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13 **UNITED STATES DISTRICT COURT**
 14 **SOUTHERN DISTRICT OF CALIFORNIA**

15

16 DRICKEY JACKSON, individually and
 17 on behalf of all others similarly situated,

Case No. '20CV2365 BEN BGS

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Plaintiff,

CLASS ACTION COMPLAINT

19

v.

JURY TRIAL DEMANDED

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AMAZON.COM, INC.,

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Defendant.

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1 Plaintiff Drickey Jackson (“Plaintiff”), individually and on behalf of himself
2 and all others similarly situated, by and through his attorneys, makes the following
3 allegations pursuant to the investigation of his counsel and based upon information
4 and belief, except as to allegations specifically pertaining to himself and his counsel,
5 which are based on personal knowledge.

6 **NATURE OF THE ACTION**

7 1. This is a class action suit brought against Defendant Amazon.com, Inc.
8 (“Amazon” or “Defendant”) for wiretapping the electronic communications of
9 Amazon Flex Drivers’ (“Flex Drivers”) closed Facebook groups. The wiretaps are
10 used by Defendant to secretly observe and monitor Flex Drivers’ electronic
11 communications and confidential postings in their closed Facebook groups, through
12 the use of monitoring tools, automated software, and dedicated employees with
13 backgrounds in signals intelligence and communications intelligence. As such,
14 Defendant has violated the California Invasion of Privacy Act (“CIPA”), Cal. Penal
15 Code § 631 and 635, have intruded upon the seclusion of Plaintiff, and violated class
16 members’ privacy rights under the California Constitution.

17 2. Mr. Jackson is an Amazon Flex Driver. He communicated with other
18 Flex Drivers in closed Facebook groups that were monitored by Defendant. Amazon
19 monitored these closed groups secretly and gathered information about planned
20 strikes or protests, unionizing efforts, pay, benefits, deliveries, warehouse conditions,
21 driving conditions, and whether workers had been approached by researchers
22 examining Amazon’s workforce. Amazon conducted this monitoring by hiring
23 employees and investigators with backgrounds in intelligence, particularly signals
24 intelligence (“SIGINT”) and communications intelligence (“COMINT”), who
25 deployed automated tools and monitoring software as part of their SIGINT and
26 COMINT duties on behalf of Amazon.

1 3. Plaintiff brings this action on behalf of himself and a class of all persons
2 whose electronic communications through the closed Facebook groups were
3 monitored by Defendant’s wiretaps.

4 **THE PARTIES**

5 4. Plaintiff Drickey Jackson is a resident of San Diego, California with an
6 intent to remain there, and is therefore a domiciliary of California. Throughout 2020,
7 prior to the filing of this lawsuit, Mr. Jackson communicated with Flex Drivers
8 through closed Facebook groups while they were being monitored by Amazon. Mr.
9 Jackson was in San Diego when he used the closed Facebook groups subject to
10 Amazon’s monitoring. During his use of the Facebook groups, Mr. Jackson’s
11 electronic communications, including communications about planned strikes or
12 protests, pay, benefits, deliveries, driving and warehouse conditions, unionizing
13 efforts, and whether workers had been approached by researchers examining
14 Amazon’s workforce, were intercepted in real time and were disclosed through
15 Amazon’s wiretap. Mr. Jackson was unaware at the time that his electronic
16 communications, including the information described above, were being intercepted
17 in real-time and would be disclosed to Amazon, nor did Mr. Jackson consent to the
18 same.

19 5. Defendant Amazon is a Delaware Corporation with its principal place of
20 business at 410 Terry Avenue North, Seattle, Washington 98109.

21 6. Amazon engages in the retail sale of consumer products and
22 subscriptions and makes the majority of its sales through its online platform,
23 Amazon.com.

24 7. Amazon does business throughout California and the entire United
25 States.

