

1 Stuart G. Gross (#251019)
Benjamin H. Klein (#313922)
2 GROSS & KLEIN LLP
The Embarcadero, Pier 9, Suite 100
3 San Francisco, CA 94111
(415) 671-4628
4 sgross@grosskleinlaw.com
bklein@grosskleinlaw.com

5 Of counsel:

6 David S. Godkin (admitted *pro hac vice*)
7 James E. Kruzer (admitted *pro hac vice*)
BIRNBAUM & GODKIN, LLP
8 280 Summer Street
Boston, MA 02210
9 (617) 307-6100
godkin@birnbaumgodkin.com
10 kruzer@birnbaumgodkin.com

11 Attorneys for Plaintiff,
SIX4THREE, LLC, a Delaware
12 limited liability company

13 SUPERIOR COURT OF CALIFORNIA

14 COUNTY OF SAN MATEO

15 SIX4THREE, LLC, a Delaware limited
liability company,

16 Plaintiff,

17 v.

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

22 Defendants.
23 _____
24
25
26
27
28

) Case No. CIV 533328
)
)

) **Assigned For All Purposes To Hon. V.**
) **Richard Swope**
)

) **DECLARATION OF DAVID S.**
) **GODKIN IN OPPOSITION TO**
) **DEFENDANTS' SPECIAL MOTIONS**
) **TO STRIKE (ANTI-SLAPP)**
) UNREDACTED VERSION OF DOCUMENT SOUGHT TO BE LODGED UNDER SEAL

HEARING DATE: July 2, 2018

HEARING TIME: 9:00 a.m.

DEPARTMENT 23

JUDGE: Hon. V. Raymond Swope

FILING DATE: April 10, 2015

TRIAL DATE: April 25, 2019

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

53. A true and correct copy of FB-00095704 - FB-00095717 (January 2013 email in which Osofsky communicates internally that Facebook has publicly announced its reciprocity policy and links to the public blog post at <https://developers.facebook.com/blog/post/2013/01/25/clarifying-our-platform-policies/> where Facebook states: “For the vast majority of developers building social apps and games, keep doing what you’re doing.... For a much smaller number of apps that are using Facebook to either replicate our functionality or bootstrap their growth in a way that creates little value for people on Facebook...we’ve had policies against this that we are further clarifying today, which links to

1 Facebook's Developer Platform Policies stating that a developer cannot replicate "core
2 functionality" without ever defining what core functionality actually entails (FB-00095711)) is
3 attached hereto as Exhibit 52.
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

94. A true and correct copy of FB-00043884 - FB-00043889 (Private Extended API Addendum between Facebook and a developer from January 2015. This is a copy of Facebook’s standard whitelist agreement. Section 4 reads: “Access to the Private Extended APIs. Subject to the terms of the Agreement, FB may, in its sole discretion, make specific Private Extended APIs available to Developer for use in connection with Developer Applications. FB may terminate such access for convenience at any time. The Private Extended APIs and the Private Extended API Guidelines will be deemed to be a part of the Platform and the Platform Policies, respectively, for purposes of the Agreement” (FB-00043885); Exhibit A reads: ““Private Extended APIs’ means a set of APIs and services provided by FB to Developer that enables Developer to retrieve data or functionality relating to Facebook that is not generally available under Platform, which may include persistent authentication, photo upload, video upload, messaging and phonebook connectivity” (FB-00043886); Exhibit B of the Agreement specifies the specific private APIs a

1 developer has the right to access under the Agreement and varies based on the developer) is
2 attached hereto as Exhibit 93.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

101. A true and correct copy of FB-00521468 - FB-00521484 (November 2013 email discussion in which Chang notes that Cross and Papamiltiadis are auditing 5,200 whitelisted apps and “finalizing with product (Eddie [O’Neil]) a set of 54 apis to become privatized,” and that they are “working on the first cut of top tier apps to be evaluated for extension/exemption” (FB-00521473)) is attached hereto as Exhibit 100.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

153. A true and correct copy of FB-00600167 - FB-00600169 (October 8, 2014 email in which Facebook engineer Alberto Tretti emails Archibong and Papamiltiadis notifying them that entities with Russian IP addresses have been using the Pinterest API access token to pull over 3 billion data points per day through the Ordered Friends API, a private API offered by Facebook to certain companies who made extravagant ads purchases to give them a competitive advantage against all other companies. Tretti sends the email because he is clearly concerned that Russian

1 entities have somehow obtained Pinterest's access token to obtain immense amounts of consumer
2 data. Merely an hour later Tretti, after meeting with Facebook's top security personnel, retracts his
3 statement without explanation, calling it only a "series of unfortunate coincidences" without
4 further explanation. It is highly unlikely that in only an hour Facebook engineers were able to
5 determine definitively that Russia had not engaged in foul play, particularly in light of Tretti's
6 clear statement that 3 billion API calls were made per day from Pinterest and that most of these
7 calls were made from Russian IP addresses when Pinterest does not maintain servers or offices in
8 Russia) is attached hereto as Exhibit 153.

10 154. A true and correct copy of FB-00454582 - FB-00454584 (October 9, 2014
11 engineering task in which Papamiltiadis, Cross and O'Neil remove Pinterest's access to the
12 Ordered Friends API the day after Tretti informs Papamiltiadis that Russian entities are using
13 Pinterest's access token to obtain billions of data points per day about consumers without their
14 permission. The task notes admit that the Ordered Friends API is a "whitelist only API" and
15 "returns non app friends" after Facebook announced publicly that access to non-app friends had
16 been removed to *all* developers. Employees note that Netflix is also accessing the Ordered Friends
17 API and ask why Netflix can still access it, but not Pinterest. No explanation is given and the
18 Russian IP issue raised by Tretti the day before is not mentioned. It is highly reasonable to
19 conclude from this sequence of events that Tretti was correct when he stated that Russian IP
20 addresses were accessing billions of data points about consumers directly from Facebook and that
21 Facebook did not want employees to become aware of this fact and so cut off Pinterest's access
22 without notice but also without revealing the explanation for doing so. Otherwise, why would
23 Facebook shut off Pinterest's access the very next day without any notice to Pinterest and further
24 without any explanation to Facebook's own employees?) is attached hereto as Exhibit 154.