05/18/2015)
* * *		
06/26/2015	30	RESPONSE to (re 24 MOTION to Dismiss; -Facebook, Inc.s Notice of Motion and Motion to Dismiss Plaintiffs Complaint Pursuant to Federal Rule of Civil Procedure 12(B)(6) and Memorandum in Support); Opposition to Motion to Dismiss filed by Noah Duguid. (Attachments: # 1 Declaration of Trinette G. Kent, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C)(Kent, Trinette) (Filed on 6/26/2015) (Entered: 06/26/2015)
07/31/2015	31	REPLY (re 24 MOTION to Dismiss; -Facebook, Inc.s Notice of Motion and Motion to Dismiss Plaintiffs Complaint Pursuant to Federal Rule of Civil Procedure 12(B)(6) and Memorandum in Support) filed by Facebook, Inc.. (Deeley,

Date Filed	#	Docket Text
		Elizabeth) (Filed on 7/31/2015) (Entered: 07/31/2015)
* * *		
08/25/2015	36	NOTICE by Facebook, Inc. re 24 MOTION to Dismiss; - <i>Facebook, Inc.s Notice of Motion and Motion to Dismiss Plaintiffs Complaint Pursuant to Federal Rule of Civil Procedure 12(B)(6) and Memorandum in Support; -Facebook Inc.'s Notice of Supplemental Authority</i> (Attachments: # (1) Exhibit A)(Sheffield-Whitehead, Kristin) (Filed on 8/25/2015) (Entered: 08/25/2015)
08/28/2015	37	ORDER OF CERTIFICATION PURSUANT TO 28 U.S.C. § 2403(A); INSTRUCTIONS TO CLERK; ORDER CONTINUING MOTION HEARING re 24 MOTION to Dismiss <i>Facebook, Inc.s Notice of Motion and Motion to Dismiss Plaintiffs Complaint Pursuant to Federal Rule of Civil Procedure 12(B)(6)</i> filed by Facebook, Inc. Signed by Judge Jon S. Tigar on August 28, 2015. (Attachments: # 1 Certificate/Proof of Service)(wsn, COURT STAFF)

JA 20

Date Filed	#	Docket Text
		(Filed on 8/28/2015) (Entered: 08/28/2015)
* * *		
09/15/2015	38	NOTICE of Supplemental Authority filed by Facebook, Inc. (Attachments: #(1) Exhibit A, #(2) Exhibit B)(Sheffield-Whitehead, Kristin) (Filed on 9/15/2015) (Entered: 09/15/2015)
09/15/2015	39	NOTICE of Supplemental Authority filed by Facebook, Inc. re 24 MOTION to Dismiss; <i>-Facebook, Inc.s Notice of Motion and Motion to Dismiss Plaintiffs Complaint Pursuant to Federal Rule of Civil Procedure 12(B)(6) and Memorandum in Support; -Corrected Facebook, Inc.'s Notice of Supplemental Authority</i> (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Sheffield-Whitehead, Kristin) (Filed on 9/15/2015) (Entered: 09/15/2015)
* * *		
10/14/2015	41	ACKNOWLEDGMENT of Certification of Constitutional Question and STIPULATION WITH [PROPOSED] ORDER <i>Requesting Extension of Time in</i>



Date Filed	#	Docket Text
		<i>Which to Intervene</i> filed by United States of America. (Attachments: #(1) Declaration of Bailey W. Heaps, #(2) Proposed Order)(Heaps, Bailey) (Filed on 10/14/2015) (Entered: 10/14/2015)
10/14/2015	42	STIPULATION AND ORDER re 41 STIPULATION WITH PROPOSED ORDER <i>Requesting Extension of Time in Which to Intervene</i> filed by United States of America. Signed by Judge Jon S. Tigar on October 14, 2015. (wsn, COURT STAFF) (Filed on 10/14/2015) (Entered: 10/14/2015)
* * *		
12/11/2015	43	NOTICE by United States of America <i>of Intervention to Support the Constitutionality of the TCPA</i> (Heaps, Bailey) (Filed on 12/11/2015) (Entered: 12/11/2015)
12/11/2015	44	Brief <i>in Support of the Constitutionality of the Telephone Consumer Protection Act of 1991</i> filed by United States of America. (Heaps, Bailey) (Filed on 12/11/2015) (Entered: 12/11/2015)