26 8. In addition to its own drivers, Amazon contracts out to over 800 service
27 delivery partners. These contract drivers are referred to as Flex Drivers.
28

1 9. Amazon discourages its employees, delivery partners, and contract
2 drivers from unionizing.

3 **JURISDICTION AND VENUE**

4 10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §
5 1332(d)(2)(A) because this case is a class action where the aggregate claims of all
6 members of the proposed class are in excess of \$5,000,000.00, exclusive of interest
7 and costs, and at least one member of the proposed class is a citizen of a state
8 different from Defendant.

9 11. This Court has personal jurisdiction over Defendant because Defendant
10 has purposefully availed itself of the laws and benefits of doing business in this State,
11 and Plaintiff's claims arise out of each of Defendant's forum-related activities.
12 Furthermore, a substantial portion of the events giving rise to Plaintiff's claims
13 occurred in this District.

14 12. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this
15 action because a substantial part of the events, omissions, and acts giving rise to the
16 claims herein occurred in this District.

17 **STATEMENT OF FACTS**

18 **Overview Of The Wiretaps**

19 13. Amazon Flex is a program by which Amazon pays regular people to
20 deliver packages.

21 14. Amazon Flex drivers have complained about a myriad of issues
22 surrounding their employment, including a lack of job security, little to no benefits,
23 and low pay.

24 15. In order to discuss these issues with colleagues, many Flex Drivers,
25 including Plaintiff, formed or joined private Facebook groups.

26 16. The idea of these Facebook groups is that they are only populated with
27 Flex Drivers, not other persons, and certainly not employees or personnel of
28 Defendant.

1 17. Unbeknownst to Flex Drivers, however, Defendant has been secretly
2 monitoring and wiretapping these closed Facebook groups.

3 18. An Amazon document, called “social media monitoring,” lists forty-
4 three closed Facebook groups and pages run by Flex Drivers in different cities in the
5 United States that Amazon monitors. The document reads that “[t]he following
6 social forums mentioned in the table are to be monitored during the Social media
7 process.”

8 19. Defendant confirmed that this document came from a sophisticated and
9 secret program that surveils dozens of private Facebook groups set up by workers.
10 Defendant later confirmed that this program is part of its Orwellian-sounding
11 Advocacy Operations Social Listening Team (“Advocacy Operations”). Amazon
12 recruits members of the Advocacy Operations from individuals who have
13 backgrounds and experience in SIGINT and COMINT. The purpose of this program
14 is to monitor information about planned strikes or protests, unionizing efforts,
15 warehouse conditions, pay, benefits, and whether workers have been approached by
16 researchers examining Amazon’s workforce.

17 20. Posts are monitored or intercepted in real time. Advocacy Operations
18 describes how it captures relevant information from closed Facebook groups
19 (included but not limited to the groups listed below) using automated monitoring
20 tools:

21

22 **AO / Social Media Monitoring / Source Access DOC**
The following social forums mentioned in the table are to be monitored during the Social media process.

GROUPS	COUNTRY/PLATFORM
Amazon Flex Drivers (USA)	
Amazon Workers & Independent Amazon Flex Drivers Experience Group USA	
Amazon Flex Drivers	
Amazon Flex APEX Drivers Nationwide	
Amazon Flex Las Vegas	
Amazon Flex Drivers of Richmond, VA	
Amazon Flex Drivers Los Angeles	
Official Amazon Flex Drivers of Portland	

