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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10

11 KEITH CARROLL, individually and on
behalf of all others similarly situated,

12 Plaintiff,

13 v.
14

15 CHICK-FIL-A, INC., a Georgia
corporation; and DOES 1 through 10,
inclusive,

16 Defendants.
17

Case No.: 3:23-cv-314

CLASS ACTION COMPLAINT

1 **I. INTRODUCTION**

2 1. Whenever someone watches a video on www.evergreenhills.com (the
3 “Website”), Defendants secretly report all the details to Facebook: the visitor’s
4 personally identifiable information (“PII”), the titles watched, and more. Why? Data
5 harvesting and targeted advertising.

6 2. As shown below, Defendants’ actions violate the Video Privacy Protection
7 Act of 1988, Pub L. No. 100-618, § 2, 102 Stat. 3195, 18 U.S.C. §§ 2710 *et seq.*
8 (“VPPA”). As such, Defendants are liable to each class member for \$2,500 and related
9 relief.

10 **II. JURISDICTION AND VENUE**

11 3. This Court has subject matter jurisdiction over this action pursuant to 28
12 U.S.C. § 1331 because it arises under the VPPA, a federal law.

13 4. Venue is proper pursuant to 28 U.S.C. § 1391 because a substantial part of
14 the acts and events giving rise to the class claims occurred in this District.

15 5. Defendants are subject to personal jurisdiction because they have sufficient
16 minimum contacts with California and do business with California residents.

17 **III. PARTIES**

18 6. Plaintiff is an individual consumer advocate who watched a video on the
19 Website.

20 7. Defendant is a Georgia corporation that owns, operates, and/or controls the
21 Website.

22 8. The above-named Defendants, along with their affiliates and agents, are
23 collectively referred to as “Defendants.” The true names and capacities of the
24 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently
25 unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of
26 the Defendants designated herein as a DOE is legally responsible for the unlawful acts
27 alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the
28 true names and capacities of the DOE Defendants when such identities become known.

1 9. Plaintiff is informed and believes and thereon alleges that at all relevant
 2 times, every Defendant was acting as an agent and/or employee of each of the other
 3 Defendants and was acting within the course and scope of said agency and/or
 4 employment with the full knowledge and consent of each of the other Defendants, and
 5 that each of the acts and/or omissions complained of herein was ratified by each of the
 6 other Defendants.

7 **IV. FACTUAL ALLEGATIONS**

8 **A. THE FACEBOOK TRACKING PIXEL**

9 10. Facebook is a social networking company where users are required to
 10 identify themselves by “the name they go by in everyday life.”¹ To create a Facebook
 11 account, a user must provide first name, last name, date of birth and gender.²

12 11. Facebook generates revenue by selling advertising space on its website
 13 based upon its ability to identify user interests.³ Facebook can identify user interests by
 14 monitoring “offsite” user activity, which allows Facebook to judge user interests
 15 beyond what users freely disclose.⁴

16 12. Facebook enables advertisers to identify “people who have already shown
 17 interest in [their] business”, which Facebook calls “Custom Audiences.”⁵ The Custom
 18 Audiences tool requires advertisers to supply user data to Facebook, and most do so via
 19 the Facebook Tracking Pixel.⁶

20 ¹ FACEBOOK, COMMUNITY STANDARDS, PART IV INTEGRITY AND
 21 AUTHENTICITY, https://www.facebook.com/communitystandards/integrity_authenticity (last visited
 22 January 2023).

² FACEBOOK, SIGN UP, <https://www.facebook.com/> (last visited January 2023).

³ FACEBOOK, WHY ADVERTISE ON FACEBOOK, <https://www.facebook.com/business/help/20502906038706> (last visited January 2023).

⁴ FACEBOOK, AD TARGETING: HELP YOUR ADS FIND THE PEOPLE WHO
 24 WILL LOVE YOUR BUSINESS, <https://www.facebook.com/business/ads/ad-targeting>
 25 (last visited January 2023).

⁵ FACEBOOK, ABOUT EVENTS CUSTOM AUDIENCE, <https://www.facebook.com/business/help/366151833804507?id=300360584271273>
 26 (last visited January 2023).