JA 22

Date Filed	#	Docket Text
12/15/2015	45	RESPONSE to (re 43 MOTION to Intervene); <i>-Facebook, Inc.'s Unopposed Motion for Leave to File a Response to the Brief of the United States as Intervenor</i> filed by Facebook, Inc.. (Attachments: #(1) [Proposed] Order) (Sheffield-Whitehead, Kristin) (Filed on 12/15/2015) (Entered: 12/15/2015)
12/16/2015	46	ORDER GRANTING LEAVE TO FILE RESPONSE re 45 Opposition/Response to Motion, filed by Facebook, Inc.. Signed by Judge Jon S. Tigar on December 16, 2015. (wsn, COURT STAFF) (Filed on 12/16/2015) (Entered: 12/16/2015)
01/07/2016	47	RESPONSE to (re 43 MOTION to Intervene); <i>-Facebook, Inc.'s Response to The United States of America's Brief as Intervenor</i> filed by Facebook, Inc.. (Deeley, Elizabeth) (Filed on 1/7/2016) (Entered: 01/07/2016)
03/24/2016	48	ORDER GRANTING MOTION TO DISMISS by Judge Jon S. Tigar; granting 24 Motion to Dismiss. Plaintiff may file an amended complaint within 30 days of the date of this order.

JA 23

Date Filed	#	Docket Text
		(wsn, COURT STAFF) (Filed on 3/24/2016) (Entered: 03/25/2016)
* * *		
04/22/2016	53	FIRST AMENDED CLASS ACTION COMPLAINT for Damages and Injunctive Relief for Violation of the Telephone Consumer Protection Act, 47 U.S.C. Section 227, et seq.; Jury Trial Demanded against Facebook, Inc.. Filed by Noah Duguid. (Attachments: #(1) Exhibit A-Login Notifications, #(2) Exhibit B-Emails to Duguid)(Kent, Trinette) (Filed on 4/22/2016) (Entered: 04/22/2016)
* * *		
05/26/2016	65	<i>Facebook, Inc.s Notice of Motion and Motion to Dismiss Plaintiffs First Amended Complaint and Memorandum in Support</i> filed by Facebook, Inc.. Motion Hearing set for 9/22/2016 02:00 PM in Courtroom 9, 19th Floor, San Francisco before Hon. Jon S. Tigar. Responses due by 6/27/2016. Replies due by 7/21/2016. (Attachments: # 1 Notice of Constitutional Question, # 2 Declaration

Date Filed	#	Docket Text
		Carrie J. Bodner, # 3 Exhibit 1, # 4 Exhibit 2, # 5 Exhibit 3, # 6 Exhibit 4, # 7 Proposed Order)(Clubok, Andrew) (Filed on 5/26/2016) (Entered: 05/26/2016)
* * *		
07/12/2016	75	NOTICE filed by Noah Duguid of Additional Authority in Opposition to re 65 <i>Facebook, Inc.s Notice of Motion and Motion to Dismiss Plaintiffs First Amended Complaint</i> (Lemberg, Sergei) (Filed on 7/12/2016) (Entered: 07/12/2016)
* * *		
08/04/2016	77	REPLY (re 65 <i>Facebook, Inc.s Notice of Motion and Motion to Dismiss Plaintiffs First Amended Complaint</i> ); - <i>Facebook, Inc.'s Reply in Support of its Motion to Dismiss Plaintiff's First Amended Complaint</i> filed by Facebook, Inc.. (Clubok, Andrew) (Filed on 8/4/2016) (Entered: 08/04/2016)
08/09/2016	78	NOTICE filed by Facebook, Inc. re 65 <i>Facebook, Inc.s Notice of Motion and Motion to Dismiss Plaintiffs First Amended Complaint</i> ; - <i>Facebook, Inc.'s</i>

Date Filed	#	Docket Text
		<i>Notice of Supplemental Authority in Support of its Motion to Dismiss Plaintiff's First Amended Complaint</i> (Attachments: #(1) Exhibit A)(Clubok, Andrew) (Filed on 8/9/2016) (Entered: 08/09/2016)
09/07/2016	79	NOTICE of Supplemental Authority filed by Facebook, Inc. re 65 <i>Facebook, Inc.s Notice of Motion and Motion to Dismiss Plaintiffs First Amended Complaint</i> (Attachments: #(1) Exhibit A)(Clubok, Andrew) (Filed on 9/7/2016) (Entered: 09/07/2016)
* * *		
09/30/2016	81	NOTICE of Supplemental Authority filed by Facebook, Inc. re 65 <i>Facebook, Inc.s Notice of Motion and Motion to Dismiss Plaintiffs First Amended Complaint</i> filed by Facebook, Inc.. (Attachments: # 1 Exhibit A)(Clubok, Andrew) (Filed on 9/30/2016) (Entered: 09/30/2016)
10/05/2016	82	RESPONSE to re 79 <i>Notice of Supplemental Authority</i> filed by Noah Duguid. (Kent, Trinette)

