

From: Berger, Laura
Sent: 10 Mar 2011 23:40:44 +0000
To: 'Beringer, Ashlie'; 'Royall, M. Sean'
Cc: Mohapatra, Manas
Subject: Facebook; FTC draft complaint and proposed consent agreement; complaint appendices to follow
Attachments: Facebook complaint to counsel 3 10 11.PDF, Facebook order to counsel 3.10.11.PDF

Hi Ashlie and Sean,

Please confirm receipt of the attached draft complaint and proposed consent agreement. I will send the appendices to the draft complaint momentarily. As we discussed during our call this afternoon, Cora, Manas, and I would like to speak with you next week in more detail about these documents. Please confirm one or more dates and times when you are available.

Best,

Laura

Laura D. Berger, Attorney
Federal Trade Commission
Division of Privacy and Identity Protection
202.326.2471 (v)

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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
 William E. Kovacic
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill

_____)	
<i>In the Matter of</i>)	
)	
FACEBOOK, INC.,)	
a corporation,)	DOCKET NO.
)	
and)	
)	
MARK ZUCKERBERG,)	
individually and as a founder, officer,)	
and owner of FACEBOOK, INC.)	
_____)	

COMPLAINT

The Federal Trade Commission, having reason to believe that Facebook, Inc., a corporation, and Mark Zuckerberg, individually and as a founder, officer, and owner of Facebook, Inc. (“Respondents”) have violated the Federal Trade Commission Act (“FTC Act”) and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Facebook, Inc. (“Facebook”), is a privately-owned, Delaware corporation with its principal office or place of business at 1601 S. California Avenue, Palo Alto, California, 94304.
2. Respondent Mark Zuckerberg (“Zuckerberg”) founded Facebook and has been its CEO and the company’s largest shareholder from approximately 2004 until the present. He also is the company’s President, controls the appointment of a majority of its Board of Directors (“Board”), and serves on the Board. Individually, or in concert with others, he has formulated, directed, participated in, controlled, or had authority to control, the policies, acts, or practices of Facebook, including the policies, acts, or practices alleged in this complaint, and has had knowledge of those practices.
3. The acts and practices of Respondents as alleged in this complaint have been in or

affecting commerce, as “commerce” is defined in Section 4 of the FTC Act.

FACEBOOK’S BUSINESS PRACTICES

4. Since at least 2004, Facebook has operated www.facebook.com, a social networking website. Users of the site create online profiles, which contain content about them such as their name, interest groups they join, the names of other users who are their “friends” on the site, photos albums and videos they upload, and messages and comments they post or receive from their friends. Users also may add content to other users’ profiles, by sharing photos, sending messages, or posting comments. As of January 2011, Facebook had approximately 600 million users.
5. Since approximately August 2006, Facebook has operated the Facebook Platform, a set of tools and programming interfaces that enables third parties to develop, run, and operate software applications, such as games, that users can interact with online (“Platform Applications”).
6. Facebook obtains revenue by placing third-party advertisements on its site and by selling Facebook Credits, a virtual currency that it offers on its website and through retail outlets. The company also has obtained revenue from fees paid by applicants for its Verified Apps program, described below. In 2009, the company had revenues of approximately \$777.2 million.

FACEBOOK’S COLLECTION AND STORAGE OF USER INFORMATION

7. Facebook has collected extensive “profile information” about its users, including, but not limited to:
 - a. mandatory information that a user must submit to register with the site, including Name, Gender, and Birthday;
 - b. optional information that a user may submit, such as:
 - i. Profile Picture;
 - ii. Hometown;
 - iii. Interested in (*i.e.*, whether a user is interested in men or women);
 - iv. Looking for (*i.e.*, whether a user is looking for friendship, dating, a relationship, or networking);
 - v. Relationships (*e.g.*, marital or other relationship status and the names of family members);
 - vi. Political and Religious Views;
 - vii. Likes and Interests (*e.g.*, activities, interests, music, books, or movies that a user likes); and
 - viii. Education and Work, (*e.g.*, the name of a user’s high school, college, graduate school, and employer);

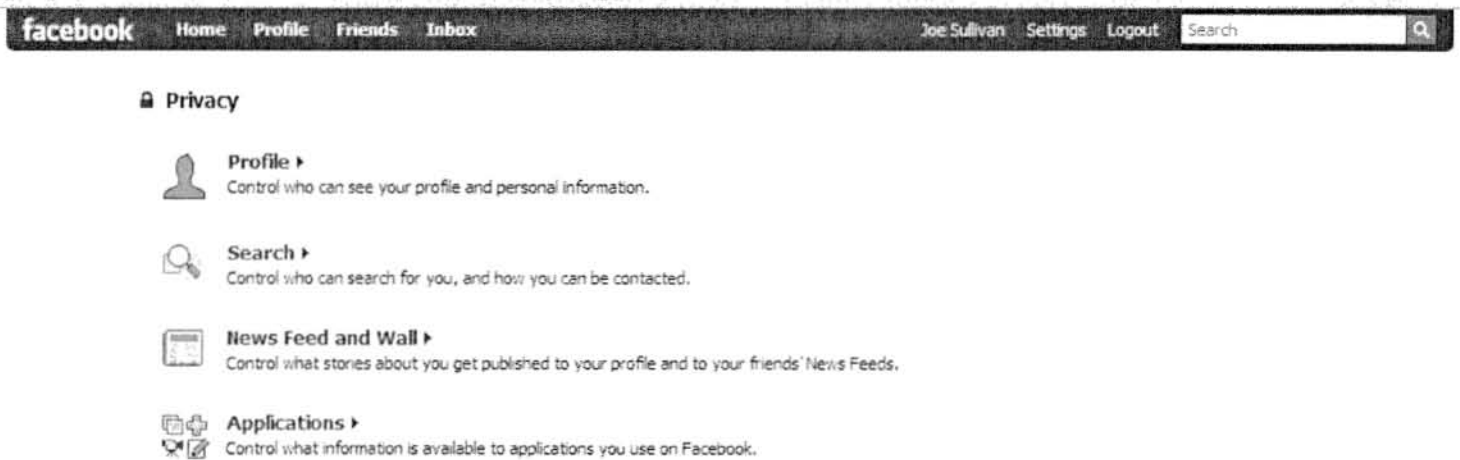
- c. other information that is based on a user's activities on the site over time, such as:
 - i. a Friends List (*i.e.*, a list of users with whom a user has become "Friends" on the site);
 - ii. Pages (*e.g.*, any web page on Facebook's web site, belonging to an organization, brand, interest group, celebrity, or other entity, that a user has clicked an online button to "like");
 - iii. Photos and Videos, including any that a user has uploaded or been "tagged in" – (*i.e.*, identified by a user such that his or her name is displayed when a user "hovers" over the likeness); and
 - iv. messages that a user posts and comments made in response to other users' content.

This profile information becomes part of the user's online profile, which can be accessible to others, as described below.

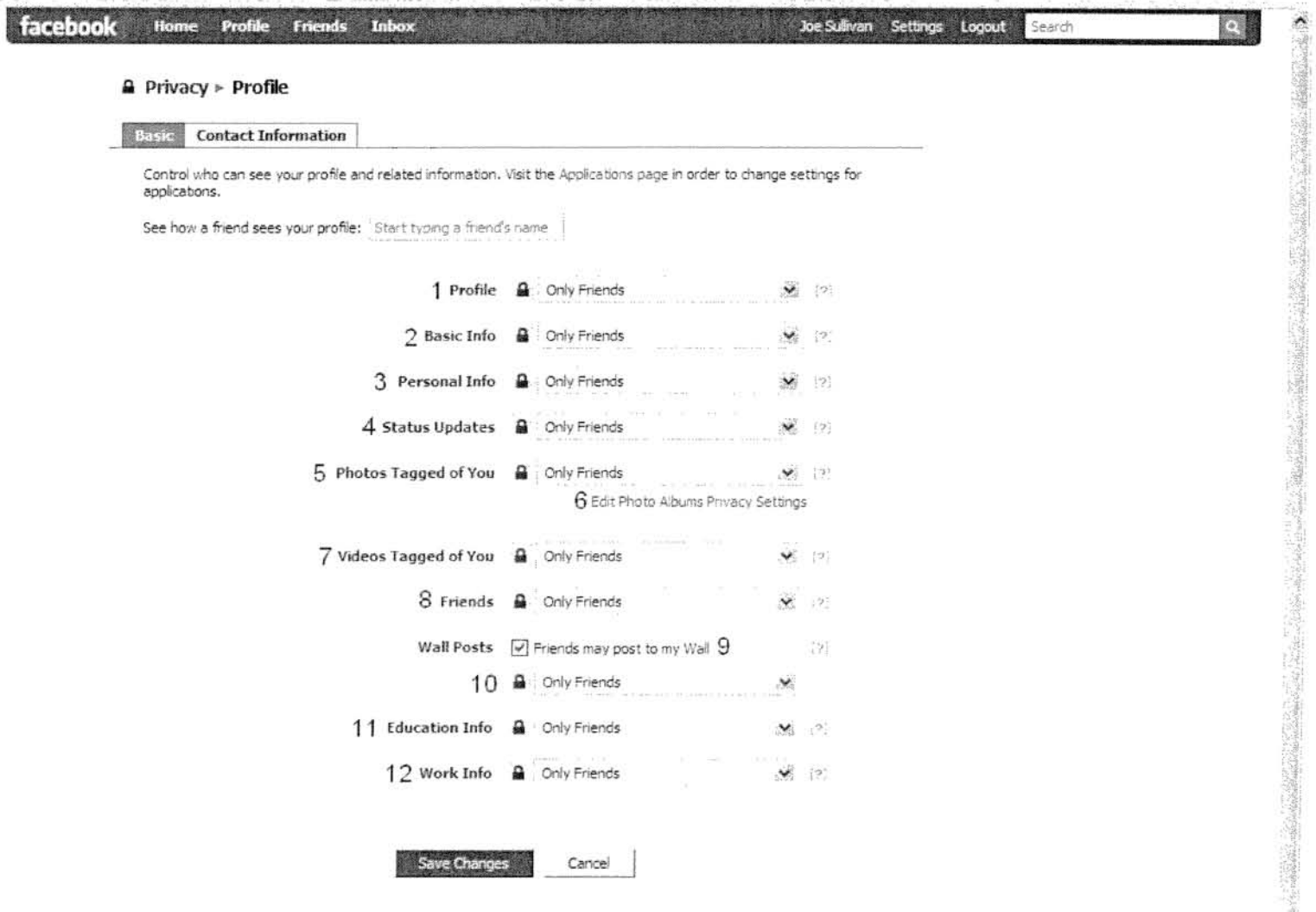
- 8. Facebook has stored users' profile information on a computer network that it controls. It has assigned to each user a User Identification Number ("User ID"), a persistent, unique number that Platform Applications and others can use to obtain certain profile information from Facebook.
- 9. Platform Applications access user profile information in two main instances. First, Platform Applications that a user authorizes can access the user's profile information. Second, if a user's "Friend" authorizes a Platform Application, that Application can access certain of the user's profile information, even if the user has not authorized that Application.

FACEBOOK'S PRIVACY SETTINGS (Count 1)

10. Facebook has provided its users with a "Privacy Settings" Page, the same or similar to the one depicted below. Among other things, this page has contained a "Profile" tab, with accompanying text that has stated "[c]ontrol who can see your profile and personal information."



11. When users have clicked on the “Profile” tab, Facebook has directed them to a Profile Privacy Settings Page, the same or similar to the one depicted below, which has confirmed that users could “[c]ontrol who can see your profile and related information.” For each category depicted, users could click on a drop-down menu and restrict access to specified users, e.g., “Only Friends,” or “Friends of Friends.”



12. Although the precise language and interface have changed over time, Facebook has continued to provide Profile Privacy Settings that it states allow users to “control who can see what [they] share” by specifying who can access such information, *e.g.*, “Only Friends” or “Friends of Friends.” (Appendix 1).
13. By enabling users to specify who can access various categories of their profile information, *e.g.*, “Only Friends,” “Friends of Friends,” Facebook has communicated that its Profile Privacy Settings enable users to restrict access to such information exclusively to the audience the user selects.
14. None of the pages described in **Paragraphs 10-12** have disclosed that a user’s choice to restrict his or her profile information through Profile Privacy Settings to “Only Friends” or “Friends of Friends” would be limited. Despite this fact, in many instances, Facebook has made profile information that a user chose to restrict to “Only Friends” or “Friends of Friends” accessible to any Platform Applications that the user’s Friends have used.
15. Facebook’s Privacy Settings Page and Profile Privacy Settings Page have included links to “Applications,” “Apps,” or “Applications and Websites” that, when clicked, have taken users to a page containing “Friends’ App Settings,” which would allow users to restrict the information that Applications used by their Friends could access.
16. However, the links to “Applications,” “Apps,” or “Applications and Websites” have failed to signal that a user’s choices to restrict profile information through Profile Privacy Settings have been limited. For example, the language alongside the Applications link, depicted in **Paragraph 10**, has stated, “[c]ontrol what information is available to applications **you use** on Facebook.” (Emphasis added). Thus, users who do not themselves use applications would have had no reason to click on this link, and would have concluded that their choices to restrict profile information through their Profile Privacy Settings were complete and effective.

