

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

DISTRICT OF COLUMBIA,

*Plaintiff,*

v.

FACEBOOK, INC.,

*Defendant.*

CIVIL ACTION NO.: 2018 CA 008715 B  
Judge Fern Flanagan Saddler  
Next Court Date: N/A  
Event: N/A

**DEFENDANT FACEBOOK, INC.'S ANSWER TO PLAINTIFF'S COMPLAINT**

Defendant Facebook, Inc. answers Plaintiff's Complaint as follows:

Except as otherwise expressly stated below, Facebook denies each and every allegation contained in the Complaint. Facebook states that the headings, sub-headings, and footnotes throughout the Complaint do not constitute well-pled allegations of fact and therefore require no response. To the extent a response is required, Facebook denies the allegations in the headings, sub-headings, and footnotes in the Complaint. Facebook reserves the right to seek to amend and/or supplement its Answer as may be necessary.

**ANSWERS TO SPECIFIC ALLEGATIONS**

1. Facebook denies the allegations in Paragraph 1, except admits that it operates a website (www.facebook.com) and a companion mobile application through which it offers social networking services to users, and admits that Facebook collects and maintains information regarding Facebook users.

2. Facebook denies the allegations in Paragraph 2, except admits that Aleksandr Kogan developed a third-party application called thisisyourdigitallife, and admits that the thisisyourdigitallife app was installed by 852 distinct users in the District of Columbia.

3. Facebook denies the allegations in Paragraph 3.

4. To the extent that Paragraph 4 asserts legal conclusions, no response is required. Facebook otherwise denies the allegations in Paragraph 4.

5. Facebook lacks knowledge or information sufficient to admit or deny allegations about the District, so denies them on that basis. Facebook otherwise denies the allegations in Paragraph 5.

6. The allegations in Paragraph 6 contain conclusions of law for which no response is required.

7. The allegations in Paragraph 7 contain conclusions of law for which no response is required. Facebook otherwise denies the allegations in Paragraph 7.

8. To the extent that Paragraph 8 asserts facts regarding other parties, Facebook is without knowledge and on that basis the allegations are denied. Facebook otherwise denies the allegations in Paragraph 8.

9. Facebook admits that it is incorporated in Delaware and its headquarters and principal place of business is located at 1 Hacker Way, Menlo Park, CA, 94025. Facebook further admits that it operates the website [www.facebook.com](http://www.facebook.com) and the Facebook mobile application and admits that D.C. residents have created accounts on Facebook. Facebook otherwise denies the allegations in Paragraph 9.

10. Facebook denies the allegations in Paragraph 10, but admits that it operates the website [www.facebook.com](http://www.facebook.com) and the Facebook mobile application, admits that D.C. residents have created accounts on Facebook, and admits that, as of March 31, 2019, Facebook had more than two billion users.

11. Facebook denies the allegations in Paragraph 11.

12. Facebook denies the allegations in Paragraph 12.

13. Facebook denies the allegations in Paragraph 13, except admits that Facebook users can provide Facebook with certain information.

14. Facebook denies the allegations in Paragraph 14, except admits that Facebook maintains certain data pertaining to the activity of Facebook users on its website. Facebook further admits that it operates a mobile application called “Facebook Messenger.”

15. Facebook denies the allegations in Paragraph 15, except admits that Facebook users have the ability to “Like” certain content.

16. Facebook denies the allegations in Paragraph 16.

17. Facebook denies the allegations in Paragraph 17, except admits that Facebook generates revenue by delivering ads to users, and admits that Facebook uses some of the information it collects regarding Facebook users to deliver ads to Facebook users.

18. Facebook denies the allegations in Paragraph 18, except admits that Facebook launched Facebook Platform in 2007, which allows third-party developers to build applications that interact with the Facebook website.

19. Facebook denies the allegations in Paragraph 19, except admits that developers can build third-party applications that integrate with Facebook Platform.

20. Facebook denies the allegations in Paragraph 20, but admits that Facebook Login allows Facebook users to utilize their Facebook credentials to authenticate themselves to third-party applications.

21. Facebook denies the allegations in Paragraph 21, but states that an Application Program Interface (“API”) is a basic technology that enables two computing systems to “talk” to one another, and admits that Facebook uses APIs to allow third-party applications to interact with the Facebook website.

22. Facebook denies the allegations in Paragraph 22.

23. Facebook admits that, in November 2013, Aleksandr Kogan, a researcher affiliated with Cambridge University, and his company, Global Science Research (“GSR”), launched a third-party application, thisisyourdigitallife, on the Facebook Platform that identified itself as a personality study for research purposes. Facebook otherwise denies the allegations in Paragraph 23.

24. Facebook admits that the thisisyourdigitallife app was presented to Facebook as a research tool to help Dr. Kogan study psychological traits. Facebook further admits that, in November 2013, third-party applications generally could be launched on Facebook Platform without affirmative review or approval by Facebook, and that Facebook did not review the thisisyourdigitallife app before it launched on Facebook Platform. Facebook otherwise denies the allegations in Paragraph 24.