⁶ FACEBOOK, CREATE A CUSTOMER LIST CUSTOM AUDIENCE, <https://www.facebook.com/business/help/170456843145568?id=2469097533764> 94
 27 (last visited January 2023); FACEBOOK, CREATE A WEBSITE CUSTOM
 28 AUDIENCE,

Continued on the next page

1 13. The Facebook Tracking Pixel is a device included programming code that
 2 advertisers can integrate into their website. Once activated, the Facebook Tracking
 3 Pixel “tracks the people and type of actions they take.”⁷ When the Facebook Tracking
 4 Pixel captures an action, it sends a record to Facebook, which Facebook then
 5 assimilates into the Custom Audiences dataset.

6 14. Advertisers control what actions—or, as Facebook calls it, “events”—the
 7 Facebook Tracking Pixel will collect, including the website’s metadata, along with what
 8 pages a visitor views.⁸

9 15. Advertisers control how the Facebook Tracking Pixel identifies visitors.
 10 The Facebook Tracking Pixel is configured to automatically collect “HTTP Headers”
 11 and “Pixel-specific Data.”⁹ HTTP Headers collect “IP addresses, information about the
 12 web browser, page location, document, referrer and persons using the website.”¹⁰ Pixel-
 13 specific Data includes “the Pixel ID and cookie.”¹¹

14 **B. DEFENDANTS ARE A “VIDEO TAPE SERVICE PROVIDER” UNDER**
 15 **THE VPPA.**

16 16. Defendants are engaged in the business of “rental, sale, *or delivery of*
 17 *prerecorded video cassette tapes or similar audio visual materials.*” 18 U.S.C. §
 18 2710(a)(4) (emphasis added). Specifically, Defendants’ business model involves
 19 monetizing videos.

20 17. The Website hosts and delivers content including videos.

21
 22 _____
 23 Continued from the previous page

24 <https://www.facebook.com/business/help/1474662202748341?id=2469097953376494>
 25 (last visited January 2023).

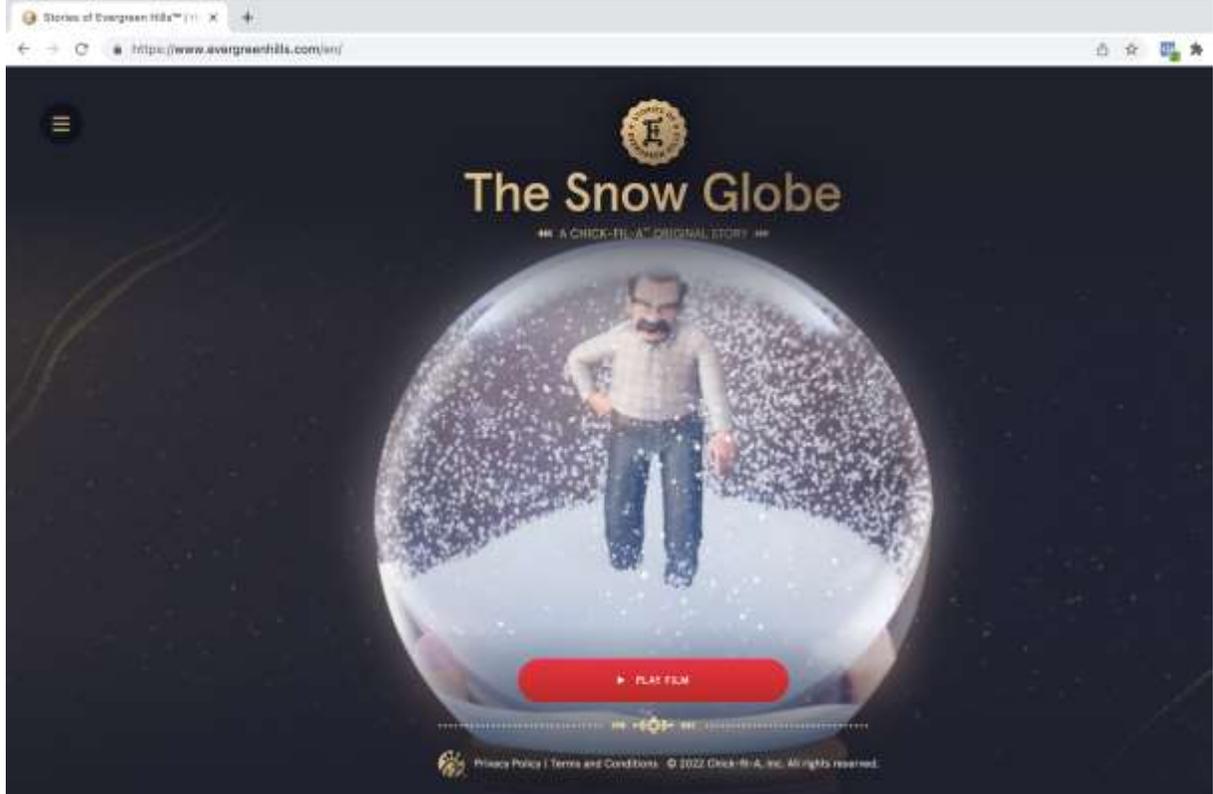
26 ⁷ FACEBOOK, RETARGETING, <https://www.facebook.com/business/oals/reta> getting.
 27 ⁸ See FACEBOOK, FACEBOOK PIXEL, ACCURATE EVENT TRACKING,
 28 *ADVANCED*, <https://developers.facebook.com/docs/facebook-pixel/advanced/>; see also
 FACEBOOK, BEST PRACTICES FOR FACEBOOK PIXEL SETUP,
<https://www.facebook.com/business/help/218844828315224?id=1205376682832142>
 (last visited January 2023).