Count 1

17. As described in **Paragraphs 10-14**, Facebook has represented, expressly or by implication, that, through their Profile Privacy Settings, users can restrict access to their profile information to specific groups, such as “Only Friends” or “Friends of Friends.”
18. In truth and in fact, in many instances, users could not restrict access to their profile information to specific groups, such as “Only Friends” or “Friends of Friends” through their Profile Privacy Settings. Instead, such information could be accessed by Platform Applications that their Friends used. Therefore, the representation set forth in **Paragraph 17** was, and is, false or misleading.

DECEMBER 2009 PRIVACY CHANGES
(Counts 2 and 3)

19. On approximately November 19, 2009, Facebook changed its privacy policy to designate certain user information as “publicly available.” On approximately December 8, 2009, Facebook implemented the changes referenced in its new policy (“the December Privacy Changes”) to automatically make public certain information that users previously had provided. Among other things, Facebook designated every user’s Name, Profile Picture, Gender, Friends List, Networks, Current City, and Pages as “publicly available information” or “PAI.” Following the December Privacy Changes, Facebook users could no longer restrict access to information designated as PAI using their Profile Privacy Settings or Friends’ App Settings. All prior user choices to restrict access to this information through Profile Privacy Settings or Friends’ App Settings were overridden.
20. Before December 8, 2009, users could, and did, use their Profile Privacy Settings to limit access to their Profile Picture, Gender, and Friends List. For example, on or about December 5, 2009, approximately 378 million users had restricted their “Profile Picture” and “Gender” to “Only Friends.”
21. Before December 8, 2009, users could, and did, use their Friends’ App Settings to restrict Platform Applications’ access to their PAI. For example, as of November 2009, approximately 586,241 users had used these settings to prevent Platform Applications from accessing any of their profile information, including their Name, Profile Picture, Gender, Friends List, Pages, Current City and Networks. Other users had used their Friends’ App Settings to limit the availability of one or more categories of this information to Platform Applications.
22. Until approximately December 8, 2009, Facebook also provided users with a separate Pages Privacy Setting to prevent users who were not their Friends from viewing a full listing of all of their Pages (“Pages List”). Using this setting, a user could hide that they “liked” a particular political party or religious organization. Users could, and did, use this setting to restrict access to their Pages List. Following the December Privacy Changes, Facebook users no longer could restrict such access to their Pages List, and all prior user choices to restrict access to their Pages List through this setting were overridden.
23. To implement the December Privacy Changes, Facebook required each user to click through a multi-page notice, known as the Privacy Wizard, which was composed of:
 - a. an introductory page, which announced:

We’re making some changes to give you more control of your information and help you stay connected. We’ve simplified the Privacy page and added the ability to set privacy on everything you share, from status updates to photos.

At the same time, we're helping everyone find and connect with each other by keeping some information – like your name and current city – publicly available. The next step will guide you through choosing your privacy settings.

- b. privacy update pages, which required each users to choose, via a series of radio buttons, between new privacy settings that Facebook “recommended” and the user’s “Old Settings,” for ten types of profile information (*e.g.*, Photos and Videos of Me, Birthday, Family and Relationships, *etc.*), and which stated:

Facebook’s new, simplified privacy settings give you more control over the information you share. We’ve recommended settings below, but you can choose to apply your old settings to any of the fields.

and

- c. a confirmation page, which summarized the user’s updated Privacy Settings.

(See Privacy Wizard screenshots, Appendix 2).

- 24. The Privacy Wizard did not disclose that users no longer could restrict access to their newly-designated PAI via their Privacy Settings, Friends’ App Settings or Pages Privacy Settings or that their existing choices to restrict access to such information via these settings would be overridden. For example, the wizard did not disclose that a user’s existing choices to share his or her Profile Picture, Gender, and Friends List with “Only Friends” would be overridden, and that this information would be made accessible to the public.
- 25. The information that Facebook failed to disclose as described in **Paragraph 24** would have been material to Facebook users.
- 26. Facebook’s designation of PAI caused harm to users, including, but not limited to, threats to their health and safety, and un-consented to revelation of their affiliations. Among other things:
 - a. certain users were threatened by stalkers or abusive former spouses, who were able to infer their locale, based on the locales of their Friends (*e.g.*, their Friends’ Current City information) and of the organizations reflected in their Pages;
 - b. a user’s Pages List became visible to anyone who viewed the user’s profile, thereby exposing potentially controversial political views or other sensitive information to third parties – such as prospective employers, government organizations, or business competitors – who sought to obtain personal information about the user;

- c. each user’s Friends List became visible to anyone who viewed the user’s profile, thereby exposing potentially sensitive affiliations, that could, in turn, reveal a user’s political views, sexual orientation, or business relationships, to third parties – such as prospective employers, government organizations, or business competitors – who sought to obtain personal information about the user; and
- d. each user’s Profile Photo became accessible to all other users, including any user who navigated to the user’s profile, thereby revealing potentially embarrassing or political images to third parties whose access users previously had restricted.

Count 2

- 27. As described in **Paragraph 23**, Facebook has represented, expressly, or by implication, that its December Privacy Changes provided users with “more control” over their information, including by allowing them to preserve their “Old Settings,” to protect the privacy of their profile information.
- 28. As described in **Paragraph 24**, Facebook failed to disclose, or failed to disclose adequately, that, following the December Privacy Changes, users could no longer restrict access to their Name, Profile Picture, Gender, Friends List, Pages, or Networks. Facebook also failed to disclose, or failed to disclose adequately, that the December Privacy Changes overrode existing user privacy settings that restricted access to a user’s Name, Profile Picture, Gender, Friends List, Pages, or Networks. These facts would be material to consumers. Therefore, Facebook’s failure to adequately disclose these facts, in light of the representation made, was, and is, a deceptive act or practice.

Count 3

- 29. As described in **Paragraphs 19-24 and 26**, by designating certain user profile information publicly available that previously had been subject to privacy settings, Facebook materially changed its promises that users could keep such information private. Facebook retroactively applied these changes to personal information that it had previously collected from users, without their informed consent, in a manner that has caused or is likely to cause substantial injury to consumers, is not outweighed by countervailing benefits to consumers or to competition, and was not reasonably avoidable by consumers. This practice was, and is, an unfair act or practice.

SCOPE OF PLATFORM APPLICATIONS’ ACCESS TO INFORMATION (Count 4)

- 30. Facebook has disseminated or caused to be disseminated numerous statements to users stating that Platform Applications they use will access only the profile information these applications need to operate, including, but not limited to:
 - a. the following statement, which appeared within a dialog box that each user must

click through before using a Platform Application for the first time:

Allowing [name of Application] access will let it pull your profile information, photos, your friends' info, and other content that it requires to work.

(See Authorization Dialog box, Appendix 3); and

- b. the following additional statements on www.facebook.com:
- i. Applications you use will access your Facebook information in order for them to work.

(See Facebook Privacy Settings: What You Share, Appendix 4); and

- ii. When you authorize an application, it will be able to access any information associated with your account that it requires to work.

(See Facebook Privacy Settings: How Applications Interact With Your Information, Appendix 5).

31. Contrary to the statements set forth in **Paragraph 30**, in many instances, a Platform Application could access profile information that was unrelated to the Application's purpose or unnecessary to its operation. For example, a Platform Application with a narrow purpose, such as a quiz regarding a television show, in many instances could access a user's Relationship Status, as well as the url for every photo and video that the user had uploaded to Facebook's web site, despite the lack of relevance of this information to the application.

Count 4

32. As set forth in **Paragraph 30**, Facebook has represented, expressly or by implication, that it has provided each Platform Application access to only such user profile information as the Application has needed to operate.
33. In truth and in fact, as described in **Paragraph 31**, from approximately August 2006 until July 2010, in many instances, Facebook has provided Platform Applications unrestricted access to user profile information that such Applications have not needed to operate.

FACEBOOK'S DISCLOSURE OF USER INFORMATION TO ADVERTISERS (Count 5)

34. Facebook has displayed advertisements ("ads") from third-parties ("Platform Advertisers") on its web site.

35. Facebook has allowed Platform Advertisers to target their ads (“Platform Ads”) by requesting that Facebook display them to users whose profile information reflects certain “targeted traits,” including, but not limited to:
- a. location (*e.g.*, city or state),
 - b. age,
 - c. sex,
 - d. birthday,
 - e. “Interested in” responses (*i.e.*, as described in **Paragraph 7(b)**, whether a user is interested in men or women),
 - f. Relationship Status,
 - g. Likes and Interests,
 - h. Education (*e.g.*, level of education, current enrollment in high school or college, affiliation with a particular college, and choice of major in college), and
 - i. name of employer.
36. Facebook has disseminated or caused to be disseminated numerous statements that it does not share information about its users with advertisers, including:
- a. Facebook may use information in your profile without identifying you as an individual to third parties. We do this for purposes such as . . . personalizing advertisements and promotions so that we can provide you Facebook. We believe this benefits you. You can know more about the world around you and, where there are advertisements, they’re more likely to be interesting to you. For example, if you put a favorite movie in your profile, we might serve you an advertisement highlighting a screening of a similar one in your town. But we don’t tell the movie company who you are.

(See Facebook Privacy Policy, November 26, 2008, Appendix 6, at FB0000005).

- b. We don’t share information with advertisers without your consent . . . We allow advertisers to choose the characteristics of users who will see their advertisements and we may use any of the non-personally identifiable attributes we have collected (including information you may have decided not to show other users, such as your birth year or other sensitive personal information or preferences) to select the appropriate audience for those advertisements. For example, we might use your interest in soccer to show you ads for soccer equipment, but we do not

tell the soccer equipment company who you are . . . Even though we do not share your information with advertisers without your consent, when you click on or otherwise interact with an advertisement, there is a possibility that the advertiser may place a cookie in your browser and note that it meets the criteria they selected.

(See Facebook Privacy Policy, November 19, 2009, Appendix 7, at FB0000016-17).

- c. We do not give your content to advertisers. (See Facebook Statement of Rights and Responsibilities, May 1, 2009, Appendix 8, at FB0000076).
- d. Still others asked to be opted-out of having their information shared with advertisers. This reflects a common misconception about advertising on Facebook. We don't share your information with advertisers unless you tell us to ([e.g.,] to get a sample, hear more, or enter a contest). Any assertion to the contrary is false. Period . . . we never provide the advertiser any names or other information about the people who are shown, or even who click on, the ads.

(See Facebook Blog, <http://blog.facebook.com/blog.php>, "Responding to Your Feedback," Barry Schnitt, April 5, 2010, Appendix 9).

- e. We never share your personal information with advertisers. We never sell your personal information to anyone. These protections are yours no matter what privacy settings you use; they apply equally to people who share openly with everyone and to people who share with only select friends.

The only information we provide to advertisers is aggregate and anonymous data, so they can know how many people viewed their ad and general categories of information about them. Ultimately, this helps advertisers better understand how well their ads work so they can show better ads.

(See *id.*, "The Role of Advertising on Facebook," Sheryl Sandberg, July 6, 2010, Appendix 10).

- 37. Contrary to the statements set forth in **Paragraph 36 (a)-(d)**, in many instances, Facebook has shared information about users with Platform Advertisers by identifying to them the users who clicked on their ads and to whom those ads were targeted. Specifically, from at least September 2008 until May 26, 2010, Facebook designed and operated its web site such that, in many instances, the User ID for a user who clicked on a Platform Ad was shared with the Platform Advertiser.
- 38. As a result of the conduct described in **Paragraph 37**, Platform Advertisers could take simple steps to get detailed information about individual users. For example, a Platform Advertiser could use the User ID to:

- a. access the user’s profile page on www.facebook.com, to obtain his or her real name and other PAI;
- b. combine the user’s real name with:
 - i. any targeted traits used for the ad the user clicked (*e.g.*, if the ad targeted 23-year-old men who were “Interested In” men and “liked” a prescription drug, the advertiser could ascribe these traits to a specific user); and
 - ii. information about the user’s visit to the advertiser’s website, including: the time and date of the visit, the pages viewed, and time spent viewing the ad (collectively, “browsing information”); and
- c. over time, combine the information described in subparts (a) - (b) with targeting traits related to additional ads or other information about the user’s browsing activities across the web.

39. In addition, contrary to the statements set forth in **Paragraph 36**, Facebook has shared information about users with third parties that advertise on certain Platform Application web sites (“Application Advertisers”), by identifying to them the specific users who visited these applications. Specifically, at various times relevant to this Complaint, when a user visited certain Platform Applications, Facebook disclosed the user’s User ID, in plain text, to any Application Advertiser that displayed an ad on the application’s web page.

