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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 JESSE CANTU, individually and on
behalf of all others similarly situated,

12 Plaintiff,

13 v.

14 WW.COM, LLC, a Delaware limited
15 liability company; WW
16 INTERNATIONAL INC., a Virginia
corporation; and DOES 1 through 25,
inclusive,

17 Defendants.
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Case No. 2:22-cv-07977

CLASS ACTION COMPLAINT

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1 **I. INTRODUCTION**

2 Whenever someone watches a video on www.weightwatchers.com (the
3 “Website”), Defendants WW.com, LLC and WW International Inc. (“Defendants”)
4 secretly report all the details to Facebook: the visitor’s identity, the titles watched, and
5 more. Why? So Facebook can bombard the person with *more* ads urging the person to
6 buy products from Defendants.

7 As shown below, Defendants’ actions violate the Video Privacy Protection Act
8 (“VPPA”). As such, Defendants are liable to each class member for \$2,500 and related
9 relief.

10 **II. JURISDICTION AND VENUE**

11 1. This Court has subject matter jurisdiction over this action pursuant to 28
12 U.S.C. § 1331 because it arises under the Video Privacy Protection Act (“VPPA”), a
13 federal law.

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

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

18 **III. PARTIES**

19 4. Plaintiff Jesse Cantu (“Plaintiff”) is a resident and citizen of California.

20 5. Defendant WW.com, LLC is a Delaware entity and Defendant WW
21 International, Inc., is a Virginia entity that owns, operates, and/or controls the Website.

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

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

6 **IV. FACTUAL ALLEGATIONS**

7 **A. THE FACEBOOK TRACKING PIXEL**

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

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

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

19 ¹ FACEBOOK, COMMUNITY STANDARDS, PART IV INTEGRITY AND
20 AUTHENTICITY, https://www.facebook.com/communitystandards/integrity_authenticity (last visited
21 October 31, 2022).

² FACEBOOK, SIGN UP, <https://www.facebook.com/> (last visited October 31, 2022).

22 ³ FACEBOOK, WHY ADVERTISE ON FACEBOOK, <https://www.facebook.com/business/help/20502906038706> (last visited October 31,
23 2022).

24 ⁴ FACEBOOK, AD TARGETING: HELP YOUR ADS FIND THE PEOPLE WHO
WILL LOVE
YOUR BUSINESS, <https://www.facebook.com/business/ads/ad-targeting> (last visited
25 October 31, 2022).

26 ⁵ FACEBOOK, ABOUT EVENTS CUSTOM AUDIENCE, <https://www.facebook.com/business/help/366151833804507?id=300360584271273>
(last visited October 31, 2022).

27 ⁶ FACEBOOK, CREATE A CUSTOMER LIST CUSTOM AUDIENCE, <https://www.facebook.com/business/help/170456843145568?id=2469097533764>
28 (last visited October 31, 2022); FACEBOOK, CREATE A WEBSITE CUSTOM
AUDIENCE,

Continued on the next page

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

6 12. 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 13. Advertisers control how the Facebook Tracking Pixel identifies visitors. The
10 Facebook Tracking Pixel is configured to automatically collect “HTTP Headers” and
11 “Pixel-specific Data.”⁹ HTTP Headers collect “IP addresses, information about the web
12 browser, page location, document, referrer and persons using the website.”¹⁰ Pixel-
13 specific Data includes “the Pixel ID and cookie.”¹¹

14 **B. WEIGHTWATCHERS.COM AND THE FACEBOOK PIXEL**

15 14. Defendants’ business plan involves persuading potential customers to try
16 their products via the use of persuasive “before and after” videos.¹² As such, Defendants
17 are “video tape service providers” under the VPPA because, as part of their business,
18 they deliver “prerecorded video” content or other “similar audio visual materials.”

19 15. Weightwatchers.com hosts and delivers content including videos.
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22 <https://www.facebook.com/business/help/1474662202748341?id=2469097953376494>
23 (last visited October 31, 2022).

24 ⁷ FACEBOOK, RETARGETING, [https://www.facebook.com/business/oals/reta getting](https://www.facebook.com/business/oals/reta%20getting).
25 ⁸ See FACEBOOK, FACEBOOK PIXEL, ACCURATE EVENT TRACKING,
26 ADVANCED, <https://developers.facebook.com/docs/facebook-pixel/advanced/>; see also
27 FACEBOOK, BEST PRACTICES FOR FACEBOOK PIXEL SETUP,
28 <https://www.facebook.com/business/help/218844828315224?id=1205376682832142>
(last visited October 31, 2022).