⁹ FACEBOOK, FACEBOOK PIXEL, <https://developers.facebook.com/docs/facebook-pixel/> (last visited January 2023).

¹⁰ *Id.*

¹¹ *Id.*

1 **Figure 1**



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16 **C. DEFENDANT DISCLOSES PII TO FACEBOOK.**

17 18. The VPPA defines PII to “include[]” “information which identifies a

18 person as having requested or obtained specific video materials or services from a video

19 tape service provider.” 18 U.S.C. § 2710(a)(3). This means “information that would

20 ‘readily permit an ordinary person to identify a specific individual's video-watching

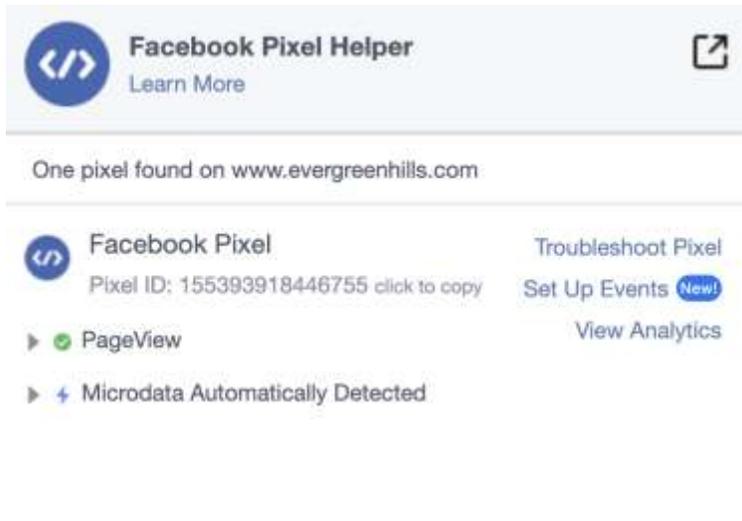
21 behavior.’ ” *Eichenberger v. ESPN, Inc.*, 876 F.3d 979, 985 (9th Cir. 2017) (quoting *In*

22 *re Nickelodeon Consumer Privacy Litig.*, 827 F.3d 262, 290 (3d Cir. 2016)).