40. As a result of the conduct described in **Paragraph 39**, Application Advertisers could take simple steps to get detailed information, similar to that described in **Paragraph 38(a)**, **(b)(ii)**, and **(c)**, regarding the user and his or her activities on any Platform Application web site where the advertiser displayed an ad.

Count 5

41. As set forth in **Paragraphs 36**, Facebook has represented, expressly or by implication, that Facebook does not provide advertisers with information about its users.

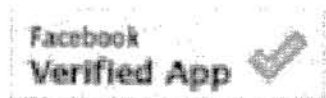
42. In truth and in fact, as described in **Paragraphs 37-40**, Facebook has provided advertisers with information about its users. Therefore, the representation set forth in **Paragraph 41** was, and is, false or misleading.

FACEBOOK’S VERIFIED APPS PROGRAM (Count 6)

43. From approximately May 2009 until December 2009, Facebook operated a Verified Apps program, through which it designated certain Platform Applications as “Facebook Verified Apps” (hereinafter, “Verified Apps”).

44. Facebook provided each Verified App with preferential treatment compared to other Platform Applications, including, but not limited to:

- a. a Verified Apps badge, the same or similar to the badge depicted below, for display on the application's profile page on www.facebook.com;



This application is a Verified Application, passing Facebook's review for trust over the user experiences.

- b. a green check mark alongside the Platform Application's name, and higher ranking among search results, on www.facebook.com and within Facebook's Application Directory.

45. To apply for the Verified Apps badge, a Platform Application developer paid Facebook a fee of \$375, or \$175 for a student or nonprofit organization. Facebook awarded the badge to approximately 254 Platform Applications.

46. Facebook has disseminated or caused to be disseminated statements to consumers conveying that it has taken steps to verify the security of Verified Apps, compared to the security of other Platform Applications, including:

- a. the Verified Apps badge, described in **Paragraphs 44(a)**;
- b. the Verified Apps green check mark, described in **Paragraph 44(b)**; and
- c. the following statement on its website:
 - i. **2) Application Verification** Facebook is introducing the Application Verification program **which is designed to offer extra assurances to help users identify applications they can trust -- applications that are secure, respectful and transparent, and have demonstrated commitment to compliance with Platform policies.**

(See Press Release "Facebook Expands Power of Platform Across the Web and Around the World" (July 23, 2008), Appendix 11, at FB0001686 (latter emphasis added)); and

ii. What are Verified Applications?

Verified applications have passed a detailed Facebook review to confirm that the user experience they provide complies with Facebook policies. Verified Applications have committed to be transparent about how they work and will respect you and your friends when they send communication on your behalf.

What is the green check mark next to some applications?

Applications that choose to participate in Facebook’s Application Verification Program receive a green check mark when they pass Facebook’s detailed review process. The review process is designed to ensure that the application complies with Facebook policies. In addition, Verified applications have committed to be transparent about how they work and will respect you and your friends when they send communication on your behalf.

(See Facebook Help Center, FAQs, Appendix 12 (emphases added)).

47. Contrary to the statements set forth in **Paragraph 46**, before designating a Platform Application as a Verified App, in many instances, Facebook took no steps to verify either the security of the Application’s website or the security the application provided for the user information it collected.
48. Contrary to the statements set forth in **Paragraph 46**, once it awarded the Verified Apps badge, Facebook took no steps to verify either the security of a Verified Application’s website or the security the application provided for the user information it collected, beyond such steps as it may have taken regarding any other Platform Application.

Count 6

49. As set forth in **Paragraph 46**, Facebook has represented, expressly or by implication, that Facebook has permitted a Platform Application to display its Verified Apps badge when Facebook’s review of the security of such Applications has exceeded its review of the security of other Platform Applications.
50. In truth and in fact, as described in **Paragraphs 47 and 48**, in many instances Facebook has permitted a Platform Application to display its Verified Apps badge when its review of the application’s security has not exceeded its review of other Platform Applications. Therefore, the representation set forth in **Paragraph 49** was, and is, false or misleading.

FACEBOOK'S DISCLOSURE OF USER PHOTOS AND VIDEOS
(Count 7)

51. Facebook has collected and stored vast quantities of photos and videos that its users upload, including, but not limited to: at least one such photo from approximately ninety-nine percent of its users, in total, and more than 100 million photos and 415,000 videos from its users, collectively, every day.
52. Facebook has stored users' photos and videos such that each one is assigned a Content URL – a uniform resource locator that specifies its location on Facebook's servers. Facebook users and Platform Applications can obtain the Content URL for any photo or video that they view on Facebook's web site by, for example, right-clicking on it. If a user or Application further disseminates this URL, Facebook will "serve" the user's photo or video to anyone who clicks on the URL.
53. Facebook has disseminated or caused to be disseminated statements communicating that a user can restrict access to his or her profile information – including, but not limited to, photos and videos that a user uploads – by deleting or deactivating his or her user account. Such statements include:

- a. **Deactivating or deleting your account.** If you want to stop using your account you may deactivate it or delete it. When you deactivate an account, no user will be able to see it, but it will not be deleted . . . When you delete an account, it is permanently deleted from Facebook.

* * *

Backup copies. Removed and deleted information may persist in backup copies for up to 90 days, but will not be available to others;

(See Facebook Privacy Policy, November 19, 2009, *supra* Appendix 7, at FB0000019);

- b. To deactivate your account, navigate to the "Settings" tab on the Account Settings page. Deactivation will remove your profile and content associated with your account from Facebook. In addition, users will not be able to search for you or view any of your information.

(See Facebook Help Center, FAQ 13015, Appendix 13);

and

If you deactivate your account, your profile and all information associated with it are immediately made inaccessible to other Facebook users.

(See *id.*, FAQs 13016 and 15663, Appendices 14 & 15).

54. Contrary to the statements set forth in **Paragraph 53**, Facebook continues to display users' photos and videos to anyone who accesses Facebook's Content URLs for them, as described in **Paragraph 52**, even after such users have deleted or deactivated their accounts.

Count 7

55. As set forth in **Paragraph 53**, Facebook has represented, expressly or by implication, that after a user has deleted or deactivated his or her account, Facebook does not provide third parties with access to their profile information, including any photos or videos that the user has uploaded.
56. In truth and in fact, as described in **Paragraph 52**, in many instances, Facebook has provided third parties with access to users' profile information – specifically photos or videos that a user has uploaded – even after the user has deleted or deactivated his or her account. Therefore, the representation set forth in **Paragraph 53** was, and is, false or misleading.

**U.S.-EU SAFE HARBOR FRAMEWORK
(Count 8)**

57. The U.S.-EU Safe Harbor Framework provides a method for U.S. companies to transfer personal data outside of Europe that is consistent with the requirements of the European Union Data Protection Directive (“Directive”). The Directive sets forth European Union (“EU”) requirements for privacy and the protection of personal data. Among other things, it requires EU Member States to implement legislation that prohibits the transfer of personal data outside the EU, with exceptions, unless the European Commission (“EC”) has determined that the recipient jurisdiction's laws ensure the data's protection. This determination is commonly referred to as meeting the EU's “adequacy” standard.
58. To satisfy the EU's adequacy standard for certain commercial transfers of personal data, the U.S. Department of Commerce (“Commerce”) and the EC negotiated the U.S.-EU Safe Harbor Framework, which took effect in 2000. The Safe Harbor is a voluntary framework that allows U.S. companies to transfer personal data lawfully from the EU to the U.S. To join the Safe Harbor, a company must self-certify to Commerce that it complies with seven Safe Harbor privacy principles and related requirements that have been deemed to meet the EU's adequacy standard.
59. The Safe Harbor privacy principles, issued by Commerce on July 21, 2000, include the following:

NOTICE: An organization must inform individuals about the purposes for which it collects and uses information about them, how to contact the organization with any inquiries or complaints, the types of third parties to which it discloses the information, and the choices and means the organization offers individuals for

limiting its use and disclosure. This notice must be provided in clear and conspicuous language when individuals are first asked to provide personal information to the organization or as soon thereafter as is practicable, but in any event before the organization uses such information for a purpose other than that for which it was originally collected or processed by the transferring organization or discloses it for the first time to a third party.

CHOICE: An organization must offer individuals the opportunity to choose (opt out) whether their personal information is (a) to be disclosed to a third party or (b) to be used for a purpose that is incompatible with the purpose(s) for which it was originally collected or subsequently authorized by the individual. Individuals must be provided with clear and conspicuous, readily available, and affordable mechanisms to exercise choice.

60. From at least May 10, 2007, until the present, Facebook has maintained a current self-certification to Commerce and has appeared on the list of Safe Harbor companies on the Commerce website. Pursuant to its self-certification, Facebook has transferred data collected from its users in the EU to the United States for processing.
61. From approximately May 2007 until November 19, 2009, Facebook stated in its Privacy Policy that it “participate[s] in the EU Safe Harbor Privacy Framework as set forth by the United States Department of Commerce.” Similarly, from approximately November 19, 2009 until the present, Facebook has stated on the Commerce website that it “adheres to the US Safe Harbor Framework developed by the U.S. Department of Commerce and the European Union.”

Count 8

62. As described in **Paragraphs 60-61**, Facebook has represented, expressly or by implication, that it has complied with the US Safe Harbor Privacy Principles, including the principles of Notice and Choice.
63. In truth and in fact, as described in **Paragraphs 11-42 and 51-56**, in many instances, Facebook has not adhered to the US Safe Harbor Privacy Principles of Notice and Choice. Therefore, the representation set forth in **Paragraph 62** was, and is, false or misleading and constitutes a deceptive act or practice.
64. The acts and practices of Respondents as alleged in this complaint constitute unfair or deceptive acts or practices, in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this ___ day of _____, 2011, has issued this complaint against Respondents.

By the Commission.

Donald S. Clark
Secretary

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.
6. This agreement is for settlement purposes only and does not constitute an admission by proposed Respondents that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.
7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed Respondents, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed Respondents' address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed Respondents waive any right they may have to any other means of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.
8. Proposed Respondents have read the draft complaint and consent order. Proposed Respondents understand that they may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, "Corporate Respondent" shall mean Facebook, its successors and assigns. "Individual Respondent" means Mark Zuckerberg. "Respondents" means the Corporate Respondent and Individual Respondent, individually, collectively, or in any combination.
2. "Covered entity" shall mean any business entity that Individual Respondent controls, directly or indirectly, which collects, handles, or stores personal information.
3. "Commerce" shall be defined as it is defined in Section 4 of the Federal Trade

Commission Act, 15 U.S.C. § 44.

4. “Platform developer” shall mean any entity other than Corporate Respondent that has developed, operated, or controlled a Platform application.
5. “Platform application” shall mean any software that may access information or functionality from Corporate Respondent through a set of tools and programming interfaces provided by Corporate Respondent, including, but not limited to, the Facebook Platform.
6. “Advertiser” shall mean any entity other than Corporate Respondent that submits an advertisement to Corporate Respondent for display on Corporate Respondent’s website or on a Platform application.
7. “Clear(ly) and prominent(ly)” shall mean:
 - A. in textual communications (*e.g.*, printed publications or words displayed on the screen of a computer or mobile device), the required disclosures are of a type, size, and location sufficiently noticeable for an ordinary consumer to read and comprehend them, in print that contrasts highly with the background on which they appear;
 - B. in communications disseminated orally or through audible means (*e.g.*, radio or streaming audio), the required disclosures are delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend them;
 - C. in communications disseminated through video means (*e.g.*, television or streaming video), the required disclosures are in writing in a form consistent with subpart (A) of this definition and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them, and in the same language as the predominant language that is used in the communication; and
 - D. in all instances, the required disclosures: (1) are presented in an understandable language and syntax; and (2) include nothing contrary to, inconsistent with, or in mitigation of any other statements or disclosures provided by Respondent.
8. “Personal information” shall mean individually identifiable information from or about an individual consumer including, but not limited to: (a) a first or last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name; (d) a mobile or other telephone number; (e) date of birth; (f) Internet Protocol (“IP”) address, user ID, device ID, or other persistent identifier; (g) geolocation information; or (h) any information combined with any of (a) through (g) above, including but not limited to, age, gender, list of friends, educational or employment information, religious or political views or affiliations, marital or other relationship status, information that is created, posted, or otherwise shared by a consumer on any of Respondents’ websites (*e.g.*, status updates, photos, videos, notes or messages), or

behavioral information, including information about a consumer's online browsing behavior.

9. "Privacy settings" shall include any control or setting provided by Respondents that allows a consumer to restrict access to or display of his or her personal information.
10. "Third party" shall mean any individual or entity other than: (1) Respondents; or (2) a service provider of Respondents that: (i) uses or receives personal information collected by or on behalf of Respondents for and at the direction of Respondents and no other individual or entity; (ii) does not disclose the personal information, or any individually identifiable information derived from such personal information, to any individual or entity other than Respondents; and (iii) does not use the personal information for any other purpose; or (3) any entity that uses personal information only as reasonably necessary: (i) to comply with applicable law, regulation, or legal process, (ii) to enforce Corporate Respondent's or any covered entity's terms of use, or (iii) to detect, prevent, or mitigate fraud or security vulnerabilities.