25. Facebook denies the allegations in Paragraph 25.

26. Facebook denies the allegations in Paragraph 26.

27. Facebook denies the allegations in Paragraph 27.

28. Facebook denies the allegations in Paragraph 28.

29. Facebook denies the allegations in Paragraph 29, except admits that in 2014, Facebook announced certain changes to Facebook Platform and instituted a review and approval process called App Review for third-party applications that sought access to user data beyond certain categories, and further admits that Kogan submitted an application through the App Review process that Facebook denied in May 2014.

30. Facebook denies the allegations in Paragraph 30, except admits that the thisisyourdigitallife app was installed by 852 distinct users in the District of Columbia.

31. To the extent that Paragraph 31 asserts facts regarding other parties, Facebook is without knowledge and on that basis the allegations are denied. Facebook otherwise denies the allegations in Paragraph 31.

32. To the extent that Paragraph 32 asserts facts regarding other parties, Facebook is without knowledge and on that basis the allegations are denied. Facebook otherwise denies the allegations in Paragraph 32.

33. To the extent that Paragraph 33 asserts facts regarding other parties, Facebook is without knowledge and on that basis the allegations are denied. Facebook otherwise denies the allegations in Paragraph 33.

34. Facebook denies the allegations in Paragraph 34.

35. Facebook denies the allegations in Paragraph 35.

36. Facebook denies the allegations in Paragraph 36, except admits that Facebook's Platform Policy is a document that governs Facebook's relationship with third-party applications. To the extent that Paragraph 36 purports to characterize the contents of Facebook's Platform Policy, Facebook respectfully refers the Court to that document, which speaks for itself, for a true and accurate account of its contents.

37. To the extent that Paragraph 37 purports to characterize the contents of Facebook's Platform Policy, Facebook respectfully refers the Court to that document, which speaks for itself, for a true and accurate account of its contents. Facebook otherwise denies the allegations in Paragraph 37.

38. Facebook admits that it terminated thisisyourdigitallife's access to the Facebook Platform in December 2015. Facebook denies the remaining allegations in Paragraph 38.

39. To the extent that Paragraph 39 asserts facts regarding other parties, Facebook is without knowledge and on that basis the allegations are denied. Facebook otherwise denies the allegations in Paragraph 39.

40. Facebook denies the allegations in Paragraph 40, except admits that Facebook sought and received a certification from Kogan in June 2016 and from Cambridge Analytica in April 2017 that all Facebook data obtained by the thisisyourdigitallife app had been accounted for and permanently deleted and destroyed.

41. Facebook denies the allegations in Paragraph 41.

42. Facebook denies the allegations in Paragraph 42.

43. Facebook denies the allegations in Paragraph 43.

44. Facebook admits that Facebook users must agree to the terms of Facebook's Terms of Service and Data Use Policy to create a Facebook account. To the extent that Paragraph 44 purports to refer to the terms of Facebook's Terms of Service or Data Use Policy, Facebook respectfully refers the Court to those documents, which speak for themselves, for a

true and correct statement of their contents. Facebook otherwise denies the allegations in Paragraph 44.

45. To the extent that Paragraph 45 purports to refer to the terms of Facebook's Terms of Service, Data Use Policy, Platform Policy or any public statements, Facebook respectfully refers the Court to those documents or public statements, which speak for themselves, for a true and correct statement of their contents. Facebook otherwise denies the allegations in Paragraph 45.

46. Facebook denies the allegations in Paragraph 46.

47. To the extent that Paragraph 47 purports to refer to the terms of Facebook's Data Use Policy, Facebook respectfully refers the Court to that document, which speaks for itself, for a true and correct statement of its contents. Facebook otherwise denies the allegations in Paragraph 47.

48. Facebook denies the allegations in Paragraph 48.

49. Facebook denies the allegations in Paragraph 49.

50. Facebook denies the allegations in Paragraph 50, except admits that Facebook users have the ability to control how their Facebook information is shared with other Facebook users.

51. Facebook denies the allegations in Paragraph 51, except admits that Facebook users have the ability to control how their Facebook information is shared with third-party applications.

52. Facebook denies the allegations in Paragraph 52.

53. Facebook denies the allegations in Paragraph 53.

54. Facebook denies the allegations in Paragraph 54.

55. Facebook denies the allegations in Paragraph 55.

56. Facebook denies the allegations in Paragraph 56.

57. Facebook denies the allegations in Paragraph 57.

58. Facebook denies the allegations in Paragraph 58.

59. Facebook denies the allegations in Paragraph 59.

60. Facebook denies the allegations in Paragraph 60, but admits that many Facebook users access Facebook via the Facebook mobile application on their mobile devices, and admits that Facebook entered into integration partnerships with various device makers to develop Facebook applications specific to their device.

61. Facebook denies the allegations in Paragraph 61. To the extent that Paragraph 61 asserts facts regarding other parties, Facebook is without knowledge and on that basis the allegations are denied.

62. Facebook denies the allegations in Paragraph 62.

63. Facebook denies the allegations in Paragraph 63, but admits that Facebook entered into agreements with 52 companies so that Facebook and those companies could offer Facebook users a way to receive Facebook or Facebook experiences on a variety of devices, operating systems, and other products.