⁹ FACEBOOK, FACEBOOK PIXEL, <https://developers.facebook.com/docs/facebook-pixel/> (last visited October 31, 2022).

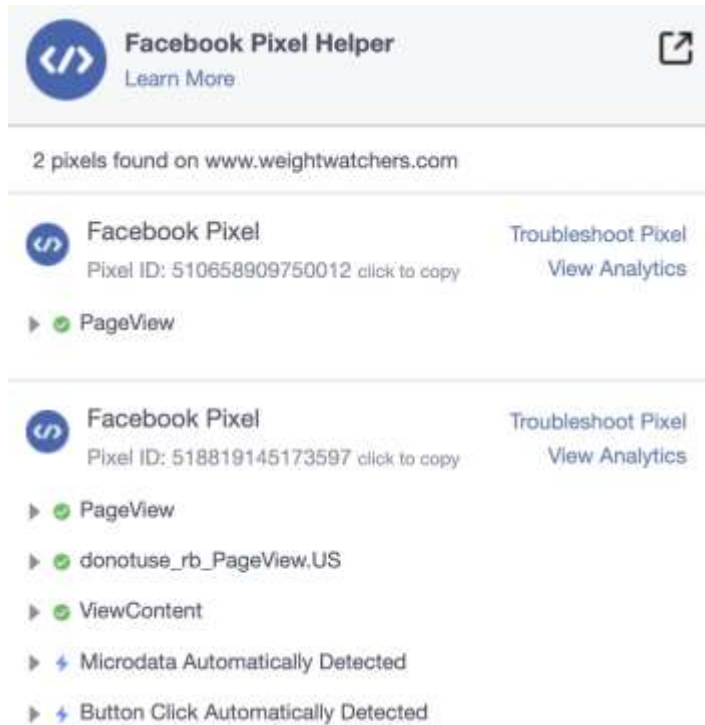
¹⁰ *Id.*

¹¹ *Id.*

¹² A google search for “Weightwatchers before and after videos” conducted November 1, 2022 returned over 180,000 results.

1 16. Weightwatchers.com hosts the Facebook tracking Pixel and transmits
2 numerous distinct events to Facebook.¹³

3 **Figure 1**



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17 17. Defendants have configured the PageView event to transmit the URL and
18 the category of content selected.

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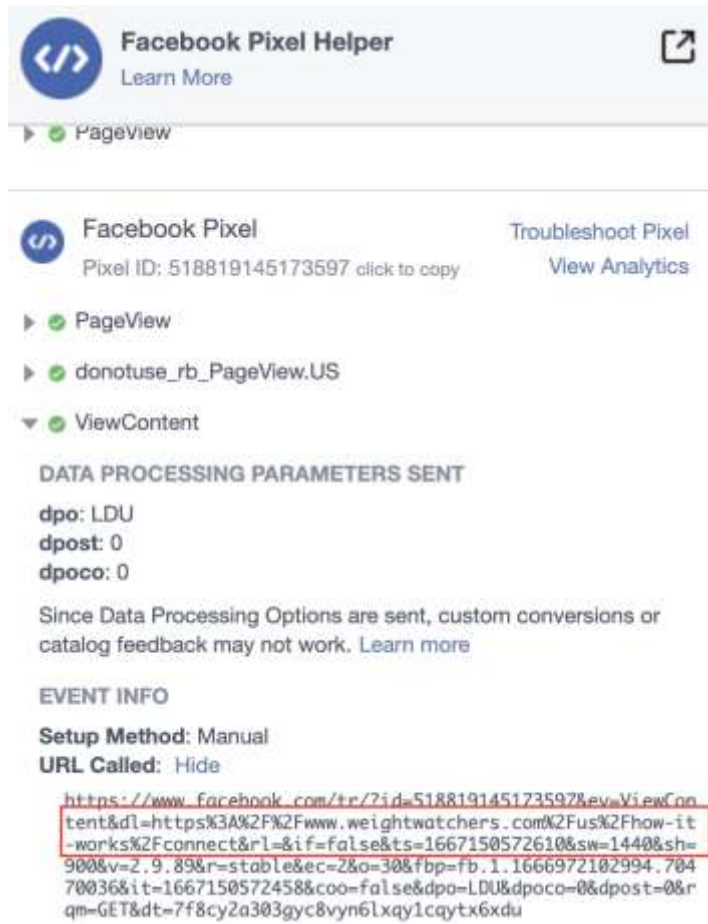
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¹³ This data is derived from a tool created and offered by Facebook.