I.

IT IS ORDERED that Respondents, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, website, or other device, in connection with the offering of any product or service, in or affecting commerce, shall not misrepresent in any manner, expressly or by implication, the extent to which they maintain and protect the privacy, confidentiality, security, or integrity of personal information, including, but not limited to:

- A. the extent to which a consumer can control the privacy of any personal information;
- B. the extent to which they make or have made personal information accessible to third parties;
- C. the manner in which they use or have used personal information;
- D. the steps they take or have taken to verify the privacy and security protections that any third party provides;
- E. the extent to which they make or have made personal information accessible to any third party following deletion or termination of a consumer's account with Respondents or during such time as a consumer's account is deactivated or suspended; and
- F. the extent to which they are a member of, adhere to, comply with, are certified by, are endorsed by, or otherwise participate in any privacy, security, or any other compliance program sponsored by the government or any third party, including, but not limited to, the U.S.-EU Safe Harbor Framework.

II.

IT IS FURTHER ORDERED that Respondents, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, website, or other device, in connection with the offering of any product or service, in or affecting commerce, shall provide clear and prominent notice and obtain affirmative express consent from a consumer (1) before providing a Platform application that a consumer uses for the first time with access to that consumer's personal information, and (2) before providing such a Platform application with access to new types of personal information about that consumer. Such notice and consent shall:

- A. appear separate and apart from any "privacy policy," "data use policy," "statement of rights and responsibilities" page, or other similar document, and
- B. clearly and prominently disclose the specific types of personal information the application has the ability to access and the name of the application.

III.

IT IS FURTHER ORDERED that Respondents, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, website, or other device, in connection with the offering of any product or service, in or affecting commerce, prior to any new or additional sharing of personal information with any third party that is a change from the sharing practices disclosed to consumers at the time such information was collected or stored, shall:

- A. separate and apart from any "privacy policy," "data use policy," "statement of rights and responsibilities" page, or other similar document, clearly and prominently disclose: (1) that the consumer's personal information will be disclosed to one or more third parties, (2) the identity or specific categories of such third parties, and (3) how such sharing constitutes a change from prior sharing practices; and
- B. obtain affirmative express consent from the consumer to such sharing.

IV.

IT IS FURTHER ORDERED that Respondents, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, website, or other device, in connection with the offering of any product or service, in or affecting commerce, shall, no later than 60 days after the date of service of this order:

- A. implement procedures reasonably designed to ensure that: (1) personal information is deleted from servers under Respondents' control within a reasonable period of time not to exceed 30 days after a consumer has deleted such information or deleted or terminated his or her account, unless Respondents are otherwise required by law to retain the information; and (2) personal information cannot be accessed by any third party during such time as the consumer has

deactivated or suspended his or her account or during the time period set forth in part (1), above; and

- B. exercise reasonable oversight to prevent unauthorized access to personal information by or through any Platform developer.

V.

IT IS FURTHER ORDERED that Respondents shall, no later than the date of service of this order, establish and implement, and thereafter maintain, a comprehensive privacy program for Corporate Respondent and any covered entity that is reasonably designed to: (1) address privacy risks related to the development and management of new and existing products and services for consumers, and (2) protect the privacy and confidentiality of personal information. Such program, the content and implementation of which must be documented in writing, shall contain privacy controls and procedures appropriate to Corporate Respondent's or the covered entity's size and complexity, the nature and scope of Corporate Respondent's or the covered entity's activities, and the sensitivity of the personal information, including:

- A. the designation of an employee or employees to coordinate and be responsible for the privacy program.
- B. the identification of reasonably foreseeable, material risks, both internal and external, that could result in the unauthorized collection, use, or disclosure of personal information, and an assessment of the sufficiency of any safeguards in place to control these risks. At a minimum, this privacy risk assessment should include consideration of risks in each area of relevant operation, including, but not limited to: (1) employee training and management, including training on the requirements of this order, and (2) product design, development, and research.
- C. the design and implementation of reasonable privacy controls and procedures to address the risks identified through the privacy risk assessment, and regular testing or monitoring of the effectiveness of those privacy controls and procedures.
- D. the development and use of reasonable steps to select and retain service providers capable of appropriately protecting the privacy of personal information they receive from Corporate Respondent or the covered entity, and requiring service providers by contract to implement and maintain appropriate privacy protections.
- E. the evaluation and adjustment of Corporate Respondent's or the covered entity's privacy program in light of the results of the testing and monitoring required by subpart C, any material changes to Corporate Respondent's or the covered entity's operations or business arrangements, or any other circumstances that Corporate Respondent or the covered entity knows or has reason to know may have a material impact on the effectiveness of its privacy program.

VI.

IT IS FURTHER ORDERED that, in connection with their compliance with Part V of this order, Respondents shall obtain initial and biennial assessments and reports (“Assessments”) for Corporate Respondent and any covered entity from a qualified, objective, independent third-party professional, who uses procedures and standards generally accepted in the profession. A person qualified to prepare such Assessments shall have a minimum of three (3) years of experience in the field of privacy and data protection. All persons conducting such Assessments and preparing such reports shall be approved by the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, in his or her sole discretion. The reporting period for the Assessments shall cover: (1) the first one hundred and eighty (180) days after service of the order for the initial Assessment, and (2) each two (2) year period thereafter for twenty (20) years after service of the order for the biennial Assessments. Each Assessment shall:

- A. set forth the specific privacy controls that Corporate Respondent or the covered entity has implemented and maintained during the reporting period;
- B. explain how such privacy controls are appropriate to Corporate Respondent’s or the covered entity’s size and complexity, the nature and scope of Corporate Respondent’s or the covered entity’s activities, and the sensitivity of the personal information;
- C. explain how the privacy controls that have been implemented meet or exceed the protections required by Part V of this order; and
- D. certify that the privacy controls are operating with sufficient effectiveness to provide reasonable assurance to protect the privacy of personal information and that the controls have so operated throughout the reporting period.

Each Assessment shall be prepared and completed within sixty (60) days after the end of the reporting period to which the Assessment applies. Corporate Respondent and any covered entity shall provide the initial Assessment to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, within ten (10) days after the Assessment has been prepared. All subsequent biennial Assessments shall be retained by Respondents until the order is terminated and provided to the Associate Director of Enforcement within ten (10) days of request.

VII.

IT IS FURTHER ORDERED that Respondents shall pay xxx to the Federal Trade Commission, as follows:

- A. prior to or concurrently with the execution of this order, Respondents shall transfer the amount specified in this Part to their undersigned counsel, who shall hold the sum in escrow for no purpose other than payment to the Commission.
- B. within five (5) days of entry of this order, counsel for Respondents shall transfer

the sum to the Commission by electronic funds transfer in accordance with instructions provided by a representative of the Commission.

- C. in the event of any default in payment, interest shall accrue, computed pursuant to 28 U.S.C. § 1961, from the date of default to the date of payment.
- D. all funds paid to or received by the Commission pursuant to this Part shall be deposited into a fund administered by the Commission or its agent. In the event that direct restitution to consumers is wholly or partially impracticable or funds remain after restitution is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies), as it determines to be reasonably related to Respondents' practices as alleged in the complaint. Any funds not used for such equitable relief will be deposited with the United States Treasury as disgorgement. Respondents shall have no right to challenge the Commission's choice of remedies under this Part. Respondents shall have no right to contest the manner of distribution chosen by the Commission.
- E. Respondents relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law. Respondents shall make no claim to or demand return of the funds, directly or indirectly, through counsel or otherwise.
- F. this order for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture.

VIII.

IT IS FURTHER ORDERED that Respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying, a print or electronic copy of:

- A. for a period of five (5) years from the date of preparation or dissemination, whichever is later, all widely disseminated statements that describe the extent to which Corporate Respondent or any covered entity maintain and protect the privacy, security and confidentiality of any personal information, including, but not limited to, any statement related to a change in any website or service controlled by Corporate Respondent or the covered entity that relates to the privacy, security, and confidentiality of personal information, with all materials relied upon in making or disseminating such statements;
- B. for a period of five (5) years from the date received, all consumer complaints directed at Corporate Respondent or a covered entity, or forwarded to Corporate Respondent or a covered entity by a third party, that relate to the conduct prohibited by this order and any responses to such complaints;
- C. for a period of five (5) years from the date received, copies of all subpoenas and other communications with law enforcement entities or personnel, if such communications raise issues that relate to Corporate Respondent's or a covered

entity's compliance with the provisions of this order;

- D. for a period of five (5) years from the date received, any documents, whether prepared by or on behalf of Corporate Respondent or a covered entity that contradict, qualify, or call into question Corporate Respondent's or the covered entity's compliance with this order;
- E. for a period of five (5) years from the date of preparation or dissemination, whichever is later, each materially different document relating to Corporate Respondent's or a covered entity's attempt to obtain the affirmative express consent of consumers referred to in Parts II and III above, and copies of sample documents demonstrating such consent; and
- F. for a period of five (5) years after the date of preparation of each Assessment required under Part VI of this order, all materials relied upon to prepare the Assessment, whether prepared by or on behalf of Corporate Respondent or a covered entity including but not limited to all plans, reports, studies, reviews, audits, audit trails, policies, training materials, and assessments, for the compliance period covered by such Assessment.

IX.

IT IS FURTHER ORDERED that Respondents shall deliver copies of the order as directed below:

- A. Corporate Respondent must deliver a copy of this order to (1) all current and future principals, officers, directors, and managers, (2) all current and future employees, agents, and representatives having responsibilities relating to the subject matter of this order, and (3) any business entity resulting from any change in structure set forth in Part XI. Corporate Respondent shall deliver this order to such current personnel within thirty (30) days after service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities. For any business entity resulting from any change in structure set forth in Part XI, delivery shall be at least ten (10) days prior to the change in structure;
- B. Individual Respondent, for any covered entity, must deliver a copy of this order to (1) all principals, officers, directors, and managers of that business, (2) all current and future employees, agents, and representatives of that business having responsibilities relating to the subject matter of this order, and (3) any business entity resulting from any change in structure set forth in Part XI. Individual Respondent shall deliver this order to such current personnel within thirty (30) days after service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities. For any business entity resulting from any change in structure set forth in Part XI, delivery shall be at least ten (10) days prior to the change in structure;
- C. for any business that collects, maintains, or stores personal information from or

about consumers, where Individual Respondent is not a controlling person of the business, but he otherwise has responsibility, in whole or in part, for developing or overseeing the implementation of policies and procedures to protect the privacy, security, confidentiality, or integrity of personal information collected from or about consumers by the business, Individual Respondent must deliver a copy of this order to all principals and managers of such business before engaging in such conduct; and

- D. Respondents must secure a signed and dated statement acknowledging receipt of this order, within thirty (30) days of delivery, from all persons receiving a copy of the order pursuant to this Part.

X.

IT IS FURTHER ORDERED that Individual Respondent for a period of ten (10) years from the date of entry of this order, shall notify the Commission of the following:

- A. any changes in Individual Respondent's residence, mailing address, and or telephone numbers, within ten (10) days of such a change;
- B. any changes in Individual Respondent's business or employment status (including self-employment), and any changes in his ownership in any business entity, within ten (10) days of such a change. Such notice shall include the name and address of each business that Individual Respondent is affiliated with, employed by, created or forms, or performs services for; a detailed description of the nature of the business or employment; and a detailed description of the Individual Respondent's duties and responsibilities in connection with such business or employment; and
- C. any changes in Individual Respondent's name or use of any aliases or fictitious names, including "doing business as" names.

Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580, with the subject line *In the matter of Facebook, Inc. and Mark Zuckerberg*, FTC File No. []. Provided, however, that in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of any such notice is contemporaneously sent to the Commission at Debrief@ftc.gov.

XI.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any change in Corporate Respondent or any covered entity that may affect compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in

either corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which Respondents learn less than thirty (30) days prior to the date such action is to take place, Respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580, with the subject line *In the matter of Facebook, Inc. and Mark Zuckerberg*, FTC File No.[]. Provided, however, that in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of any such notice is contemporaneously sent to the Commission at Debrief@ftc.gov.

XII.

IT IS FURTHER ORDERED that Respondents within sixty (60) days after the date of service of this order, shall each file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of their own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, they shall submit additional true and accurate written reports.

XIII.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. any Part of this order that terminates in fewer than twenty (20) years; and
- B. this order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that Respondent(s) did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that this order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this _____ day of _____, 2011.

FACEBOOK, INC.

By: _____
[INSERT NAME]
Facebook, Inc.

By: _____
MARK ZUCKERBERG, individually and as
Chief Executive Officer, Facebook, Inc.