23 19. Here, Defendant discloses information which allows Facebook (and any

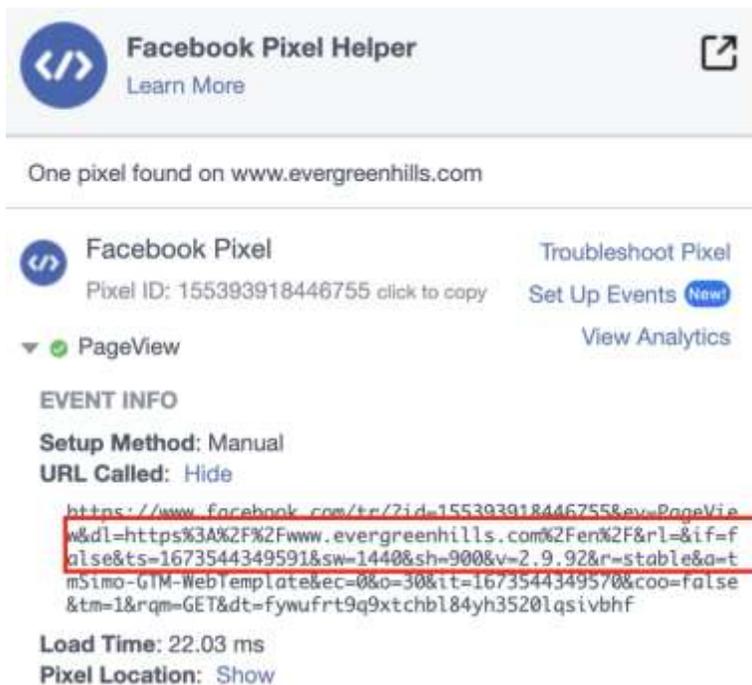
24 ordinary person) to identify a user’s video-watching behavior:

1 **Figure 2**



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10 20. Defendants have configured the PageView event to transmit the Universal
11 Resource Locator (“URL”) and the category of content selected.

12 **Figure 3**



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24 21. In the above figure, for example, Defendants disclose a webpage’s URL.
25 22. Microdata discloses the video’s title and other descriptors.

1 **Figure 4**



23. The “Button Click Automatically Detected” event discloses when the “Play Film” button is clicked by the visitor along with descriptive information about the button, page, and video.

1 **Figure 5**

2 **Facebook Pixel Helper** Learn More

3

4 One pixel found on www.evergreenhills.com

5 **Facebook Pixel** Troubleshoot Pixel
Pixel ID: 155393918446755 [click to copy](#) Set Up Events **New!**

6 **Button Click Automatically Detected** View Analytics

7

8 **CUSTOM PARAMETERS SENT**

9 **formFeatures:** []
buttonText: PLAY FILM
buttonFeatures: Hide

10

```
{ "classList": "bg-red bg-gradient-to-b from-red to-red-dark md:hover:from-red-dark md:hover:to-red opacity-100 w-[282px] sm:w-[300px] min-h-[48px] transition-all duration-500 ease-in-out flex items-center justify-center h-[48px] text-white text-center rounded-full type-button-primary inline-block", "destination": "", "id": "", "imageUrl": "linear-gradient(rgb(202, 15, 26), rgb(255, 3, 59))", "innerText": "PLAY FILM", "numChildButtons": 0, "tag": "button", "type": "button", "name": "", "value": "" }
```

11

12 **pageFeatures:** Hide

13

```
{ "title": "Stories of Evergreen Hills™ | Holiday Short Films by Chick-fil-A®" }
```

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16 24. The aggregate pixel events (Page View, Microdata Automatically
17 Detected, and Button Click Automatically Detected) permit an ordinary person to
18 identify a video's content, title, and location.