64. Facebook denies the allegations in Paragraph 64.

65. Facebook denies the allegations in Paragraph 65.

66. Facebook incorporates its responses to Paragraphs 1 to 65.

67. Paragraph 67 contains legal conclusions to which no response is required.  
Facebook otherwise denies the allegations in Paragraph 67.

68. Paragraph 68 contains legal conclusions to which no response is required.  
Facebook otherwise denies the allegations in Paragraph 68.

69. Paragraph 69 contains legal conclusions to which no response is required.  
Facebook otherwise denies the allegations in Paragraph 69.

70. Paragraph 70 contains legal conclusions to which no response is required.  
Facebook otherwise denies the allegations in Paragraph 70.

71. Paragraph 71 contains legal conclusions to which no response is required.  
Facebook respectfully refers the Court to the text of the CPPA for its terms.

72. To the extent that Paragraph 72 asserts legal conclusions, no response is required. Facebook otherwise denies the allegations in Paragraph 72.

73. To the extent that Paragraph 73 asserts legal conclusions, no response is required. Facebook otherwise denies the allegations in Paragraph 73.

74. To the extent that Paragraph 74 asserts legal conclusions, no response is required. Facebook otherwise denies the allegations in Paragraph 74.

75. To the extent that Paragraph 75 asserts legal conclusions, no response is required. Facebook otherwise denies the allegations in Paragraph 75.

76. To the extent that Paragraph 76 asserts legal conclusions, no response is required. Facebook otherwise denies the allegations in Paragraph 76.

#### **“Prayer for Relief”**

The allegations in the “Prayer for Relief” are conclusions of law for which no responsive pleading is required and which are therefore denied. To the extent these allegations are deemed in whole or in part to be factual, Facebook denies them. Facebook disputes Plaintiff’s characterization of its conduct, that its conduct provides a basis for any actionable claim.

#### **“Jury Demand”**

Facebook admits that Plaintiff purports to demand a trial by jury by the maximum number of jurors permitted by law.

#### **AFFIRMATIVE DEFENSES**

Without assuming the burden to prove that which properly falls on Plaintiff, Facebook pleads the following separate and additional affirmative defenses to the entire Complaint and each claim alleged therein.

#### **FIRST SEPARATE AND ADDITIONAL DEFENSE**

The District of Columbia lacks general personal jurisdiction over Facebook because Facebook is not incorporated in and does not maintain its principal place of business in the District of Columbia, and lacks specific personal jurisdiction over Facebook because Plaintiff’s claims do not arise from conduct Facebook targeted towards the District. Exercising jurisdiction



over Facebook based on the claims alleged in the Complaint would violate the Due Process Clause of the Fifth Amendment to the United States Constitution.

#### SECOND SEPARATE AND ADDITIONAL DEFENSE

The Complaint fails to state a claim upon which relief can be granted because consumers were not deceived by Facebook and consumers consented to the data-sharing by Facebook alleged in the Complaint.

#### THIRD SEPARATE AND ADDITIONAL DEFENSE

The Complaint fails to state a claim upon which relief can be granted because Facebook did not omit any material facts from consumers.

#### FOURTH SEPARATE AND ADDITIONAL DEFENSE

The Complaint fails to state a claim upon which relief can be granted because Facebook exercised commercially reasonable best efforts to protect Facebook users' data.

#### FIFTH SEPARATE AND ADDITIONAL DEFENSE

Any violations of District law alleged in the Complaint were caused in whole or in part by third parties.

#### SIXTH SEPARATE AND ADDITIONAL DEFENSE

The monetary relief sought by the District constitutes an excessive fine in violation of the Eighth Amendment to the United States Constitution.

#### SEVENTH SEPARATE AND ADDITIONAL DEFENSE

Plaintiff's claims and requested relief are barred, in whole or in part, because no D.C. resident was injured as a result of the conduct alleged in the Complaint.

#### EIGHTH SEPARATE AND ADDITIONAL DEFENSE

Plaintiff's request for restitution is barred because D.C. consumers did not pay Facebook any money or transfer property to Facebook in connection with the allegations in the Complaint.

#### RESERVATION OF SEPARATE AND ADDITIONAL DEFENSES

Facebook presently has insufficient knowledge or information upon which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses to the

Complaint. Facebook reserves the right to assert additional affirmative defenses as it becomes aware that such defenses may be available.

**PRAYER FOR RELIEF**

WHEREFORE, Facebook prays for the following relief:

- A. That judgment on the Complaint, and on each cause of action, be entered in favor of Facebook;
- B. That the Complaint and all claims therein be dismissed with prejudice;
- C. That Plaintiff take nothing by the Complaint;
- D. That the request for declaratory and/or injunctive relief be denied;
- E. That Facebook be awarded its costs incurred, including reasonable attorneys' fees; and
- F. For such other and/or further relief as this Court may deem just and proper.

DATE: July 8, 2019

Respectfully submitted,

**GIBSON, DUNN & CRUTCHER, LLP**

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