FEDERAL TRADE COMMISSION

LAURA D. BERGER
CORA TUNG HAN
MANAS MOHAPATRA
Counsel for the Federal Trade Commission

APPROVED:

MANEESHA MITHAL
Associate Director
Division of Privacy and Identity Protection

CHRISTOPHER N. OLSEN
Assistant Director
Division of Privacy and Identity Protection

DAVID C. VLADECK
Director
Bureau of Consumer Protection

From: Beringer, Ashlie
Sent: 5 Apr 2011 06:49:30 +0000
To: Berger, Laura
Cc: Han, Cora Tung; Mohapatra, Manas; Royall, M. Sean; Mellon, Scott Howard; Li, Daniel Y.
Subject: Revised draft consent order -- correct version
Attachments: 4-4-2011 FB Draft Order - Redline.pdf, 4-4-2011 FB Draft Order - Clean.pdf, 4-4-11 - Ltr to L Berger.pdf

Laura -

Attached is the revised language we discussed (clean and redline), together with related correspondence. Again, we request that you and your team delete without reviewing the materials that I sent earlier, which were early versions that were not authorized and mistakenly generated by our word processing department.

We look forward to discussing this with you later this week after you have had an opportunity to review these materials.

Best regards,
Ashlie

Ashlie Beringer

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
1881 Page Mill Road, Palo Alto, CA 94304-1211
Tel +1 650.849.5219 • Fax +1 650.849.5019
ABeringer@gibsondunn.com • www.gibsondunn.com

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CONFIDENTIAL SETTLEMENT COMMUNICATION

April 4, 2011

Via Electronic Mail

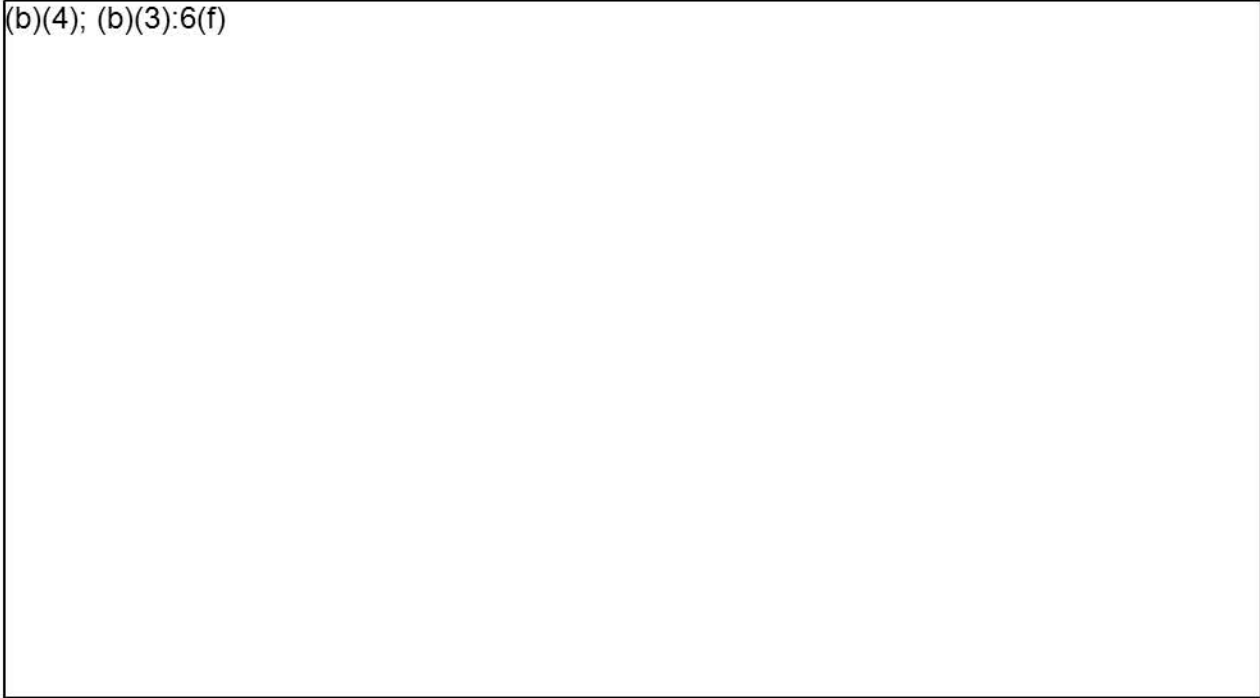
Laura D. Berger, Esq.
Federal Trade Commission
601 New Jersey Avenue, NW
Mail Stop NJ-8122
Washington, DC 20001

Re: Draft Consent Agreement Received March 10, 2011

Dear Laura:

As we have discussed, we are enclosing various revisions to the draft consent agreement received March 10, 2011, which we hope will assist in advancing our discussions concerning the potential for a negotiated resolution in this matter.

(b)(4); (b)(3):6(f)



With that background in mind, Facebook has worked diligently to develop language to enable the parties to find common ground on the proposed consent order. As is clear from

GIBSON DUNN

Laura D. Berger, Esq.
April 4, 2011
Page 6

(b)(4); (b)(3):6(f)

We look forward to continuing our discussions and working diligently to explore a potential agreement around the revised concepts reflected in the attached draft.

Very truly yours,



S. Ashlie Berenger

SAB/ln
Enclosure

(b)(4); (b)(3):6(f)

From: Berger, Laura
Sent: 20 Apr 2011 17:44:30 -0400
To: Berger, Laura;'Beringer, Ashlie';'Li, Daniel Y.';'Royall, M. Sean'
Cc: Han, Cora Tung;Mohapatra, Manas
Subject: Facebook; FTC settlement negotiations
Attachments: Facebook staff proposed order to counsel 04 20 11.pdf, Facebook staff proposed order to counsel REDLINE 04 20 11.pdf

Hi Ashlie and Sean,

Attached please find a staff-proposed, revised order and a redline, comparing it to the version we sent to you on March 10, 2001. This proposal seeks to address key concerns that you have raised during these negotiations. As with the earlier version, this proposal is for settlement purposes only, and does not limit or reflect the scope of relief that the Commission may seek if we are unable to reach a settlement. Further, as we've discussed, we can recommend these revisions only to the extent that you accept, in all significant respects, the remaining relief set forth in the attached proposal.

Please note that the status of our request for disgorgement is unchanged from when we spoke last Thursday: we are awaiting information from you to explain the basis for your statement to

(b)(6)

(b)(6)

Based on our conversation with you last Thursday, we understand that you are working to provide this information and will get back to us shortly. Please let us know, at your earliest convenience, when you expect to provide it.

You will find that the attached proposal mirrors the proposal that we described to you in detail during our conversation last Thursday. We would like to speak with you regarding the likelihood of an agreement to the major provisions reflected in the proposal in the near future. Per our brief call yesterday, and my email from earlier today (below), are you available to speak on Friday, April 22, between 12 and 2 pm Pacific? Further, per my earlier request (below), please let us know when you are available for a brief call regarding the extension of time to negotiate that you have requested.

Thank you both for your cooperation in this matter. We look forward to hearing from you.

Best,

Laura

Laura D. Berger, Attorney
Federal Trade Commission
Division of Privacy and Identity Protection
202.326.2471 (v)

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From: Berger, Laura
Sent: Wednesday, April 20, 2011 4:30 PM
To: Beringer, Ashlie; Li, Daniel Y.; Royall, M. Sean
Cc: Han, Cora Tung; Mohapatra, Manas
Subject: quick phone call

Hi Ashlie and Sean,

Are you two free for a quick phone call today? We are ready to send you the proposed order language, would like to speak with you briefly in advance regarding the extension of time to negotiate.

Best,

Laura

Laura D. Berger, Attorney
Federal Trade Commission
Division of Privacy and Identity Protection
202.326.2471 (v)

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From: Berger, Laura
Sent: Wednesday, April 20, 2011 1:59 PM
To: Beringer, Ashlie; Royall, M. Sean
Cc: Han, Cora Tung; Mohapatra, Manas
Subject: Friday call

Hi Ashlie and Sean,

Following up on your call yesterday afternoon, I wanted to confirm a time to meet on Friday. Would 12-2 pm Pacific work for you on Friday?

As I mentioned yesterday, we believe we will be able to share a revised staff-proposed order, as well as news regarding an extension of the negotiation time period, later today.

Best,

Laura

Laura D. Berger, Attorney
Federal Trade Commission
Division of Privacy and Identity Protection
202.326.2471 (v)

CONFIDENTIALITY WARNING: This email may contain confidential or privileged information and is for the sole use of the intended recipient. If you believe that you may have

received this email in error, please destroy all copies of the email and any attachments, and notify the sender immediately. Thank you.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed Respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true. Proposed Respondent expressly denies the allegations set forth in the complaint, except for the jurisdictional facts.
7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed Respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed Respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed Respondent waives any right it may have to any other means of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.
8. Proposed Respondent has read the draft complaint and consent order. Proposed Respondent understands that they may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, "Respondent" shall mean Facebook, its successors and assigns. For purposes of Parts I, II, and III of this order, "Respondent" shall also mean Facebook acting directly, or through any corporation, subsidiary, division, website, or other device.
2. "Commerce" shall be defined as it is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
3. "Clear(ly) and prominent(ly)" shall mean:
 - A. in textual communications (*e.g.*, printed publications or words displayed on the screen of a computer or mobile device), the required disclosures are of a type, size, and location sufficiently noticeable for an ordinary consumer to read and comprehend them, in print that contrasts highly with the background on which

they appear;

- B. in communications disseminated orally or through audible means (*e.g.*, radio or streaming audio), the required disclosures are delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend them;
- C. in communications disseminated through video means (*e.g.*, television or streaming video), the required disclosures are in writing in a form consistent with subpart (A) of this definition and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them, and in the same language as the predominant language that is used in the communication;
- D. in all instances, the required disclosures: (1) are presented in an understandable language and syntax; and (2) include nothing contrary to, inconsistent with, or in mitigation of any other statements or disclosures provided by Respondent.

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- 4. “Personal information” shall mean individually identifiable information from or about an individual consumer including, but not limited to: (a) a first or last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name; (d) a mobile or other telephone number; (e) photos and videos; (f) Internet Protocol (“IP”) address, User ID or other persistent identifier; (g) physical location; or (h) any information combined with any of (a) through (g) above.
- 5. “Privacy setting” shall include any control or setting provided by Respondent that allows a consumer to restrict access to or display of his or her personal information.
- 6. “Third party” shall mean any individual or entity other than: (1) Respondent; or (2) a service provider of Respondent that: (i) uses or receives personal information collected by or on behalf of Respondent for and at the direction of Respondent and no other individual or entity; (ii) does not disclose the personal information, or any individually identifiable information derived from such personal information, to any individual or entity other than Respondent; and (iii) does not use the personal information for any other purpose; or (3) any entity that uses personal information only as reasonably necessary: (i) to comply with applicable law, regulation, or legal process, (ii) to enforce Respondent’s terms of use, or (iii) to detect, prevent, or mitigate fraud or security vulnerabilities.

I.

IT IS ORDERED that Respondent, and its officers, agents, representatives, and employees, in connection with the offering of any product or service, in or affecting commerce, shall not misrepresent in any manner, expressly or by implication, the extent to which it collects, uses, stores, discloses or permits access to personal information, including, but not limited to:

- A. the extent to which a consumer can control the privacy of any personal information
- STAFF PROPOSAL**
- B. the extent to which Respondent makes or has made personal information accessible to third parties;
- C. the steps Respondent takes or has taken to verify the privacy and security protections that any third party provides;
- D. the extent to which Respondent makes or has made personal information accessible to any third party following deletion or termination of a consumer's account with Respondent or during such time as a consumer's account is deactivated or suspended; and
- E. the extent to which Respondent is a member of, adheres to, complies with, is certified by, is endorsed by, or otherwise participates in any privacy, security, or any other compliance program sponsored by the United States government or any third party, including, but not limited to, the U.S.-EU Safe Harbor Framework.

II.

IT IS FURTHER ORDERED that Respondent, and its officers, agents, representatives, and employees, in connection with the offering of any product or service, in or affecting commerce, prior to any new or additional sharing of a consumer's personal information with any third party that is a change from (1) any privacy setting in effect for the consumer; or (2) the sharing practices disclosed to the consumer at the time the information was collected, shall:

- A. clearly and prominently disclose, separate and apart from any "privacy policy," "data use policy," "statement of rights and responsibilities" page, or other similar document: (1) the categories of personal information that will be disclosed to such third parties, (2) the identity or specific categories of such third parties, and (3) how such sharing constitutes a change from prior sharing practices; and
- B. obtain affirmative express consent from the consumer to such sharing by having a consumer select between at least two options, each of which is equally clearly and prominently disclosed, and at least one of which enables the consumer to prevent the new or additional sharing of his or her information.

III.

IT IS FURTHER ORDERED that Respondent, and its officers, agents, representatives, and employees, in connection with the offering of any product or service, in or affecting commerce, shall, no later than sixty (60) days after the date of service of this order implement procedures reasonably designed to ensure that personal information cannot be accessed by any third party from servers under Respondent's control after a consumer has deleted such information or deleted or terminated his or her account, or during such time as a consumer has

deactivated his or her account, except as required by law or where necessary to protect the Facebook website or its users from fraud or illegal activity.