19 25. When a visitor watches a video on evergreenhills.com while logged into
20 Facebook, Defendants compel a visitor's browser to transmit the c_user cookie to
21 Facebook. The c_user cookie contains that visitor's unencrypted Facebook ID. When
22 accessing the above video, for example, Defendants compelled the browser to send nine
23 cookies:

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Figure 6

Name	Value	Domain
xs	41%3AitCotXRoSkdRkg%3...	.facebook.com
c_user	100087271304389	.facebook.com
presence	C%7B%22t3%22%3A%5B...	.facebook.com
sb	Z7VeY5082dzpP0ecvF3j2thu	.facebook.com
datr	ErdeY8DwZw6OUY5T3qHV...	.facebook.com
locale	en_US	.facebook.com
fr	0guCJWgHtnQ5r9aft.AWV5x...	.facebook.com
wd	1179x721	.facebook.com
dpr	2	.facebook.com

26. When a visitor's browser has recently logged out of Facebook, Defendants will compel the browser to send a smaller set of cookies:

Name	Value	Domain
locale	en_US	.facebook.com
fr	0guCJWgHtnQ5r9aft.AWUR...	.facebook.com
datr	ErdeY8DwZw6OUY5T3qHV...	.facebook.com
dpr	2	.facebook.com
wd	1179x721	.facebook.com
sb	Z7VeY5082dzpP0ecvF3j2thu	.facebook.com

Figure 7

27. The fr cookie contains an encrypted Facebook ID and browser identifier.¹² The datr cookie also identifies a browser.¹³ Facebook, at a minimum, uses the fr cookie to identify particular users.¹⁴

¹² DATA PROTECTION COMMISSIONER, FACEBOOK IRELAND LTD, REPORT OF RE-AUDIT (Sept. 21, 2012), http://www.europe-v-facebook.org/ODPC_Review.pdf (last visited January 2023).

¹³ FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES, <https://www.facebook.com/policy/cookies/> (last visited January 2023).

¹⁴ FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES, <https://www.facebook.com/policy/cookies/> (last visited January 2023).

1 28. Facebook, at a minimum, uses the fr and c_user cookies to link to
2 Facebook IDs and corresponding Facebook profiles.

3 29. A Facebook ID is personally identifiable information. Anyone can identify
4 a Facebook profile—and all personal information publicly listed on that profile—by
5 appending the Facebook ID to the end of Facebook.com.

6 30. Through the Facebook Tracking Pixel’s code, these cookies combine the
7 identifiers with the event data, allowing Facebook to know, among other things, what
8 evergreenhills.com videos a user has watched.¹⁵

9 31. By compelling a visitor’s browser to disclose the c_user cookie alongside
10 event data for videos, Defendants knowingly disclose information sufficiently
11 permitting an ordinary person to identify a specific individual’s video viewing behavior.

12 32. By compelling a visitor’s browser to disclose the fr cookie alongside event
13 data for videos, Defendants knowingly disclose information sufficient to permit an
14 ordinary person to identify a specific individual’s video viewing behavior.

15 33. By compelling a visitor’s browser to disclose the fr cookie and other
16 browser identifiers alongside event data for videos, Defendants knowingly disclose
17 information sufficiently permitting an ordinary person to identify a specific individual’s
18 video viewing behavior.

19 34. Facebook confirms that it matches activity on evergreenhills.com with a
20 user’s profile. Facebook allows users to download their “off-site activity,” which is a
21 “summary of activity that businesses and organizations share with us about your
22 interactions, such as visiting their apps or websites.”¹⁶ The off-site activity report
23 confirms that Defendants identify an individual’s video viewing activities.

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25 ¹⁵ FACEBOOK, GET STARTED, <https://developers.facebook.com/docs/meta-pixel/get-started> (last visited January 2023).

26 ¹⁶ See <https://www.facebook.com/help/2207256696182627> (Off-Facebook Activity is
27 only a “summary” and Facebook acknowledges “receiv[ing] more details and activity
28 than what appears in your Facebook activity.” What is more, it omits “information
we’ve received when you’re not logged into Facebook, or when we can’t confirm that
you’ve previously used Facebook on that device.”) (last visited January 2023).

1 **D. PLAINTIFF IS A “CONSUMER” UNDER THE VPPA.**

2 35. The VPPA defines the term “consumer” to mean “any renter, purchaser, or
3 subscriber of goods or services from a video tape service provider[.]” 18 U.S.C. §
4 2710(a)(1).

5 36. Plaintiff has eaten at Defendant’s restaurant before. As such, Plaintiff is a
6 purchaser of Defendant’s products and therefore a “consumer” under VPPA.