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STEP	WHAT TO DO
1. Capture the posts mentioned in the Shift handover mail.	Open the shift handover mail and list down the posts which requires additional monitoring/investigation/reporting.
2. Allot the existing groups, pages t	Find the list of Login wise groups in the Source access doc
3. Search for updates in the following Public forums & blogs using the steps mentioned in Social Media Login doc.	a. If assigned multiple logins, open each in different browser and the corresponding groups of the account in different tabs b. Change the filter at the top of each group to "New post" c. Collect posts of corresponding shift
4. Categorization of posts	a. Compare the collected posts with Post categorization template b. Read out the example mentioned across corresponding category and sub-category c. Determine the right category and sub-category d. If relevant information not found consult with the Cam/Sid
5. Investigation of the posts	a. Open the Investigation doc b. Reach out to the relevant category and find out the use case of the post c. Determine the relevant details required for the investigation
6. Finding out details using different tools	a. Open the Tools doc b. Follow the mentioned steps to find out relevant information required c. Collate the information
7. Reporting of the post	Use the Reporting template doc to report out the post in the DL
8. Updates for next shift associates	Use the Shift handover doc to pass on any relevant issues to be followed up by the associates in the next shift

21. Issues raised by the Drivers in these closed Facebook groups are compiled into reports and delivered to Amazon's Corporate Department. The reports are then filtered and categorized through a tool called the "Social Media Bank." Reports detailing driving and warehouse conditions, strikes, pay, deliveries, benefits, unionizing, being approached by researchers examining Amazons workforce, and/or protests are flagged by Advocacy Operations.¹

22. The below screenshot is an example of a post by Amazon Flex drivers complaining about not receiving delivery slots that was intercepted by Amazon:

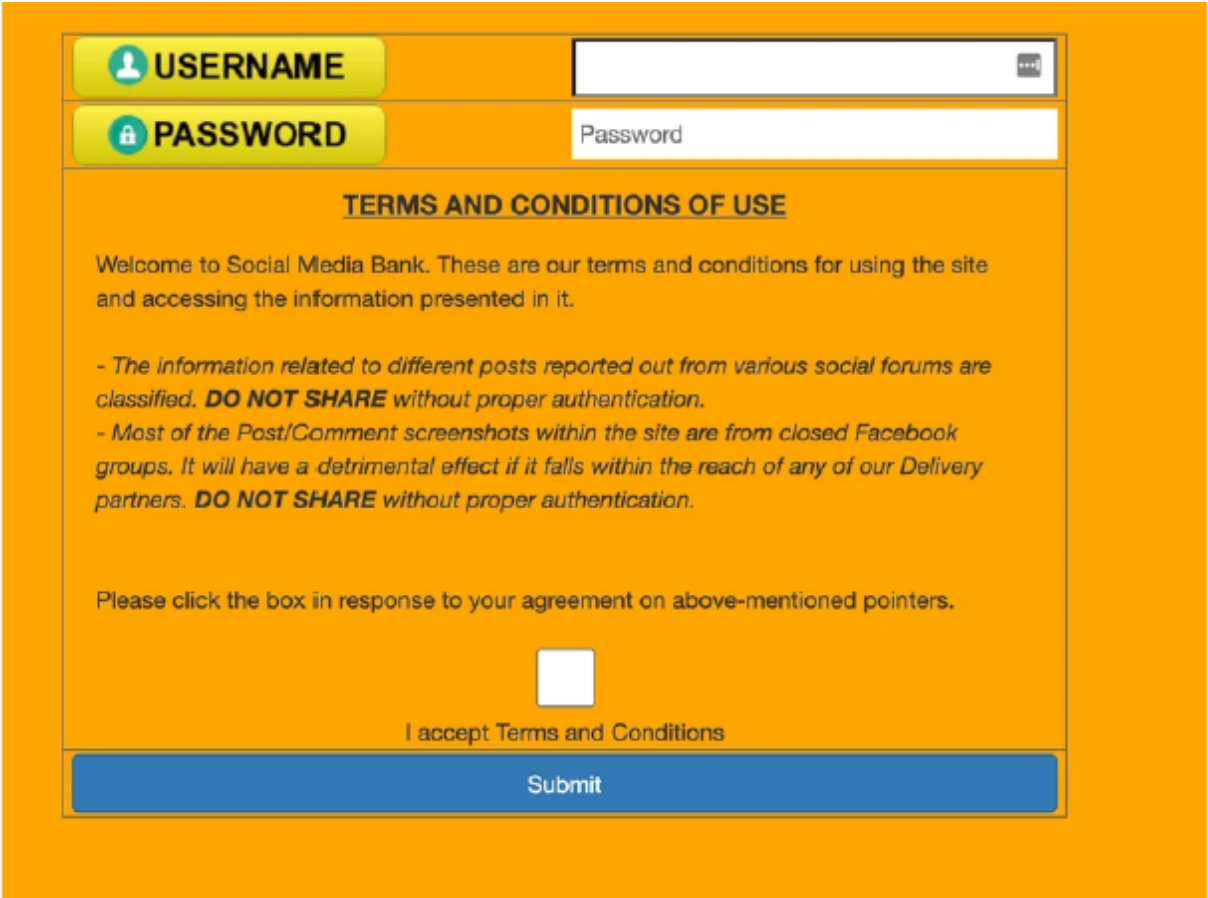
¹ *Id.*

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ISSUE: DPs were complaining of not receiving blocks. Many were of the view that the block count has reduced since the holiday and the volume is being taken away by white vans. They are confirming it by asking the station staff. Few have also opined that the decrease in the offers have been noticed not at all stations. Some are definitely being impacted while the rest are just working fine.

TOTAL POSTS: 03, COMMENTS: 52

23. Amazon asked its employees to keep this monitoring program secret and created a special login page to access the reports. In fact, on the login page for Social Media Bank, Defendant admits that “most of the Post/Comment screenshots within the site are from closed Facebook groups. It will have a detrimental effect if it falls within the reach of any of our Delivery partners. **DO NOT SHARE** without proper authentication”²:



² Id.

1 24. These processes, as currently employed by Amazon, function as a
2 wiretap.

3 **Defendant Wiretapped Plaintiff's Electronic Communications**

4 25. Since 2016, Plaintiff has been a member of closed Facebook groups for
5 Amazon Flex drivers.

6 26. Plaintiff communicated to other Flex Drivers in the closed Facebook
7 groups.

8 27. Plaintiff communicated about such topics as Amazon missing payments,
9 driving routes, checking into the warehouse five minutes before shifts started, no
10 breaks during driving shifts, delivers, and having to drive after shifts ended to finish
11 delivering packages, which resulted in subsequent labor disputes with Amazon.

12 28. Plaintiff's posts were tracked and intercepted by Defendant in real time
13 using the aforementioned processes.

14 29. Amazon intercepted these posts without Plaintiff's consent. The
15 Facebook groups were closed, and Plaintiff believed he was only communicating
16 with other Flex Drivers.

17 **CLASS ACTION ALLEGATIONS**

18 30. Plaintiff seeks to represent a class of all California Flex Drivers who
19 were members of the closed Facebook groups, and whose electronic communications
20 were intercepted by Defendant (the "Class"). Plaintiff reserves the right to modify
21 the class definition as appropriate based on further investigation and discovery
22 obtained in the case.

23 31. Members of the Class are so numerous that their individual joinder
24 herein is impracticable. On information and belief, members of the Class number in
25 the thousands. The precise number of Class members and their identities are
26 unknown to Plaintiff at this time but may be determined through discovery. Class
27 members may be notified of the pendency of this action by mail and/or publication
28 through the distribution records of Defendant.

1 32. Common questions of law and fact exist as to all Class members and
2 predominate over questions affecting only individual Class members. Common legal
3 and factual questions include, but are not limited to, whether Defendant has violated
4 the California Invasion of Privacy Act (“CIPA”), Cal. Penal Code §§ 631 and 635,
5 has intruded upon the seclusion of Plaintiff, and violated class members’ privacy
6 rights under the California Constitution.