JA 26

Date Filed	#	Docket Text
		(Filed on 10/5/2016) (Entered: 10/05/2016)
10/05/2016	83	RESPONSE to re 81 Notice, re 79 Notice of <i>Supplemental Authority</i> filed by Noah Duguid. (Lemberg, Sergei) (Filed on 10/5/2016) (Entered: 10/05/2016)
* * *		
10/21/2016	85	NOTICE of Additional Authority filed by Noah Duguid in Opposition to re 65 <i>Facebook, Inc.s Notice of Motion and Motion to Dismiss Plaintiffs First Amended Complaint</i> (Attachments: #(1) Exhibit A) (Lemberg, Sergei) (Filed on 10/21/2016) (Entered: 10/21/2016)
* * *		
01/10/2017	90	NOTICE of Additional Authority in Opposition by Noah Duguid re 65 MOTION to Dismiss <i>Facebook, Inc.s Notice of Motion and Motion to Dismiss Plaintiffs First Amended Complaint</i> (Lemberg, Sergei) (Filed on 1/10/2017) Modified on 1/11/2017 (mclS, COURT STAFF). (Entered: 01/10/2017)

Date Filed	#	Docket Text
01/18/2017	91	<i>Facebook, Inc.'s Unopposed Motion for Leave to File a Response to Plaintiff's Notice of Supplemental Authority</i> filed by Facebook, Inc.. (Attachments: # 1 Exhibit A, # 2 Proposed Order)(Clubok, Andrew) (Filed on 1/18/2017) (Entered: 01/18/2017)
01/20/2017	92	ORDER GRANTING FACEBOOK, INC.'S MOTION FOR LEAVE TO FILE A RESPONSE TO PLAINTIFF'S NOTICE OF SUPPLEMENTAL AUTHORITY by Judge Jon S. Tigar; granting 91 Motion for Leave to File. (wsn, COURT STAFF) (Filed on 1/20/2017) (Entered: 01/20/2017)
01/30/2017	93	NOTICE of Additional Authority in re 73 Opposition to re 65 <i>Facebook, Inc.s Notice of Motion and Motion to Dismiss Plaintiffs First Amended Complaint</i> filed by Noah Duguid. (Lemberg, Sergei) (Filed on 1/30/2017) (Entered: 01/30/2017)
* * *		
02/02/2017	96	<i>Facebook, Inc.'s Unopposed Motion for Leave to File a Response to Plaintiff's Notice of</i>

Date Filed	#	Docket Text
		<i>Supplemental Authority</i> filed by Facebook, Inc.. (Attachments: #(1) Exhibit A, #(2) Proposed Order)(Clubok, Andrew) (Filed on 2/2/2017) (Entered: 02/02/2017)
02/02/2017	97	ORDER GRANTING FACEBOOK, INC.'S MOTION FOR LEAVE TO FILE A RESPONSE TO PLAINTIFF'S NOTICE OF SUPPLEMENTAL AUTHORITY by Judge Jon S. Tigar; granting 96 Motion for Leave to File. <i>Facebook shall file its response on the public docket by Monday, February 6, 2017.</i> (wsn, COURT STAFF) (Filed on 2/2/2017) (Entered: 02/03/2017)
02/03/2017	98	RESPONSE to re 93 <i>Facebook, Inc.'s Response to Plaintiff's Notice of Supplemental Authority</i> filed by Facebook, Inc.. (Clubok, Andrew) (Filed on 2/3/2017) (Entered: 02/03/2017)
* * *		
02/16/2017	101	ORDER GRANTING MOTION TO DISMISS WITH PREJUDICE by Judge Jon S. Tigar; granting 65 Motion to Dismiss. (wsn, COURT STAFF)



JA 29

Date Filed	#	Docket Text
		(Filed on 2/16/2017) (Entered: 02/16/2017)
02/23/2017	102	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Noah Duguid. Appeal of Order on Motion to Dismiss 101, (Appeal Fee of \$505.00, receipt number 0971- 11179021 paid) (Attachments: #(1) Order Granting MTD)(Lemberg, Sergei) (Filed on 2/23/2017) (Entered: 02/23/2017)
02/28/2017	103	USCA Case Number 17-15320 for 102 Notice of Appeal filed by Noah Duguid. (tnS) (Filed on 2/28/2017) (Entered: 02/28/2017)
* * *		

**First Amended Class Action Complaint for Damages and Injunctive Relief for Violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. (N.D. Cal. Apr. 22, 2016)**

For his First Amended Class Action Complaint, Plaintiff, Noah Duguid, by and through his undersigned counsel, pleading on his own behalf and on behalf of all others similarly situated, states as follows:

**JURISDICTION AND VENUE**

1. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1331. *Mims v. Arrow Fin. Serv., LLC*, 132 S.Ct. 740, 751-53 (2012).

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391, because Defendant resides in this district and because a substantial part of the events giving rise to the claim occurred in this district.

**PARTIES**

3. Plaintiff is, and at all times mentioned herein was, an adult individual residing in Stevensville, Montana, and is a “person” as defined by 47 U.S.C. § 153(39).

4. Facebook is a California business entity with an address of 1601 Willow Road, Menlo Park, California 94025, and is a “person” as defined by 47 U.S.C. § 153(39).