7 37. Plaintiff also downloaded Defendants’ mobile application onto Plaintiff’s
8 smartphone device, which established Plaintiff’s seamless access to Defendants’
9 Website. As such, Plaintiff is a “subscriber” of goods or services from a “video tape
10 service provider” within the meaning of 18 U.S.C. § 2710(a)(1). *See Yershov v.*
11 *Gannett Satellite Info. Network, Inc.*, 820 F.3d 482, 487-90 (1st Cir. 2016)
12 (“[Plaintiff’s] decision to download the App seems a fair enough indication that he
13 intended more than a one-shot visit.”).

14 38. Plaintiff watched at least one video on the Website within two years from
15 the date of the act complained of.

16 39. Plaintiff is a consumer privacy advocate with dual motivations for
17 watching a video on Defendants’ Website. First, Plaintiff was genuinely interested in
18 learning more about the goods and services offered by Defendants. Second, Plaintiff is
19 a “tester” who works to ensure that companies abide by the privacy obligations imposed
20 by federal law. As someone who advances important public interests at the risk of vile
21 personal attacks, Plaintiff should be “praised rather than vilified.” *Murray v. GMAC*
22 *Mortgage Corp.*, 434 F.3d 948, 954 (7th Cir. 2006).

23 40. In enacting the VPPA, Congress deliberately chose to extend its
24 protections to a “consumer” even if such consumer is not a “purchaser” of the goods or
25 services of a “video tape service provider”. *Yershov*, 820 F.3d at 487 (“Congress would
26 have had no need to include a third category of persons protected under the Act if it had
27 intended that only persons who pay money for videos be protected, which militates
28 against an interpretation of the statute incorporating such an element.”). As such,

1 statutes like the VPPA are largely enforced by civic-minded “testers” such as Plaintiff.
2 *See Tourgeman v. Collins Fin. Servs., Inc.*, 755 F.3d 1109, 1115-16 (9th Cir. 2014)
3 (explaining why testers have Article III standing and generally discussing why plaintiffs
4 who enforce consumer protection and civil rights statutes need not demonstrate
5 monetary damages or even mental distress in order to suffer an Article III injury in
6 fact).¹⁷

7 41. During the class period, Plaintiff visited evergreenhills.com and watched
8 one or more videos.

9 42. When Plaintiff watched videos on evergreenhills.com, Defendants
10 disclosed event data, which recorded and disclosed the video’s title, description, and
11 URL, to Facebook. Alongside this event data, Defendants also disclosed identifiers for
12 Plaintiff, including the c_user and fr cookies. In other words, Defendants did exactly
13 what the VPPA prohibits: they disclosed Plaintiff’s video viewing habits to a third
14 party.

15 43. Given the nature of Defendants’ business, visitors would be shocked and
16 appalled to know that Defendants secretly disclose to Facebook all of the key data
17 regarding a visitor’s viewing habits.

18 44. Defendants’ conduct is illegal, offensive, and contrary to visitor
19 expectations: indeed, a recent study conducted by the Electronic Privacy Information
20 Center, a respected thought leader regarding digital privacy, found that: (1) nearly 9 in
21 10 adults are “very concerned” about data privacy, and (2) 75% of adults are unaware of
22 the extent to which companies gather, store, and exploit their personal data.

23
24 ¹⁷ Civil rights icon Rosa Parks was acting as a “tester” when she initiated the
25 Montgomery Bus Boycott in 1955, as she voluntarily subjected herself to an illegal
26 practice to obtain standing to challenge the practice in Court. *See*
27 <https://www.naacpldf.org/press-release/ldf-pays-tribute-to-rosa-parks-on-the-sixtieth-anniversary-of-her-courageous-stand-against-segregation/> “(Contrary to popular myth, Rosa Parks was not just a tired seamstress who merely wanted to sit down on a bus seat that afternoon. She refused to give up her seat on principle. Parks had long served as the secretary of the Montgomery branch of the NAACP [and] challenging segregation in Montgomery’s transportation system was on the local civil rights agenda for some time.”) (last visited Jan. 2023).
28

1 45. By disclosing Plaintiff’s event data and identifiers to Facebook, Defendant
2 knowingly disclosed Plaintiff’s PII to a third-party.