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IV.

IT IS FURTHER ORDERED that Respondent shall, no later than the date of service of this order, establish and implement, and thereafter maintain, a comprehensive privacy program that is reasonably designed to (1) address privacy risks related to the development and management of new and existing products and services for consumers, and (2) protect the privacy and confidentiality of personal information. Such program, the content and implementation of which must be documented in writing, shall contain controls and procedures appropriate to Respondent's size and complexity, the nature and scope of Respondent's activities, and the sensitivity of the personal information, including:

- A. the designation of an employee or employees to coordinate and be responsible for the privacy program.
- B. the identification of reasonably foreseeable, material risks, both internal and external, that could result in Respondent's unauthorized collection, use, or disclosure of personal information and an assessment of the sufficiency of any safeguards in place to control these risks. At a minimum, this privacy risk assessment should include consideration of risks in each area of relevant operation, including, but not limited to: (1) employee training and management, including training on the requirements of this order, and (2) product design, development, and research.
- C. the design and implementation of reasonable controls and procedures to address the risks identified through the privacy risk assessment, and regular testing or monitoring of the effectiveness of those controls and procedures.
- D. the development and use of reasonable steps to select and retain service providers capable of appropriately protecting the privacy of personal information they receive from Respondent and requiring service providers, by contract, to implement and maintain appropriate privacy protections.
- E. the evaluation and adjustment of Respondent's privacy program in light of the results of the testing and monitoring required by subpart C, any material changes to Respondent's operations or business arrangements, or any other circumstances that Respondent knows or has reason to know may have a material impact on the effectiveness of its privacy program.

V.

IT IS FURTHER ORDERED that, in connection with their compliance with Part IV of this order, Respondent shall obtain initial and biennial assessments and reports ("Assessments") from a qualified, objective, independent third-party professional, who uses procedures and

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standards generally accepted in the profession. A person qualified to prepare such Assessments shall have a minimum of three (3) years of experience in the field of privacy and data protection. All persons selected to conduct such Assessments and prepare such reports shall be approved by the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, in his or her sole discretion. The reporting period for the Assessments shall cover: (1) the first one hundred and eighty (180) days after service of the order for the initial Assessment, and (2) each two (2) year period thereafter for twenty (20) years after service of the order for the biennial Assessments. Each Assessment shall:

- A. set forth the specific privacy controls that Respondent has implemented and maintained during the reporting period;
- B. explain how such privacy controls are appropriate to Respondent's size and complexity, the nature and scope of Respondent's activities, and the sensitivity of the personal information;
- C. explain how the privacy controls that have been implemented meet or exceed the protections required by Part IV of this order; and
- D. certify that the privacy controls are operating with sufficient effectiveness to provide reasonable assurance to protect the privacy of personal information and that the controls have so operated throughout the reporting period.

Each Assessment shall be prepared and completed within sixty (60) days after the end of the reporting period to which the Assessment applies. Respondent shall provide the initial Assessment to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, within ten (10) days after the Assessment has been prepared. All subsequent biennial Assessments shall be retained by Respondent until the order is terminated and provided to the Associate Director of Enforcement within ten (10) days of request.

VI.

IT IS FURTHER ORDERED that Respondent shall pay xxx to the Federal Trade Commission, as follows:

- A. prior to or concurrently with the execution of this order, Respondent shall transfer the amount specified in this Part to their undersigned counsel, who shall hold the sum in escrow for no purpose other than payment to the Commission.
- B. within five (5) days of entry of this order, counsel for Respondent shall transfer the sum to the Commission by electronic funds transfer in accordance with instructions provided by a representative of the Commission.
- C. in the event of any default in payment, interest shall accrue, computed pursuant to 28 U.S.C. § 1961, from the date of default to the date of payment.

D. all funds paid to or received by the Commission pursuant to this Part shall be deposited into a fund administered by the Commission or its agent. In the event that direct restitution to consumers is wholly or partially impracticable or funds remain after restitution is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies), as it determines to be reasonably related to Respondent's practices as alleged in the complaint. Any funds not used for such equitable relief will be deposited with the United States Treasury as disgorgement. Respondent shall have no right to challenge the Commission's choice of remedies under this Part. Respondent shall have no right to contest the manner of distribution chosen by the Commission.

E. Respondent relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Respondent shall make no claim to or demand return of the funds, directly or indirectly, through counsel or otherwise.

VII.

IT IS FURTHER ORDERED that Respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying, a print or electronic copy of:

- A. for a period of three (3) years from the date of preparation or dissemination, whichever is later, all widely disseminated statements that describe the extent to which Respondent maintains and protects the privacy, security, and confidentiality of any personal information, including, but not limited to, any statement related to a change in any website or service controlled by Respondent that relates to the privacy of personal information, with all materials relied upon in making or disseminating such statements;
- B. for a period of six (6) months from the date received, all consumer complaints directed at Respondent or forwarded to Respondent by a third party, that relate to the conduct prohibited by this order and any responses to such complaints;
- C. for a period of five (5) years from the date received, any documents, prepared by or on behalf of Respondent, that contradict, qualify, or call into question Respondent's compliance with this order;
- D. for a period of three (3) years from the date of preparation or dissemination, whichever is later, each materially different document relating to Respondent's attempt to obtain the affirmative express consent of consumers referred to in Part II above, and copies of sample documents demonstrating such consent; and
- E. for a period of three (3) years after the date of preparation of each Assessment required under Part VI of this order, all materials relied upon to prepare the Assessment, whether prepared by or on behalf of Respondent, including but not limited to all plans, reports, studies, reviews, audits, audit trails, policies, training

materials, and assessments, for the compliance period covered by such
Assessment

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VIII.

IT IS FURTHER ORDERED that Respondent shall deliver copies of the order as directed below:

- A. Respondent must deliver a copy of this order to (1) all current and future principals, officers, directors, and managers; (2) all current and future employees, agents, and representatives having supervisory responsibilities relating to the subject matter of this order, and (3) any business entity resulting from any change in structure set forth in Part IX. Respondent shall deliver this order to such current personnel within thirty (30) days after service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities. For any business entity resulting from any change in structure set forth in Part IX, delivery shall be at least ten (10) days prior to the change in structure;
- B. Respondent must secure a signed and dated statement acknowledging receipt of this order, within thirty (30) days of delivery, from all persons receiving a copy of the order pursuant to this Part.

IX.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any change in Respondent that may affect compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in either corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which Respondent learns fewer than thirty (30) days prior to the date such action is to take place, Respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580, with the subject line *In the Matter of Facebook, Inc.*, FTC File No.[]. Provided, however, that in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of any such notice is contemporaneously sent to the Commission at Debrief@ftc.gov.

X.

IT IS FURTHER ORDERED that Respondent, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting

forth in detail the manner and form of their own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, Respondent shall submit additional true and accurate written reports.

STAFF PROPOSAL

XI.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. any Part of this order that terminates in fewer than twenty (20) years; and
- B. this order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that Respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that this order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this _____ day of _____, 2011.

FACEBOOK, INC.

By: _____
[INSERT NAME]
Facebook, Inc.

By: _____
MARK ZUCKERBERG, individually and as
Chief Executive Officer, Facebook, Inc.

FEDERAL TRADE COMMISSION
STAFF PROPOSAL

LAURA D. BERGER
CORA TUNG HAN
MANAS MOHAPATRA
Counsel for the Federal Trade Commission

APPROVED:

MANEESHA MITHAL
Associate Director
Division of Privacy and Identity Protection

CHRISTOPHER N. OLSEN
Assistant Director
Division of Privacy and Identity Protection

DAVID C. VLADECK
Director
Bureau of Consumer Protection

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

_____)
In the Matter of _____) **FILE NO:**
_____)
_____)
FACEBOOK, INC., _____)
a corporation, _____)
and **STAFF PROPOSAL** AGREEMENT CONTAINING
_____) CONSENT ORDER
_____)
MARK ZUCKERBERG, _____)
individually, and as a founder, officer, _____)
and owner of FACEBOOK, INC. _____) **CONSENT ORDER**
_____) _____
_____)

The Federal Trade Commission has conducted an investigation of certain acts and practices of Facebook, Inc. ("Facebook") and its principal, Mark Zuckerberg (collectively "proposed Respondents"). Proposed Respondents, having been represented by counsel, are willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between Facebook, its duly authorized officers, Mark Zuckerberg, individually, and counsel for the Federal Trade Commission that:

1. Proposed Respondent Facebook is a Delaware corporation with its principal office or place of business at 1601 S. California Avenue, Palo Alto, California, 94304.
2. Proposed Respondent Mark Zuckerberg ("Zuckerberg") is the founder, president, and chief executive officer of Facebook and its largest shareholder. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of Facebook and has knowledge of those practices. His principal place of business is the same as Facebook's.
2. Proposed Respondents admits all the jurisdictional facts set forth in the draft complaint.
4. Proposed Respondents waives:
 - A. any further procedural steps;
 - B. the requirement that the Commission's decision contain a statement of findings of

fact and conclusions of law; and

- C. all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.
6. This agreement is for settlement purposes only and does not constitute an admission by proposed Respondents that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true. Proposed Respondent expressly denies the allegations set forth in the complaint, except for the jurisdictional facts.
7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed Respondents, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed Respondents' Respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed Respondents waives any right they may have to any other means of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.
8. Proposed Respondents have read the draft complaint and consent order. Proposed Respondents understand that they may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, ~~“Corporate Respondent”~~ “Respondent” shall mean Facebook, its successors and assigns. ~~“Individual Respondent”~~ means Mark Zuckerberg. ~~“Respondents”~~ means the Corporate Respondent and Individual Respondent, individually, collectively, or in any combination.

2. ~~“Covered entity” shall mean any business entity that Individual Respondent controls, directly or indirectly, which collects, handles, or stores personal information~~ For purposes of Parts I, II, and III of this order, “Respondent” shall also mean Facebook acting directly, or through any corporation, subsidiary, division, website, or other device.

2. ~~“Commerce” shall be defined as it is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.44.~~ **STAFF PROPOSAL**

4. ~~“Platform developer” shall mean any entity other than Corporate Respondent that has developed, operated, or controlled a Platform application.~~

5. ~~“Platform application” shall mean any software that may access information or functionality from Corporate Respondent through a set of tools and programming interfaces provided by Corporate Respondent, including, but not limited to, the Facebook Platform.~~

6. ~~“Advertiser” shall mean any entity other than Corporate Respondent that submits an advertisement to Corporate Respondent for display on Corporate Respondent’s website or on a Platform application.~~

3. “Clear(ly) and prominent(ly)” shall mean:

A. in textual communications (*e.g.*, printed publications or words displayed on the screen of a computer or mobile device), the required disclosures are of a type, size, and location sufficiently noticeable for an ordinary consumer to read and comprehend them, in print that contrasts highly with the background on which they appear;

B. in communications disseminated orally or through audible means (*e.g.*, radio or streaming audio), the required disclosures are delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend them;

C. in communications disseminated through video means (*e.g.*, television or streaming video), the required disclosures are in writing in a form consistent with subpart (A) of this definition and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them, and in the same language as the predominant language that is used in the communication; and

D. in all instances, the required disclosures: (1) are presented in an understandable

language and syntax; and (2) include nothing contrary to, inconsistent with, or in mitigation of any other statements or disclosures provided by Respondent.

4. “Personal information” shall mean individually identifiable information from or about an individual consumer including, but not limited to: (a) a first or last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name; (d) a mobile or other telephone number; (e) ~~date of birth~~ photos and videos; (f) Internet Protocol (“IP”) address, ~~U~~ User ID, ~~device ID~~, or other persistent identifier; (g) ~~geolocation information~~ physical location; or (h) any information combined with any of (a) through (g) above, ~~including but not limited to, age, gender, list of friends, educational or employment information, religious or political views or affiliations, marital or other relationship status, information that is created, posted, or otherwise shared by a consumer on any of Respondents’ websites (e.g., status updates, photos, videos, notes or messages), or behavioral information, including information about a consumer’s online browsing behavior.~~ STAFF PROPOSAL
5. “Privacy settings” shall include any control or setting provided by Respondents that allows a consumer to restrict access to or display of his or her personal information.
6. “Third party” shall mean any individual or entity other than: (1) Respondents; or (2) a service provider of Respondents that: (i) uses or receives personal information collected by or on behalf of Respondents for and at the direction of Respondents and no other individual or entity; (ii) does not disclose the personal information, or any individually identifiable information derived from such personal information, to any individual or entity other than Respondents; and (iii) does not use the personal information for any other purpose; or (3) any entity that uses personal information only as reasonably necessary: (i) to comply with applicable law, regulation, or legal process, (ii) to enforce ~~Corporate Respondent’s or any covered entity’s~~ terms of use, or (iii) to detect, prevent, or mitigate fraud or security vulnerabilities.–

I.