7 33. The claims of the named Plaintiff are typical of the claims of the Class
8 because the named Plaintiff, like all other class members, was a member of one of the
9 closed Facebook Groups and had his electronic communications intercepted and
10 disclosed to Defendant through the use of
11 Amazon’s wiretaps.

12 34. Plaintiff is an adequate representative of the Class because his interests
13 do not conflict with the interests of the Class members he seeks to represent, he has
14 retained competent counsel experienced in prosecuting class actions, and he intends
15 to prosecute this action vigorously. The interests of Class members will be fairly and
16 adequately protected by Plaintiff and his counsel.

17 35. The class mechanism is superior to other available means for the fair and
18 efficient adjudication of the claims of Class members. Each individual Class member
19 may lack the resources to undergo the burden and expense of individual prosecution
20 of the complex and extensive litigation necessary to establish Defendant’s liability.
21 Individualized litigation increases the delay and expense to all parties and multiplies
22 the burden on the judicial system presented by the complex legal and factual issues of
23 this case. Individualized litigation also presents a potential for inconsistent or
24 contradictory judgments. In contrast, the class action device presents far fewer
25 management difficulties and provides the benefits of single adjudication, economy of
26 scale, and comprehensive supervision by a single court on the issue of Defendant’s
27 liability. Class treatment of the liability issues will ensure that all claims and
28 claimants are before this Court for consistent adjudication of the liability issues.

1 36. Plaintiff brings all claims in this action individually and on behalf of
2 members of the Class against Defendant.

3 **COUNT I**
4 **Violation Of The California Invasion Of Privacy Act,**
5 **Cal. Penal Code § 631**

6 37. Plaintiff repeats the allegations contained in the foregoing paragraphs as
7 if fully set forth herein.

8 38. Plaintiff brings this claim individually and on behalf of the members of
9 the proposed Class against Defendant.

10 39. To establish liability under section 631(a), a plaintiff need only establish
11 that the defendant, “by means of any machine, instrument, contrivance, or in any
12 other manner,” does any of the following:

13 Intentionally taps, or makes any unauthorized connection,
14 whether physically, electrically, acoustically, inductively or
15 otherwise, with any telegraph or telephone wire, line, cable,
16 or instrument, including the wire, line, cable, or instrument
17 of any internal telephonic communication system,

18 *Or*

19 Willfully and without the consent of all parties to the
20 communication, or in any unauthorized manner, reads or
21 attempts to read or learn the contents or meaning of any
22 message, report, or communication while the same is in
23 transit or passing over any wire, line or cable or is being
24 sent from or received at any place within this state,

25 *Or*

26 Uses, or attempts to use, in any manner, or for any purpose,
27 or to communicate in any way, any information so
28 obtained,

Or

1 Aids, agrees with, employs, or conspires with any person or
2 persons to unlawfully do, or permit, or cause to be done any
3 of the acts or things mentioned above in this section.

4 40. Section 631(a) is not limited to phone lines, but also applies to “new
5 technologies” such as computers, the Internet, and email. *See Matera v. Google Inc.*,
6 2016 WL 8200619, at *21 (N.D. Cal. Aug. 12, 2016) (CIPA applies to “new
7 technologies” and must be construed broadly to effectuate its remedial purpose of
8 protecting privacy); *Bradley v. Google, Inc.*, 2006 WL 3798134, at *5-6 (N.D. Cal.
9 Dec. 22, 2006) (CIPA governs “electronic communications”); *In re Facebook, Inc.*
10 *Internet Tracking Litigation*, 956 F.3d 589 (9th Cir. 2020) (reversing dismissal of
11 CIPA and common law privacy claims based on Facebook’s collection of consumers’
12 Internet browsing history).

13 41. Amazon’s processes, including its live tool and Social Media Bank, are a
14 “machine, instrument, contrivance, or ... other manner” used to engage in the
15 prohibited conduct at issue here.

16 42. At all relevant times, by using the live tool and Social Media Bank,
17 Defendant intentionally tapped, electrically or otherwise, the lines of internet
18 communication between Plaintiff and class members.