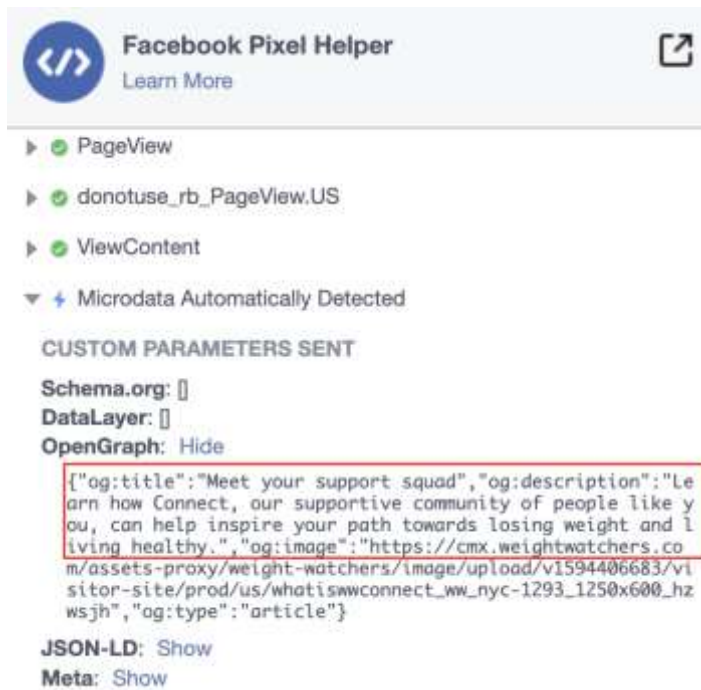
1 **Figure 2**



17 18. In the above figure, for example, Defendants disclose a webpage’s
18 Universal Resource Locator (“URL”).

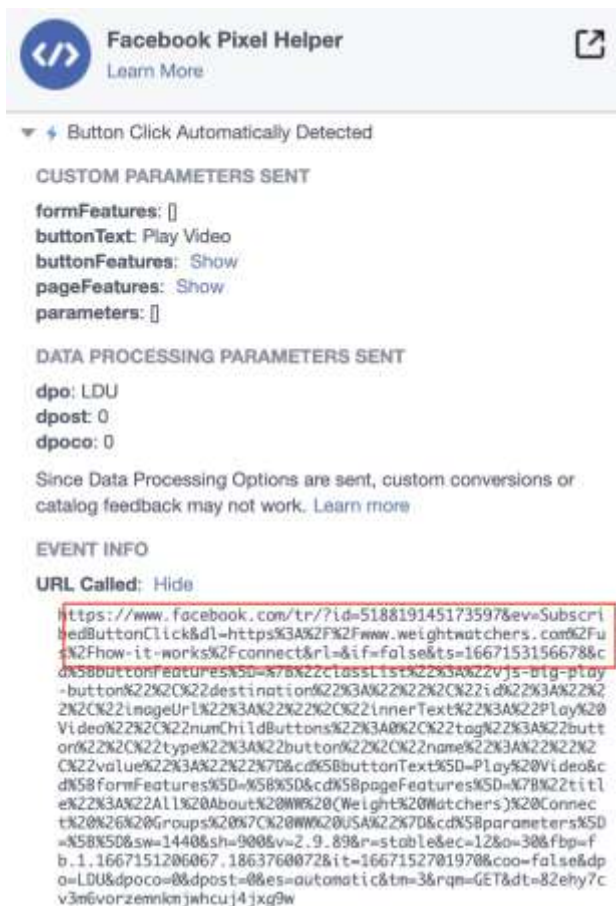
19 19. Microdata discloses the video’s title and other descriptors.
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1 **Figure 3**



13 20. The “Button Click Automatically Detected” event discloses when the
14 video’s play button is clicked by the visitor along with descriptive information about the
15 button, page, and video.
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2 **Figure 4**



19 21. The aggregate pixel events (Page View, Microdata Automatically Detected, and Button Click Automatically Detected) permit an ordinary person to identify a video’s content, title, and location.