**THE TELEPHONE CONSUMER PROTECTION ACT OF 1991**

5. The TCPA regulates, among other things, the use of automated telephone dialing systems (“ATDS”).

6. Specifically, 47 U.S.C. § 227(1)(A)(iii) prohibits any call using an ATDS to a cellular phone without prior express consent by the person being called or an emergency purpose.

7. 47 U.S.C. § 227(a)(1) defines an ATDS as equipment having the capacity-

(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and

(B) to dial such numbers.

8. According to the Federal Communications Commission (“FCC”), an ATDS “encompass[es] any equipment that stores telephone numbers in a database and dials them without human intervention.” *Nunes v. Twitter, Inc.*, No. 14-cv-02843-VC, 2014 WL 6708465, at \*1 (N.D. Cal. Nov. 26, 2014); *Fields v. Mobile Messengers Am., Inc.*, No. 12-cv-05160-WHA, 2013 WL 6774076, at \*3 (N.D. Cal. Dec. 23, 2013) (concluding there were genuine disputes of material fact regarding whether messages were sent using an ATDS where plaintiffs alleged that the equipment used functioned similarly to a predictive dialer in that it received numbers from a computer database and dialed those numbers without human intervention.”).

9. “Human intervention” means significant human involvement in the dialing of a number, and any human involvement with phone number compilation is irrelevant. *See In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02–278, Report and Order, 18 FCC Rcd. 14014, ¶ 132 (2003) (“The basic function of [ATDS], however, has not changed—

the capacity to *dial* numbers without human intervention.” (emphasis added and omitted); *Moore v. Dish Network L.L.C.*, 57 F. Supp. 3d 639, 654 (N.D.W. Va. 2014) (“[I]t is irrelevant under the FCC’s definition of a predictive dialer that humans are involved in the process of creating the lists that are entered into the Campaign Manager software.”).

10. Moreover, the FCC has made clear that it is a system’s *capacity* to dial randomly or sequentially that determines whether it is an ATDS, not its “present ability.” *In re Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, CG Docket No. 02-278, FCC 15-72, at ¶ 15 (July 10, 2015) (“2015 FCC Order”); see also *Meyer v. Portfolio Recovery Assocs., LLC*, 707 F.3d 1036, 1043 (9th Cir. 2012) (“[T]he clear language of the TCPA ‘mandates that the focus be on whether the equipment has the *capacity* to store or produce telephone numbers to be called, using a random or sequential number generator.’” (quoting *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 951 (9th Cir. 2009))). In other words, “even when the equipment presently lack[s] the necessary software, it nevertheless [may have] the requisite capacity to be an autodialer.” 2015 FCC Order, at ¶ 16.

11. A piece of equipment can possess the requisite “capacity” to satisfy the statutory definition of “autodialer” even if, for example, it requires the addition of software to actually perform the functions described in the definition. 2015 FCC Ruling, at ¶ 18.

12. The FCC has clarified that text messages qualify as “calls” under the TCPA:

We affirm that under the TCPA, it is unlawful to make any call using an automatic telephone dialing system or an artificial or prerecorded message to any wireless telephone number. Both the statute and our rules prohibit these calls, with limited exceptions, “to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other common carrier service, or any service for which the party is charged.” This encompasses both voice calls and text calls to wireless numbers including, for example, short message service (SMS) calls, provided the call is made to a telephone number assigned to such service.

*In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd. 14014, 14115 (July 3, 2003); see *Satterfield*, 569 F.3d at 953.

## FACTS

### A. The Automated Login Notification Process

13. Plaintiff is not a Facebook customer and never provided consent for Facebook to contact him on his cellular telephone.

14. Because consumers often share private information on Facebook, as an “extra security feature,” Facebook established an automated “login notification” process through which it sends automated, computer-generated text messages to cellular telephones when a Facebook account is

accessed from a new device (computer, smart-phone, tablet, etc.).

15. Facebook's automated Login Approval process generated the texts to Plaintiff and class members.

16. Facebook is the entity sending the text messages: "When you turn on login notifications, we'll send you an alert each time someone logs into your account from a new place." See Exhibit A.

17. The Login Approval process was introduced by Facebook on May 12, 2011 from general capability that was first announced on May 13, 2010. See <https://code.facebook.com/posts/702694856412838/introducing-login-approvals> (last visited Apr. 20, 2016).

18. When an account becomes disabled due to suspected fraud, Facebook transmits login notifications by text message:

Login approvals is a Two Factor Authentication system that requires you to enter a code **we send to your mobile phone** via text message whenever you log into Facebook from a new or unrecognized computer. Once you have entered this security code, you'll have the option to save the device to your account so that you don't see this challenge on future logins.

See <https://www.facebook.com/notes/facebook-engineering/introducing-login-approvals/10150172618258920> (last visited Apr. 20, 2016) (emphasis added).