19 43. At all relevant times, by using the live tool and Social Media Bank,
20 Defendant intentionally tapped willfully and without the consent of all parties to the
21 communication, or in any unauthorized manner, read or attempted to read or learn the
22 contents or meaning of electronic communications of Plaintiff and putative Class
23 Members, while the electronic communications were in transit or passing over any
24 wire, line, or cable, or were being sent from or received at any place within
25 California.

26 44. Defendant implemented the live tool and Social Media Bank to
27 accomplish the wrongful conduct at issue here.
28

1 45. Plaintiff and Class Members did not consent to any of Defendant’s
2 actions in implementing the wiretaps in the closed Facebook groups. Nor have
3 Plaintiff or Class Members consented to Defendant’s intentional access, interception,
4 reading, learning, recording, and collection of Plaintiff and Class Members’
5 electronic communications.

6 46. The violation of section 631(a) constitutes an invasion of privacy
7 sufficient to confer Article III standing.

8 47. Unless enjoined, Defendant will continue to commit the illegal acts
9 alleged here. Plaintiff continues to be at risk because he frequently uses the closed
10 Facebook groups to communicate to Flex Drivers. Plaintiff continues to desire to use
11 the Facebook groups for that purpose, but cannot without being unwillingly
12 monitored by Defendant. Plaintiff may or is likely to visit the closed Facebook
13 groups in the future. As such, he has no practical way to know if his communications
14 will be monitored or recorded by Defendant.

15 48. Plaintiff and Class Members seek all relief available under Cal. Penal
16 Code § 637.2, including injunctive relief and statutory damages of \$5,000 per
17 violation.

18 **COUNT II**
19 **Violation Of The California Invasion Of Privacy Act,**
20 **Cal. Penal Code § 635**

21 49. Plaintiff repeats the allegations contained in the foregoing paragraphs as
22 if fully set forth herein.

23 50. Plaintiff brings this claim individually and on behalf of the members of
24 the proposed Class against Defendant.

25 51. California Penal Code § 635 provides, in pertinent part:
26 Every person who manufactures, assembles, sells, offers for
27 sale, advertises for sale, possesses, transports, imports, or
28 furnishes to another any device which is primarily or
exclusively designed or intended for eavesdropping upon the
communication of another, or any device which is primarily

1 or exclusively designed or intended for the unauthorized
2 interception or reception of communications between
3 cellular radio telephones or between a cellular radio
4 telephone and a landline telephone in violation of Section
5 632.5, or communications between cordless telephones or
6 between a cordless telephone and a landline telephone in
7 violation of Section 632.6 , shall be punished by a fine not
8 exceeding two thousand five hundred dollars.

9 52. At all relevant times, by using the live tool and Social Media Bank,
10 Defendant intentionally manufactured, assembled, sold, offered for sale, advertised
11 for sale, possessed, transported, imported, and/or furnished a wiretap device that is
12 primarily or exclusively designed or intended for eavesdropping upon the
13 communication of another.

14 53. The live tool and Social Media Bank are “devices” that are “primarily or
15 exclusively designed” for eavesdropping. That is, the live tool and social media bank
16 are designed to gather private postings on Facebook and other electronic
17 communications.

18 54. Plaintiff and Class Members did not consent to any of Defendant’s
19 actions in implementing wiretaps.

20 55. Unless enjoined, Defendant will continue to commit the illegal acts
21 alleged here. Plaintiff continues to be at risk because he frequently uses the closed
22 Facebook groups to communicate to Flex Drivers. Plaintiff continues to desire to use
23 the Facebook groups for that purpose, but cannot without being unwillingly
24 monitored by Defendant. Plaintiff may or is likely to visit the closed Facebook
25 groups in the future. As such, he has no practical way to know if his communications
26 will be monitored or recorded by Defendant.