IT IS ORDERED that Respondents, and ~~their~~ its officers, agents, representatives, and employees, ~~directly or through any corporation, subsidiary, division, website, or other device,~~ in connection with the offering of any product or service, in or affecting commerce, shall not misrepresent in any manner, expressly or by implication, the extent to which ~~they maintain and protect the privacy, confidentiality, security, or integrity of~~ it collects, uses, stores, discloses or permits access to personal information, including, but not limited to:

- A. the extent to which a consumer can control the privacy of any personal information;
- ---

B. the extent to which ~~they~~ Respondent ~~makes~~ makes or ~~have~~ has made personal information accessible to third parties;

- ~~C. the manner in which they use or have used personal information;~~
- C. the steps they Respondent takes or haves taken to verify the privacy and security protections that any third party provides;
- D. the extent to which they Respondent makes or haves made personal information accessible to any third party following deletion or termination of a consumer's account with Respondents or during such time as a consumer's account is deactivated or suspended; and
- E. the extent to which they are Respondent is a member of, adheres to, complys complies with, ares certified by, ares endorsed by, or otherwise participates in any privacy, security, or any other compliance program sponsored by the United States government or any third party, including, but not limited to, the U.S.-EU Safe Harbor Framework.

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H.

~~IT IS FURTHER ORDERED~~ that Respondents, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, website, or other device, in connection with the offering of any product or service, in or affecting commerce, shall provide clear and prominent notice and obtain affirmative express consent from a consumer (1) before providing a Platform application that a consumer uses for the first time with access to that consumer's personal information, and (2) before providing such a Platform application with access to new types of personal information about that consumer. Such notice and consent shall:

- ~~A. appear separate and apart from any "privacy policy," "data use policy," "statement of rights and responsibilities" page, or other similar document, and~~
- ~~B. clearly and prominently disclose the specific types of personal information the application has the ability to access and the name of the application.~~

III.

IT IS FURTHER ORDERED that Respondents, and theirs officers, agents, representatives, and employees, ~~directly or through any corporation, subsidiary, division, website, or other device,~~ in connection with the offering of any product or service, in or affecting commerce, prior to any new or additional sharing of a consumer's personal information with any third party that is a change from (1) any privacy setting in effect for the consumer; or (2) the sharing practices disclosed to the consumers at the time such the information was collected or stored, shall:

- A. clearly and prominently disclose, separate and apart from any "privacy policy," "data use policy," "statement of rights and responsibilities" page, or other similar

document, clearly and prominently disclose: (1) that the consumer's categories of personal information that will be disclosed to one or more such third parties, (2) the identity or specific categories of such third parties, and (3) how such sharing constitutes a change from prior sharing practices; and

- B. obtain affirmative express consent from the consumer to such sharing by having a consumer select between at least two options, each of which is equally clearly and prominently disclosed, and at least one of which enables the consumer to prevent the new or additional sharing of his or her information.

IVII.

IT IS FURTHER ORDERED that Respondents, and ~~their~~ officers, agents, representatives, and employees, ~~directly or through any corporation, subsidiary, division, website, or other device,~~ in connection with the offering of any product or service, in or affecting commerce, shall, no later than sixty (60) days after the date of service of this order:

- ~~A. implement procedures reasonably designed to ensure that: (1) personal information is deleted cannot be accessed by any third party from servers under Respondents' Respondent's control within a reasonable period of time not to exceed 30 days after a consumer has deleted such information or deleted or terminated his or her account, unless Respondents are otherwise required by law to retain the information; and (2) personal information cannot be accessed by any third party or during such time as the consumer has deactivated or suspended his or her account or during the time period set forth in part (1), above; and~~
- ~~B. exercise reasonable oversight to prevent unauthorized access to personal information by or through any Platform developer.~~

V.

except as required by law or where necessary to protect the Facebook website or its users from fraud or illegal activity.

=

IV.

IT IS FURTHER ORDERED that Respondents shall, no later than the date of service of this order, establish and implement, and thereafter maintain, a comprehensive privacy program for ~~Corporate Respondent and any covered entity~~ that is reasonably designed to: (1) address privacy risks related to the development and management of new and existing products and services for consumers, and (2) protect the privacy and confidentiality of personal information. Such program, the content and implementation of which must be documented in writing, shall contain privacy controls and procedures appropriate to ~~Corporate Respondent's or the covered entity's~~ size and complexity, the nature and scope of ~~Corporate Respondent's or the covered entity's~~ activities, and the sensitivity of the personal information, including:

- A. the designation of an employee or employees to coordinate and be responsible

for the privacy program.

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- B. the identification of reasonably foreseeable, material risks, both internal and external, that could result in the Respondent's unauthorized collection, use, or disclosure of personal information; and an assessment of the sufficiency of any safeguards in place to control these risks. At a minimum, this privacy risk assessment should include consideration of risks in each area of relevant operation, including, but not limited to: (1) employee training and management, including training on the requirements of this order, and (2) product design, development, and research.
- C. the design and implementation of reasonable ~~privacy~~ controls and procedures to address the risks identified through the privacy risk assessment, and regular testing or monitoring of the effectiveness of those ~~privacy~~ controls and procedures.
- D. the development and use of reasonable steps to select and retain service providers capable of appropriately protecting the privacy of personal information they receive from ~~Corporate Respondent or the covered entity~~, and requiring service providers, by contract, to implement and maintain appropriate privacy protections.
- E. the evaluation and adjustment of ~~Corporate Respondent's or the covered entity's~~ privacy program in light of the results of the testing and monitoring required by subpart C, any material changes to ~~Corporate Respondent's or the covered entity's~~ operations or business arrangements, or any other circumstances that ~~Corporate Respondent or the covered entity~~ knows or has reason to know may have a material impact on the effectiveness of its privacy program.

VI.

IT IS FURTHER ORDERED that, in connection with their compliance with Part ~~V~~IV of this order, Respondents shall obtain initial and biennial assessments and reports ("Assessments") for ~~Corporate Respondent and any covered entity~~ from a qualified, objective, independent third-party professional, who uses procedures and standards generally accepted in the profession. A person qualified to prepare such Assessments shall have a minimum of three (3) years of experience in the field of privacy and data protection. All persons ~~conducting~~selected to conduct such Assessments and ~~preparing~~prepare such reports shall be approved by the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, in his or her sole discretion. The reporting period for the Assessments shall cover: (1) the first one hundred and eighty (180) days after service of the order for the initial Assessment, and (2) each two (2) year period thereafter for twenty (20) years after service of the order for the biennial Assessments.— Each Assessment shall:

- STAFF PROPOSAL**
- A. ~~set forth the specific privacy controls that Corporate Respondent or the covered entity has implemented and maintained during the reporting period;~~
 - B. explain how such privacy controls are appropriate to ~~Corporate Respondent's~~ or the covered entity's size and complexity, the nature and scope of ~~Corporate Respondent's~~ or the covered entity's activities, and the sensitivity of the personal information;
 - C. explain how the privacy controls that have been implemented meet or exceed the protections required by Part VI of this order; and
 - D. certify that the privacy controls are operating with sufficient effectiveness to provide reasonable assurance to protect the privacy of personal information and that the controls have so operated throughout the reporting period.

Each Assessment shall be prepared and completed within sixty (60) days after the end of the reporting period to which the Assessment applies. ~~Corporate Respondent and any covered entity~~ shall provide the initial Assessment to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, within ten (10) days after the Assessment has been prepared. All subsequent biennial Assessments shall be retained by Respondents until the order is terminated and provided to the Associate Director of Enforcement within ten (10) days of request.

VII.

IT IS FURTHER ORDERED that Respondents shall pay xxx to the Federal Trade Commission, as follows:

- A. prior to or concurrently with the execution of this order, Respondents shall transfer the amount specified in this Part to their undersigned counsel, who shall hold the sum in escrow for no purpose other than payment to the Commission.
- B. within five (5) days of entry of this order, counsel for Respondents shall transfer the sum to the Commission by electronic funds transfer in accordance with instructions provided by a representative of the Commission.
- C. in the event of any default in payment, interest shall accrue, computed pursuant to 28 U.S.C. § 1961, from the date of default to the date of payment.
- D. all funds paid to or received by the Commission pursuant to this Part shall be deposited into a fund administered by the Commission or its agent. In the event that direct restitution to consumers is wholly or partially impracticable or funds remain after restitution is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies), as it determines to be reasonably related to ~~Respondents'~~ Respondent's practices as alleged in the complaint. Any funds not used for such equitable relief will be

deposited with the United States Treasury as disgorgement. Respondents shall have no right to challenge the Commission's choice of remedies under this Part. Respondents shall have no right to contest the manner of distribution chosen by the Commission.

- E. Respondents relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Respondents shall make no claim to or demand return of the funds, directly or indirectly, through counsel or otherwise.
- F. this order for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture.

VH VII.-

IT IS FURTHER ORDERED that Respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying, a print or electronic copy of:

- A. for a period of five~~three~~ (53) years from the date of preparation or dissemination, whichever is later, all widely disseminated statements that describe the extent to which ~~Corporate Respondent or any covered entity~~ maintains and protects the privacy, security, and confidentiality of any personal information, including, but not limited to, any statement related to a change in any website or service controlled by ~~Corporate Respondent or the covered entity~~ that relates to the privacy, security, and confidentiality of personal information, with all materials relied upon in making or disseminating such statements;
- B. for a period of five~~six~~ (56) ~~years~~months from the date received, all consumer complaints directed at ~~Corporate Respondent or a covered entity~~, or forwarded to ~~Corporate Respondent or a covered entity~~ by a third party, that relate to the conduct prohibited by this order and any responses to such complaints;
- ~~C. for a period of five (5) years from the date received, copies of all subpoenas and other communications with law enforcement entities or personnel, if such communications raise issues that relate to Corporate Respondent's or a covered entity's compliance with the provisions of this order;~~
- C. for a period of five (5) years from the date received, any documents, ~~whether~~ prepared by or on behalf of ~~Corporate Respondent or a covered entity~~, that contradict, qualify, or call into question ~~Corporate Respondent's or the covered entity's~~ compliance with this order;
- D. for a period of five~~three~~ (53) years from the date of preparation or dissemination, whichever is later, each materially different document relating to ~~Corporate Respondent's or a covered entity's~~ attempt to obtain the affirmative express consent of consumers referred to in Parts ~~H and III~~ II above, and copies of sample

documents demonstrating such consent; and
E. ~~or a period of five~~ three (3) years after the date of preparation of each Assessment required under Part VI of this order, all materials relied upon to prepare the Assessment, whether prepared by or on behalf of ~~Corporate Respondent or a covered entity,~~ including but not limited to all plans, reports, studies, reviews, audits, audit trails, policies, training materials, and assessments, for the compliance period covered by such Assessment.

VIXII.

IT IS FURTHER ORDERED that Respondents shall deliver copies of the order as directed below:

- A. ~~Corporate~~ Respondent must deliver a copy of this order to (1) all current and future principals, officers, directors, and managers; (2) all current and future employees, agents, and representatives having supervisory responsibilities relating to the subject matter of this order, and (3) any business entity resulting from any change in structure set forth in Part ~~XIX~~. ~~Corporate~~ Respondent shall deliver this order to such current personnel within thirty (30) days after service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities. For any business entity resulting from any change in structure set forth in Part ~~XIX~~, delivery shall be at least ten (10) days prior to the change in structure;
- B. Individual Respondent, for any covered entity, must deliver a copy of this order to (1) all principals, officers, directors, and managers of that business, (2) all current and future employees, agents, and representatives of that business having responsibilities relating to the subject matter of this order, and (3) any business entity resulting from any change in structure set forth in Part XI. Individual Respondent shall deliver this order to such current personnel within thirty (30) days after service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities. For any business entity resulting from any change in structure set forth in Part XI, delivery shall be at least ten (10) days prior to the change in structure;
- ~~C. for any business that collects, maintains, or stores personal information from or about consumers, where Individual Respondent is not a controlling person of the business, but he otherwise has responsibility, in whole or in part, for developing or overseeing the implementation of policies and procedures to protect the privacy, security, confidentiality, or integrity of personal information collected from or about consumers by the business, Individual Respondent must deliver a copy of this order to all principals and managers of such business before engaging in such conduct; and~~
- ~~D. Respondents~~ Respondent must secure a signed and dated statement acknowledging

receipt of this order, within thirty (30) days of delivery, from all persons receiving
copy of this order pursuant to this Part.

STAFF PROPOSAL

X.

~~IT IS FURTHER ORDERED that Individual Respondent for a period of ten (10) years from the date of entry of this order, shall notify the Commission of the following:~~

- ~~A. any changes in Individual Respondent's residence, mailing address, and or telephone numbers, within ten (10) days of such a change;~~
- ~~B. any changes in Individual Respondent's business or employment status (including self-employment), and any changes in his ownership in any business entity, within ten (10) days of such a change. Such notice shall include the name and address of each business that Individual Respondent is affiliated with, employed by, created or forms, or performs services for; a detailed description of the nature of the business or employment; and a detailed description of the Individual Respondent's duties and responsibilities in connection with such business or employment; and~~
- ~~C. any changes in Individual Respondent's name or use of any aliases or fictitious names, including "doing business as" names.~~

~~Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580, with the subject line *In the matter of Facebook, Inc. and Mark Zuckerberg*, FTC File No. [—]. Provided, however, that in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of any such notice is contemporaneously sent to the Commission at Debrief@ftc.gov.~~

XIX.