19. To be able to transmit text messages, Facebook maintains a database of phone numbers on

its computers, and then then transmits alert text messages to selected numbers from its database using its automated protocol.

20. This fully-automated, computerized process is fully described by Facebook here: <http://thedinforgraphics.com/wp-content/uploads/2011/11/facebook-security-2011-infographics.jpeg>, including:

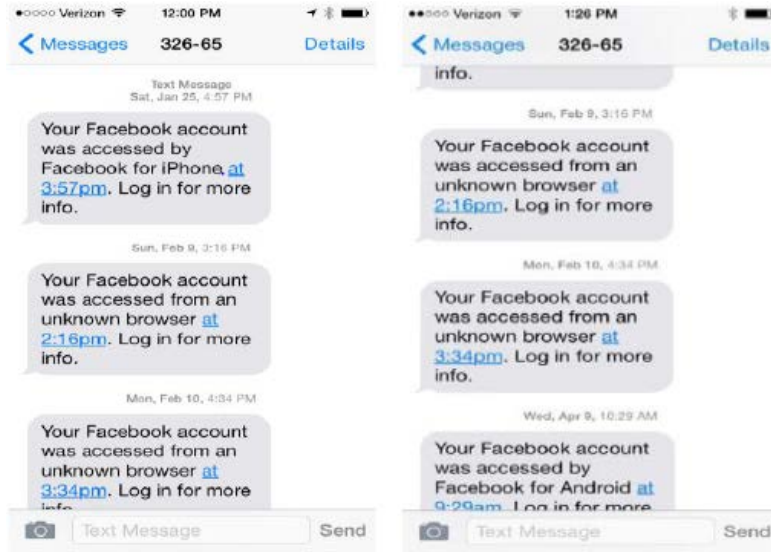


### **B. Text Messages Sent to Plaintiff**

21. On or around January 25, 2014, Facebook began sending automated, templated text messages to Plaintiff's cellular telephone number, 406-xxx-7935.

22. Facebook sent the text messages from short code 326-65 (spelling FBOOK), an abbreviated telephone number known as an SMS short code licensed and operated by Facebook or one of its agents on its behalf.

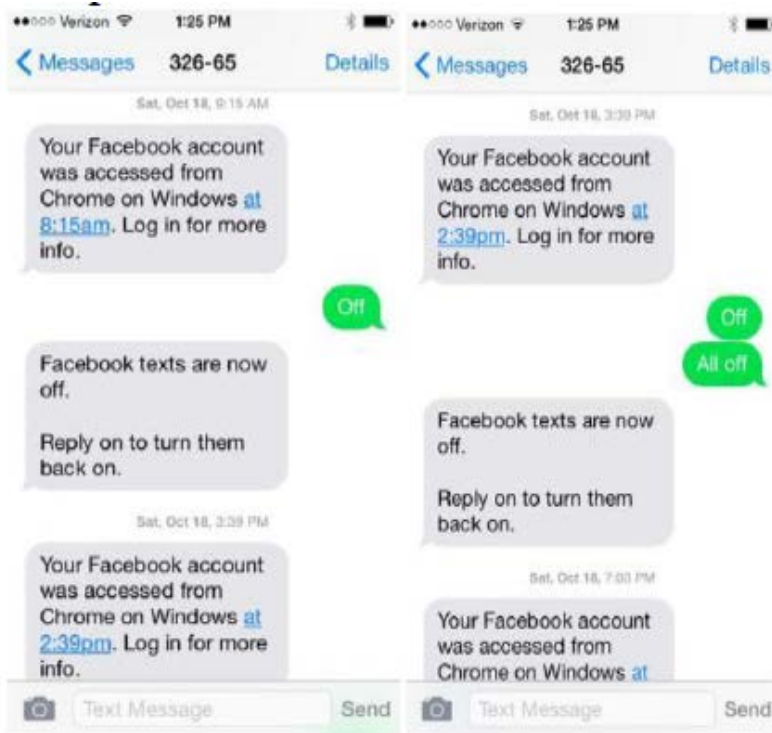
23. A true and correct copy of several of the messages received by Plaintiff are produced below:



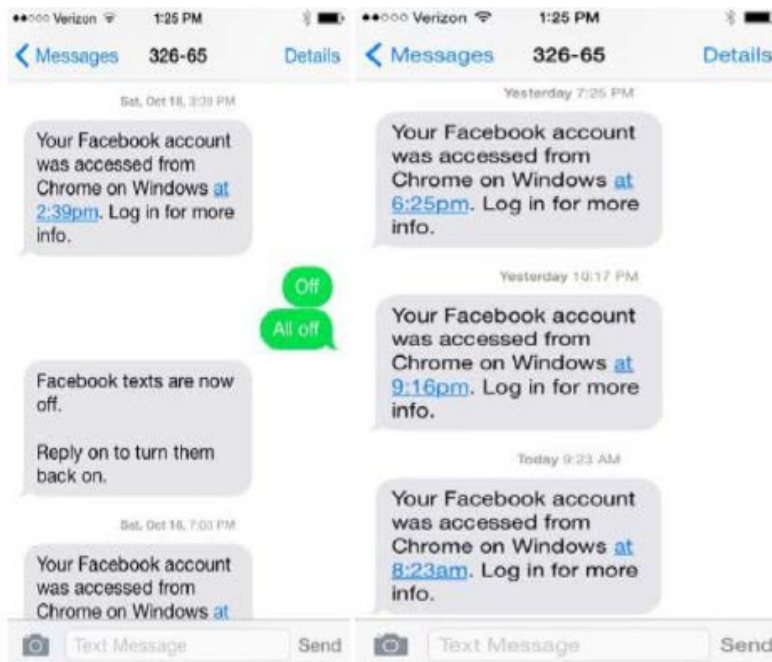
24. Plaintiff could not “Log in” to a Facebook account to turn off the messages because he does not have a Facebook account.

25. Following online instructions, and frustrated with text message bombardment, Plaintiff requested that Facebook turn ‘OFF’ the messages:





26. Facebook’s system confirmed to Plaintiff that messages would be turned ‘OFF,’ yet automated text message bombardment continued:



27. Facebooks text messages were repetitive, template-based and/or impersonal to Plaintiff.

28. The login notification system and its main functionalities are written in a programming language called PHP. See <https://www.quora.com/What-programming-languages-are-used-at-Facebook> (last visited Apr. 20, 2016) (“The frontend is written in PHP (programming language) . . .”).

29. Facebook’s system includes a computerized protocol for creating automated text messages programmed to appear customized to the user.

30. A template for a message sent to plaintiff appears in Facebook’s system in the following or a substantially similar form: “Your Facebook Account

was accessed from [\_\_BROWSER\_\_] on [\_\_DATE\_\_].  
Login for more info.”

31. Alternatively, Facebook may be employing other functionally similar methods of assembling templated text messages using computer programs.

32. Using PHP programming code, or substantially similar code in any programming language, and replacing values, Facebook’s computer programs then convert the templated message into messages like the messages Plaintiff received as follows:

```

1 <?php
2 $string = ' Your Facebook Account was accessed from from  BROWSER  on
3   __DATE__. Log in for more info.';
4
5 $pattern = '/__BROWSER__/i';
6 $replacement = 'Chrome';
7 $string = preg_replace($pattern, $replacement, $string);
8
9 $pattern = '/__DATE__/i';
10 $replacement = date('l jS \of F Y h:i:s A');
11 $string = preg_replace($pattern, $replacement, $string);
12
13 echo $string;
14 ?>

```

Output:

```

1 Your Facebook Account was accessed from Chrome on Saturday 26th of March
2016 11:40:40 PM. Log in for more info.

```

33. Thus, what appears to be a customized message is, in fact, done through a computer algorithm with no human involvement.

34. Frustrated by his inability to turn off automated text message spam to his mobile phone, on

or around April 20, 2014, Plaintiff sent Facebook a detailed email complaining of the unauthorized text messages to his cell phone and requesting that the text messages cease.

35. In response, Facebook sent Plaintiff an automated email directing Plaintiff to log on to the Facebook website to report problematic “content.” Plaintiff responded to the email by re-explaining his issue and stating: “A human needs to read this email and take action. Thank you!” In response, Facebook sent the same automated email as received in response to the first email. *See* Exhibit B.

36. The telephone number messaged by Facebook was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming messages pursuant to 47 U.S.C. § 227(b)(1).

37. The messages from Facebook to Plaintiff were not placed for “emergency purposes” as defined by 47 U.S.C. § 227(b)(1)(A)(i).

### **C. Allegations Regarding Capacity of Facebook’s System**

38. The text messages sent to Plaintiff’s cellular phone were sent with an ATDS as defined by 47 U.S.C. § 227(a)(1) and the FCC, in that Facebook acquired Plaintiff’s Number, stored it in a database connected to its telephonic or computer system, and then used its system to send text messages to Plaintiff’s cell phone number automatically and without human intervention.

39. No human was involved in the sending of Facebook’s text messages to Plaintiff.

40. Like any computer system, Facebook's computer based system, which involves many computer servers equipped with multiple software applications, has the capacity to generate random numbers. See [https://en.wikipedia.org/wiki/Pseudorandom\\_number\\_generator](https://en.wikipedia.org/wiki/Pseudorandom_number_generator) (last visited Apr. 20, 2016).

41. Facebook's computer based system likewise has the capacity to generate sequential numbers.

42. For instance, it has the capacity to take any number, for instance 310-555- 1212, consider it as a 10-digit integer 3105551212, add 1 to it, and get a new sequential phone number.