3 **V. CLASS ALLEGATIONS**

4 46. Plaintiff brings this action individually and on behalf of all others similarly
5 situated (the “Class”) defined as follows:

6 **All persons in the United States who are consumers under VPPA who**
7 **watched video content on evergreenhills.com or any other website owned,**
8 **operated, or controlled by Defendants and whose personally identifiable**
9 **information was disclosed by Defendants to Facebook or any other third**
10 **party during the class period.**

11 47. **Numerosity (Fed. R. Civ. P. 23(a)(1)):** At this time, Plaintiff does not
12 know the exact number of members of the aforementioned Class. However, given the
13 popularity of Defendant’s Website, the number of persons within the Class is believed
14 to be so numerous that joinder of all members is impractical.

15 48. **Commonality and Predominance (Fed. R. Civ. P. 23(a)(2), 23(b)(3)):**
16 There is a well-defined community of interest in the questions of law and fact involved
17 in this case. Questions of law and fact common to the members of the Class that
18 predominate over questions that may affect individual members of the Class include:

- 19 a) whether Plaintiff and the Class are within the definition of the term,
20 “consumer,” used in the VPPA;
21 b) whether Defendants collected Plaintiff’s and the Class’s PII;
22 c) whether Defendants unlawfully disclosed and continue to disclose their
23 users’ PII in violation of the VPPA;
24 d) whether Defendants’ disclosures were committed knowingly; and
25 e) whether Defendants disclosed Plaintiff’s and the Class’s PII without
26 consent.

27 49. **Typicality (Fed. R. Civ. P. 23(a)(3)):** Plaintiff’s claims are typical of
28 those of the Class because Plaintiff, like all members of the Class, used

1 advertisements.

2 54. Plaintiff and members of the Class are “consumers” because they have
3 either downloaded Defendant’s mobile device application or purchased Defendant’s
4 goods or services and have watched videos on WEBSITE.com. 18 U.S.C. § 2710(a)(1).

5 55. Defendants disclosed to a third party, Facebook, Plaintiff’s and the Class
6 members’ PII. Defendants utilized the Facebook Tracking Pixel to compel Plaintiff’s
7 web browser to transfer Plaintiff’s identifying information, like Plaintiff’s Facebook ID,
8 along with Plaintiff’s event data, like the title of the videos that Plaintiff viewed.

9 56. Plaintiff and the Class members viewed videos using evergreenhills.com.

10 57. Defendants knowingly disclosed Plaintiff’s PII because they used that data
11 to build audiences on Facebook and retarget Plaintiff and Class members for
12 Facebook’s advertising campaigns.

13 58. Defendants did not obtain the informed, written consent of Plaintiff or the
14 Class members to disclose PII concerning Plaintiff or the Class members to third
15 parties.

16 59. Defendant’s disclosures were not made in the “ordinary course of
17 business” as the term is defined by the VPPA because they were not necessary for “debt
18 collection activities, order fulfillment, request processing, [or] the transfer of
19 ownership.” 18 U.S.C. § 2710(a)(2).

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff seeks judgment against Defendants, individually and on
22 behalf of all others similarly situated, as follows:

- 23 a. For an order certifying the Class under Rule 23 of the Federal Rules of
24 Civil Procedure, naming Plaintiff as representative of the Class;
- 25 b. For an order declaring that Defendants’ conduct violates the VPPA;
- 26 c. For an order finding in favor of Plaintiff and the Class on all claims
27 asserted herein;
- 28 d. An award of statutory damages under the VPPA;

- e. An award of punitive damages;
- f. For prejudgment interest on all amounts awarded;
- g. For injunctive relief to stop the illegal conduct; and
- h. For an order awarding Plaintiff and the Class their reasonable attorneys' fees and other litigation costs reasonably incurred.

Dated: January 22, 2023

PACIFIC TRIAL ATTORNEYS
A Professional Corporation



By: _____
Scott J. Ferrell
Attorneys for Plaintiff

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Chick-Fil-A Secretly Shares Consumer Video-Viewing Data with Facebook](#)