27 56. Plaintiff and Class Members seek all relief available under Cal. Penal
28 Code § 637.2, including injunctive relief and statutory damages of \$5,000 per
violation.

COUNT III
Intrusion Upon Seclusion

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2 57. Plaintiff repeats the allegations contained in the foregoing paragraphs as
3 if fully set forth herein.

4 58. Plaintiff brings this claim individually and on behalf of the members of
5 the proposed Class against Defendants.

6 59. At all relevant times, by implementing the wiretaps on the Facebook
7 groups, Defendant intentionally intruded upon the seclusion of Plaintiff and Class
8 Members.

9 60. Defendant's deception was deliberate.

10 61. When visiting the private Facebook groups, Plaintiff and Class Members
11 had an objectively reasonable expectation of privacy.

12 62. Plaintiff and Class Members did not consent to any of Defendant's
13 actions in implementing the wiretaps on the Facebook groups.

14 63. Defendant's intentional intrusion on Plaintiff's and Class Members'
15 solitude or seclusion without consent would be highly offensive to a reasonable
16 person.

COUNT IV
Invasion Of Privacy Under California's Constitution

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18 64. Plaintiff repeats the allegations contained in the foregoing paragraphs as
19 if fully set forth herein.

20 65. Plaintiff brings this claim individually and on behalf of the members of
21 the proposed Class against Defendant.

22 66. Plaintiff and Class Members have an interest in: (1) precluding the
23 dissemination and/or misuse of their confidential posts on Facebook; and (2) making
24 personal decisions and/or conducting personal activities without observation,
25 intrusion or interference, including, but not limited to, the right to visit and join
26 Facebook groups and communicate with other members without being subjected to
27 wiretaps without Plaintiff's and Class Members' knowledge or consent.
28

1 67. At all relevant times, by implementing wiretaps in the closed Facebook
2 groups, Defendant intentionally invaded Plaintiff's and Class Members' privacy
3 rights under the California Constitution.

4 68. Plaintiff and Class Members had a reasonable expectation that their
5 communications, personally-identifiable information, and other data would remain
6 confidential and that Defendant would not install wiretaps on the closed Facebook
7 groups.

8 69. Plaintiff and Class Members did not consent to any of Defendant's
9 actions in implementing the wiretaps in the closed Facebook groups.

10 70. This invasion of privacy is serious in nature, scope and impact.

11 71. This invasion of privacy alleged here constitutes an egregious breach of
12 the social norms underlying the privacy right.

13 72. Plaintiff and Class Members seek all relief available for invasion of
14 privacy claims under California's Constitution.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff, individually and on behalf of all others similarly
17 situated, seeks judgment against Defendant, as follows:

- 18 (a) For an order certifying the Class under Rule 23 and naming Plaintiff as the
19 representative of the Class and Plaintiff's attorneys as Class Counsel to
20 represent the Class;
- 21 (b) For an order declaring that the Defendant's conduct violates the statutes
22 referenced herein;
- 23 (c) For an order finding in favor of Plaintiff and the Class on all counts
24 asserted herein;
- 25 (d) For compensatory, punitive, and statutory damages in amounts to be
26 determined by the Court and/or jury;
- 27 (e) For prejudgment interest on all amounts awarded;
- 28 (f) For an order of restitution and all other forms of equitable monetary relief;

- 1 (g) For injunctive relief as pleaded or as the Court may deem proper; and
- 2 (h) For an order awarding Plaintiff and the Class their reasonable attorneys’
- 3 fees and expenses and costs of suit.

4 **DEMAND FOR TRIAL BY JURY**

5 Pursuant to Federal Rules of Civil Procedure 38(b), Plaintiff demands a trial by
6 jury of all issues so triable.

7
8 Dated: December 4, 2020

Respectfully submitted,

9 **BURSOR & FISHER, P.A.**

10
11 By: /s/ Neal J. Deckant
Neal J. Deckant

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