43. Facebook's system has the capacity to store and dial the random or sequential numbers it generates just like it stored and dialed Plaintiff's number.

44. In the unlikely event that Facebook's system does not already have the capacity to generate random or sequential numbers, that capacity can be trivially added.

45. The following code could be added to Facebook's system to generate random numbers:

```
1  <?php
2
3  for ($randomNumber = mt_rand(1, 9), $i = 1; $i < 10; $i++) {
4      $randomNumber .= mt_rand(0, 9);
5  }
6
7  var_dump($randomNumber);
```

46. This simplified PHP Code would generate random numbers in Facebook's ATDS system.

47. The Code would generate random numbers as follows:

```
1  string(10) "3446780111"
```

48. The ability to generate sequential numbers could also easily be added to Facebook's system if it does not have it currently.

49. For instance the following code could be added:

```
1  <?php
2
3  $showManyYouNeed = 100;
4  $phonePrefix = 212;
5  $fromNumber = 5551212;
6
7  for ($i = 0; $i < $showManyYouNeed; $i++) {
8      $phoneNumber = sprintf('%3d-%07d', $phonePrefix, $fromNumber+$i);
9      print $phoneNumber . "\n";
10 }
11
12 ?>
```

50. The following sequential numbers would be generated:

212-5551212  
212-5551213  
212-5551214  
212-5551215  
212-5551216  
212-5551217  
212-5551218  
212-5551219  
212-5551220  
212-5551221  
212-5551222  
212-5551223  
212-5551224  
212-5551225  
212-5551226  
212-5551227

212-5551228  
212-5551229  
212-5551230  
212-5551231  
212-5551232

#### **D. Consumer Complaints**

51. Many consumers receive text messages from Facebook even though they did not authorize Facebook to contact them on their cell phones, and many receive messages even after requesting that they stop.

52. Facebook provides instructions on its website to deactivate the login notification feature. However, these instructions only address stopping the messages by changing a Facebook user's account settings. *See*

<https://www.facebook.com/help/163370983727716> (last visited Apr. 20, 2016). Facebook offers no solution for those receiving the messages despite having no Facebook account.

53. Online blogs indicate that consumers can also respond “off” to Facebook’s text messages to get them to stop. *See* <https://wordimpress.com/how-tostop-facebook-text-message-notifications/> (last visited Apr. 20, 2016). Indeed, Facebook responds to such texts with messages stating: “Facebook texts are now off. Reply on to turn back on.” *See* ¶ 25 *supra*.

54. However, Facebook often disregards consumers’ requests to stop the login notifications. Rather than cease as instructed, Facebook continues to knowingly hound consumers with unwanted and unauthorized text messages. *See* ¶ 25 *supra*. As one Facebook user complained, “I have tried texting ‘Off’ ‘OFF’ ‘off’ ‘STOP’ ‘Stop’. NONE of them have stopped the text messages. If I get one more text message from Facebook I will delete the whole account.” <https://wordimpress.com/how-to-stop-facebook-text-message-notifications/> (last visited Apr. 20, 2016).

55. Servicing over a billion Facebook accounts worldwide, Facebook’s automated systems are powerful and, when used improperly, capable of extreme invasions into the privacy of American consumers. *See* <http://webapps.stackexchange.com/questions/59001/how-can-i-stop-notifications-from-an-unknown-facebook-account-to-my-new-phone> (last visited Apr. 20, 2016) (consumer complaining of receiving text messages from Facebook “at all hours of the night”). Facebook operates a sloppy system and in



doing so shows complete disregard for the privacy of consumers.

56. Plaintiff is such a consumer and he seeks relief for himself and all others similarly situated from Facebook's unlawful behavior.

### **CLASS ACTION ALLEGATIONS**

#### **A. The Class**

57. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23 on behalf of himself and all others similarly situated.

58. Plaintiff represents, and is a member of the following classes:

Class 1: All persons within the United States who did not provide their cellular telephone number to Defendant and who received one or more text messages, from or on behalf of Defendant to said person's cellular telephone, made through the use of any automatic telephone dialing system within the four years prior to the filing of the Complaint.

Class 2: All persons within the United States who, after notifying Defendant that it no longer wished to receive text messages and receiving a confirmation from Defendant to that effect, received one or more text messages, from or on behalf of Defendant to said person's cellular telephone, made through the use of any automatic telephone dialing system within the four years prior to the filing of the Complaint.

59. Defendant and its employees or agents are excluded from the Classes. Plaintiff does not know the

number of members in the Classes, but believes the Class members number in the several thousands, if not more. Thus, this matter should be certified as a class action to assist in the expeditious litigation of this matter.

**B. Numerosity**

60. Upon information and belief, Defendant has sent text messages to cellular telephone numbers belonging to thousands of consumers throughout the United States without their prior express consent. The members of the Classes, therefore, are believed to be so numerous that joinder of all members is impracticable.