~~IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any change in Corporate Respondent or any covered entity that may affect compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in either corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which Respondents learn ~~less~~ fewer than thirty (30) days prior to the date such action is to take place, Respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580, with the~~

subject line *In the Matter of Facebook, Inc. and Mark Zuckerberg*, FTC File No. [].
Provided, however, that in lieu of overnight courier, notices may be sent by first class mail, but only if an electronic version of any such notice is contemporaneously sent to the Commission at Debrief@ftc.gov.

STAFF PROPOSAL

XII.

IT IS FURTHER ORDERED that Respondents, within sixty (60) days after the date of service of this order, shall each file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of their own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, they Respondent shall submit additional true and accurate written reports.

XIII.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. any Part of this order that terminates in fewer than twenty (20) years; and
- B. this order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that Respondent(s) did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that this order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this _____ day of _____, 2011.

FACEBOOK, INC.

By: _____
[INSERT NAME]
Facebook, Inc.

STAFF PROPOSAL

By: MARK ZUCKERBERG, individually and as
Chief Executive Officer, Facebook, Inc.

FEDERAL TRADE COMMISSION

LAURA D. BERGER
CORA TUNG HAN
MANAS MOHAPATRA
Counsel for the Federal Trade Commission

APPROVED:

MANEESHA MITHAL
Associate Director
Division of Privacy and Identity Protection

CHRISTOPHER N. OLSEN
Assistant Director
Division of Privacy and Identity Protection

DAVID C. VLADECK
Director
Bureau of Consumer Protection

From: Matties, Deborah J.
Sent: 12 May 2011 22:31:05 -0400
To: JDL
Cc: Lupovitz, Joni;DeLorme, Christine Lee
Subject: Fw: Confidential letter from Facebook
Attachments: Leibowitzltr.pdf

Jon - Sean Royall, who you met this week at the Leon Max meeting, asked me to send this letter to you. In it, (b)(4); (b)(3):6(f)

(b)(4); (b)(3):6(f)

I will respond to him that I received it and transmitted it to you. Let me know if there is anything else you want me to convey.

Should I send this to Will Tom?

-- Debbie

From: Royall, M. Sean [mailto:SRoyall@gibsondunn.com]
Sent: Thursday, May 12, 2011 09:54 PM
To: Matties, Deborah J.
Subject: Confidential letter

Hi, Deborah.

The attached letter to Chairman Leibowitz concerns the Commission's privacy-related investigation of Facebook. Could you provide it to the Chairman for me? I will also have a hard copy delivered tomorrow.

Thanks,

Sean

M. Sean Royall

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

1050 Connecticut Avenue
NW, Washington, DC 20036
Tel 202.955.8546 • Fax 202.530.9337

2100 McKinney Avenue
Dallas, TX 75201-6912
Tel +1 214.698.3256 • Fax +1 214.571.2923

SRoyall@gibsondunn.com • www.gibsondunn.com

From: Royall, M. Sean
Sent: 20 May 2011 03:31:50 +0000
To: Mithal, Maneesha;Berger, Laura
Cc: Scalia, Eugene;Beringer, Ashlie
Subject: Facebook White Paper
Attachments: Vladeck Ltr (May 19, 2011).pdf, Facebook White Paper (May 19, 2011).pdf, Facebook White Paper Appendix (May 19, 2011).pdf

Maneesha and Laura,

On behalf of Facebook, I am attaching a white paper and associated appendix, and a related cover letter. I spoke briefly today with David Vladeck, who suggested that I email these documents to you for distribution within the Commission. Hard copies will be delivered tomorrow morning.

Regards,

Sean

M. Sean Royall

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

1050 Connecticut Avenue
NW, Washington, DC 20036
Tel 202.955.8546 • Fax 202.530.9337

2100 McKinney Avenue
Dallas, TX 75201-6912
Tel +1 214.698.3256 • Fax +1 214.571.2923

SRoyall@gibsondunn.com • www.gibsondunn.com

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CONFIDENTIAL AND PROPRIETARY
RULE 408 SETTLEMENT MATERIAL

May 19, 2011

VIA ELECTRONIC AND OVERNIGHT MAIL

David C. Vladeck, Esq.
Director, Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Re: *Facebook, Inc.*

Dear Mr. Vladeck:

As you know, Facebook for more than a year has been actively working with the Bureau of Consumer Protection Staff to respond to the Commission's Civil Investigative Demand and various supplemental information requests, and to explore the potential for a voluntary resolution of various claims and remedial demands asserted in the Staff's draft complaint and proposed consent order. For a period of sixty days concluding earlier this week, Facebook and its counsel engaged in detailed discussions and negotiations with Staff, hoping to arrive at an agreement on mutually acceptable terms by which this matter could be resolved. Despite diligent efforts, these Staff-level discussions did not yield any final agreement. Facebook believes the discussions were fruitful in many respects and was prepared to continue the process, but the Company's request to extend the negotiation period was denied.

We understand Staff is now preparing a complaint recommendation that will be forwarded to your office upon completion, and that we will have the opportunity thereafter to meet with you. Facebook looks forward to interacting directly with you and other senior Bureau representatives, and remains committed to investigating possible paths to settling this matter.

(b)(4); (b)(3):6(f)

At Staff's urging, we have until now largely refrained from commenting upon the merits of the underlying claims, or the legal underpinnings of the proposed relief. Yet at this juncture

David C. Vladeck, Esq.
May 19, 2011
Page 2

CONFIDENTIAL AND PROPRIETARY
RULE 408 SETTLEMENT MATERIAL

we believe it would be productive for the Bureau to consider Facebook's views on these issues, which have been set forth in some detail in the attached white paper. You and your colleagues may well disagree with many points made in this white paper, but it would be immensely helpful to us, as we proceed with senior-level discussions, to hear your thoughts and reactions. Perhaps you will persuade us to adopt different views on certain important issues, or we might succeed in persuading you. Either way, an open, substantive dialogue on key issues could help bridge the gaps that remain between our respective positions, and we hope you will accept the invitation to engage with us at that level.

Sincerely,



M. Sean Royall
MSR/jlw

Attachments

cc: Eugene Scalia, Esq.
Ashlie Beringer, Esq.
Maneesha Mithal, Esq.
Laura Berger, Esq.



THE CHAIRMAN

FEDERAL TRADE COMMISSION

WASHINGTON, D.C. 20580

June 7, 2011

M. Sean Royall, Esq.
Gibson, Dunn & Crutcher LLP
2100 McKinney Avenue
Dallas, TX 75201-6912

Dear Mr. Royall:

This responds to your May 12, 2011 letter concerning (b)(4); (b)(3):6(f)
(b)(4); (b)(3):6(f). I appreciate your bringing these concerns to my attention.

(b)(4); (b)(3):6(f)

As someone who worked here, Sean, you know that we have a highly professional staff (b)(4); (b)(3):6(f). Nevertheless, I am mindful of the concerns you have raised, and have taken appropriate action to address them.

Again, I appreciate your bringing this matter to my attention.

Sincerely,

Jon Leibowitz
Chairman

From: Nishiguchi, Lorraine
Sent: 25 Aug 2011 18:18:05 +0000
To: Berger, Laura
Cc: Olsen, Christopher; Han, Cora Tung; Beringer, Ashlie; Royall, M. Sean
Subject: Facebook, Inc.
Attachments: L. Berger ltr.pdf
Importance: High

Attached is correspondence addressed to you from S. Ashlie Beringer, dated August 25, 2011, regarding Facebook, Inc. Please contact me if you have any questions or concerns. Thank you.

Lorraine Nishiguchi
Legal Secretary

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
1881 Page Mill Road, Palo Alto, CA 94304-1211
(b)(6)
(b)(6) * www.gibsondunn.com

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CONFIDENTIAL

August 25, 2011

VIA ELECTRONIC MAIL

Laura Berger, Esq.
Federal Trade Commission
601 New Jersey Avenue, NW
Mail Stop NJ-8122
Washington, DC 20001

Re: Facebook, Inc.

Dear Laura:

This responds to your email of August 24, 2011. We were surprised by your recent statement that Staff sees no point in continued settlement negotiations, particularly given the significant progress we have recently made resolving several of the remaining key issues with the draft consent order. We also did not understand your decision to cancel our scheduled meeting yesterday with Jim Kohm. We requested that meeting because we

(b)(4); (b)(3):6(f)

GIBSON DUNN

Laura Berger, Esq.
August 25, 2011
Page 4

(b)(4); (b)(3):6(f)

(b)(4); (b)(3):6(f)

We are happy to address these issues at the Bureau Director level, to the extent that Staff believes the continued discussion of these points would be futile.

Sincerely,



S. Ashlie Beringer

SAB/ln

cc: Christopher Olsen, Esq.
Cora Han, Esq.
M. Sean Royall, Esq.

101139571.1

From: Berger, Laura
Sent: 13 Sep 2011 18:33:23 +0000
To: Beringer, Ashlie (ABeringer@gibsondunn.com)
Cc: Li, Daniel Y. (DLi@gibsondunn.com); Han, Cora Tung; Mohapatra, Manas; Royall, M. Sean (SRoyall@gibsondunn.com)
Subject: Facebook, Inc.; Response to your August 25th letter
Attachments: SCAN8269_000.pdf

Hi Ashlie,

Please find attached a letter responding to your August 25th letter.

Best,
Laura



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Laura D. Berger
Attorney
Division of Privacy and Identity Protection

Direct Dial: 202.326.2471
Fax : 202.326.3062
E-mail: lberger@ftc.gov

September 13, 2011

VIA ELECTRONIC MAIL

S. Ashlie Beringer
Gibson, Dunn & Crutcher LLP
1881 Page Mill Road
Palo Alto, CA 94304-1211

Re: Facebook, Inc.

Dear Ashlie:

I am writing in response to your letter dated August 25, 2011, regarding our mutual efforts to reach a voluntary settlement of alleged law violations by your client, Facebook, Inc. ("Facebook"). (b)(4); (b)(3):6(f)

(b)(4); (b)(3):6(f)

On August 23, 2011, you stated that (b)(4); (b)(3):6(f)

(b)(4); (b)(3):6(f)

willingness to concede these points, and we had made concessions in response. We discuss these requirements, and Facebook's responses to them, below.

¹ Your position is reflected in the offer that you emailed to us on August 23, 2011 ("final Facebook offer"), and in your August 25th letter (collectively, "Facebook's responses").

(b)(4); (b)(3):6(f)

Your letter is certainly correct that we have made substantial progress in addressing outstanding issues in these negotiations. Although we are moving ahead with our complaint recommendation, we welcome the opportunity for further progress within the parameters outlined above.

Sincerely,



Laura D. Berger

From: Beringer, Ashlie
Sent: 20 Sep 2011 21:08:42 +0000
To: Berger, Laura
Cc: Olsen, Christopher; Han, Cora Tung; Mohapatra, Manas; Royall, M. Sean; Li, Daniel Y.
Subject: Response to your September 13, 2011 letter
Attachments: 9-20-11 ltr to L Berger.pdf

Hi Laura -

I'm forwarding a response to your September 13, 2011 letter. Let me know if you'd like to arrange a time to follow up on these issues once you've had an opportunity to review this internally.

Best,
Ashlie
Ashlie Beringer

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
1881 Page Mill Road, Palo Alto, CA 94304-1211
Tel +1 650.849.5219 • Fax +1 650.849.5019
ABeringer@gibsondunn.com • www.gibsondunn.com

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CONFIDENTIAL SETTLEMENT COMMUNICATION

September 20, 2011

Via Electronic Mail

Laura D. Berger, Esq.
Federal Trade Commission
601 New Jersey Avenue, NW
Mail Stop NJ-8122
Washington, DC 20001

Re: Facebook, Inc.

Dear Laura:

Thank you for your letter of September 13, 2011. We wanted to clarify and respond to a few points raised in your letter, before outlining a possible path forward given the respective positions outlined in our recent correspondence.

(b)(4); (b)(3):6(f)

Laura D. Berger, Esq.
September 20, 2011
Page 4

(b)(4); (b)(3):6(f)

We believe it would be productive to explore the potential to resolve the few, but important, open issues along these lines - (b)(4); (b)(3):6(f)

(b)(4); (b)(3):6(f) We are available to discuss these issues further with Staff (or with the Bureau Director, if preferable) at your convenience.

Very truly yours,



S. Ashlie Beringer

SAB/ln

cc: Cora Han, Esq.
Chris Olson, Esq.
M. Sean Royall, Esq.
(via electronic mail)

101153989.1