61. The exact number and identities of the Class members are unknown at this time and can only be ascertained through discovery. Identification of the Class members is a matter capable of ministerial determination from Defendant's records.

**C. Common Questions of Law and Fact**

62. There are questions of law and fact common to the Classes that predominate over any questions affecting only individual Class members. These questions include:

- a. Whether Defendant sent non-emergency text messages to Plaintiff and Class members' cellular telephones using an ATDS;
- b. Whether Defendant can meet its burden of showing it obtained prior express consent to send each message;
- c. Whether Defendant's conduct was knowing and/or willful;

- d. Whether Defendant is liable for damages, and the amount of such damages; and
- e. Whether Defendant should be enjoined from such conduct in the future.

63. The common questions in this case are capable of having common answers. If Plaintiff's claim that Defendant routinely sends automated text messages to telephone numbers assigned to cellular telephone services without prior express consent is accurate, Plaintiff and the Class members will have identical claims capable of being efficiently adjudicated and administered in this case.

**D. Typicality**

64. Plaintiff's claims are typical of the claims of the Class members, as they are all based on the same factual and legal theories.

**E. Protecting the Interests of the Class Members**

65. Plaintiff will fairly and adequately protect the interests of the Classes and has retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither Plaintiff nor his counsel has any interests which might cause them not to vigorously pursue this action.

**F. Proceeding Via Class Action is Superior and Advisable**

66. A class action is the superior method for the fair and efficient adjudication of this controversy. The interest of Class members in individually controlling the prosecutions of separate claims against Facebook is small because it is not economically feasible for Class members to bring individual actions.

67. Management of this class action is unlikely to present any difficulties. Several courts have certified classes in TCPA actions. These cases include, but are not limited to: *Mitchem v. Ill. Collection Serv.*, 271 F.R.D. 617 (N.D. Ill. 2011); *Sadowski v. Med1 Online, LLC*, 2008 WL 2224892 (N.D. Ill., May 27, 2008); *CE Design Ltd. V. Cy's Crabhouse North, Inc.*, 259 F.R.D. 135 (N.D. Ill. 2009); *Lo v. Oxnard European Motors, LLC*, 2012 WL 1932283 (S.D. Cal., May 29, 2012).

### COUNT I

#### **Violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq.**

68. Plaintiff repeats and realleges the above paragraphs of this Complaint and incorporates them herein by reference.

69. Defendant sent multiple automated text messages to cellular numbers belonging to Plaintiff and the other members of the Classes without their prior express consent.

70. Each of the aforementioned messages by Defendant constitutes a violation of the TCPA.

71. Plaintiff and the Classes are entitled to an award of \$500.00 in statutory damages for each message sent in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

72. Additionally, Plaintiff and the Classes are entitled to and seek injunctive relief prohibiting such conduct by Defendant in the future.

73. Additionally Plaintiff and the Classes are entitled to and do seek a declaration that:

- i. Defendant violated the TCPA;

- ii. Defendant's system is an ATDS; and
- iii. Defendant placed text messages to Plaintiff and the Classes without prior express consent.

## COUNT II

### **Knowing and/or Willful Violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.***

74. Plaintiff repeats and realleges the above paragraphs of this Complaint and incorporates them herein by reference.

75. Defendant knowingly and/or willfully sent multiple automated text messages to cellular numbers belonging to Plaintiff and the other members of the Classes without their prior express consent.

76. Each of the aforementioned messages by Defendant constitutes a knowing and/or willful violation of the TCPA.

77. As a result of Defendant's knowing and/or willful violations of the TCPA, Plaintiff and the Classes are entitled to an award of treble damages up to \$1,500.00 for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

78. Additionally, Plaintiff and the Classes are entitled to and seek injunctive relief prohibiting such conduct by Defendant in the future.

79. Additionally Plaintiff and the Classes are entitled to and do seek a declaration that:

- i. Defendant knowingly and/or willfully violated the TCPA;

- ii. It is Defendant's practice and history to willfully disregard consumers' valid requests that Defendant cease placing text messages to their cellular telephones.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that the Court grant Plaintiff and the Classes the following relief against Defendant:

1. Injunctive relief prohibiting such violations of the TCPA by Defendant in the future;
2. Declaratory relief as requested;
3. Statutory damages of \$500.00 for each and every call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B);
4. Treble damages of up to \$1,500.00 for each and every call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(C);
5. An award of attorneys' fees and costs to counsel for Plaintiff and the Classes; and
6. Such other relief as the Court deems just and proper.

**TRIAL BY JURY DEMANDED ON ALL COUNTS**

DATED: April 22, 2016      NOAH DUGUID,

By: /s/ Sergei Lemberg  
(Pro Hac Vice)

\* \* \*