20 22. When a visitor watches a video on Weightwatchers.com while logged into Facebook, Defendants compel a visitor’s browser to transmit the c user cookie to Facebook. The c user cookie contains that visitor’s unencrypted Facebook ID. When accessing the above video, for example, Defendants compelled the browser to send ten cookies:

Figure 5

Name	Value	Domain
presence	C%7B%22t3%22%3A%5B%5D%2C%22utc3%22%3A1...	.facebook.com
fr	0ALyYNpDKdejzTzxL.AWX3Kk183LF7dadGp0WEclFdrYs...	.facebook.com
usida	eyJ2ZXliOjEslmlkljoiQXJra3RoaDFvZXRsNWYiLCJ0aW1ljl...	.facebook.com
datr	XJTIYrKgWBI7LJvxjx0xIdMt	.facebook.com
xs	3%3A4EH9S1ewrg_PBQ%3A2%3A1667150228%3A-1%...	.facebook.com
wd	1440x721	.facebook.com
dpr	2	.facebook.com
sb	uu3jYpzue5zjSGhNf-gKsR3n	.facebook.com
c_user	100087271304389	.facebook.com
locale	en_US	.facebook.com

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

Figure 6

Name	Value	Domain
fr	0ilmxmGApZkrtQX6F.BjXrVn.48.AAA.0.0.BjXrcr.AWU_dh...	.facebook.com
datr	ErdeY8DwZw6OUY5T3qHVChfr	.facebook.com
sb	Z7VeY5082dzpP0ecvF3j2thu	.facebook.com
dpr	2	.facebook.com
wd	1440x721	.facebook.com

24. The fr cookie contains an encrypted Facebook ID and browser identifier.¹⁴ The datr cookies also identifies a browser.¹⁵ Facebook, at a minimum, uses the fr cookie to identify particular users.¹⁶

¹⁴ DATA PROTECTION COMMISSIONER, FACEBOOK IRELAND LTD, REPORT OF RE-AUDIT (Sept. 21, 2012), http://www.europe-v facebook.org/ODPC_Review.pdf (last visited October 31, 2022).

¹⁵ FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES, <https://www.facebook.com/policy/cookies/> (last visited October 31, 2022).

¹⁶ FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES, <https://www.facebook.com/policy/cookies/> (last visited October 31, 2022).

25. The `_fbp` cookie contains, at least, an unencrypted value that uniquely identifies a browser.¹⁷ As with the `fr` cookie, Facebook uses the `_fbp` cookie to identify users.

Figure 7

Name	Value	Domain
<code>_fbp</code>	fb.1.1667151325949.962025875	.weightwatchers.com

26. The Facebook Tracking Pixel uses both first- and third-party cookies. A first-party cookie is “created by the website the user is visiting”—i.e., `Weightwatchers.com`.¹⁸ A third-party cookie is “created by a website with a domain name other than the one the user is currently visiting”—i.e., Facebook.¹⁹ The `_fbp` cookie is always transmitted as a first-party cookie. A duplicate `_fbp` cookie is sometimes sent as a third-party cookie, depending on whether the browser has recently logged into Facebook.

27. Facebook, at a minimum, uses the `fr`, `_fbp`, and `c_user` cookies to link to Facebook IDs and corresponding Facebook profiles.

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

29. Through the Facebook Tracking Pixel’s code, these cookies combine the identifiers with the event data, allowing Facebook to know, among other things, what `Weightwatchers.com` videos a user has watched.²⁰

¹⁷ FACEBOOK, CONVERSION API, <https://developers.facebook.com/docs/marketingapi/conversions-api/parameters/fbp-and-fbc/> (last visited October 31, 2022).

¹⁸ PC MAG, FIRST-PARTY COOKIES, <https://www.pcmag.com/encyclopedia/term/first-party-cookie> (last visited October 31, 2022). This is confirmable by using developer tools to inspect a website’s cookies and track network activity.

¹⁹ PC MAG, THIRD-PARTY COOKIES, <https://www.pcmag.com/encyclopedia/term/third-party-cookie> (last visited October 31, 2022). This is also confirmable by tracking network activity.

²⁰ FACEBOOK, GET STARTED, <https://developers.facebook.com/docs/meta-pixel/get-started> (last visited October 31, 2022).

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

4 31. By compelling a visitor’s browser to disclose the fr and _fbp cookies
5 alongside event data for videos, Defendants knowingly disclose information sufficient to
6 permit an ordinary person to identify a specific individual’s video viewing behavior.

7 32. By compelling a visitor’s browser to disclose the fr cookie and other browser
8 identifiers alongside event data for videos, Defendants knowingly disclose information
9 sufficiently permitting an ordinary person to identify a specific individual’s video
10 viewing behavior.

11 33. Facebook confirms that it matches activity on Weightwatchers.com with a
12 user’s profile. Facebook allows users to download their “off-site activity,” which is a
13 “summary of activity that businesses and organizations share with us about your
14 interactions, such as visiting their apps or websites.”²¹ The off-site activity report
15 confirms Defendants identify an individual’s video viewing activities.

16 **C. EXPERIENCE OF PLAINTIFF**

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

24 35. In enacting the VPAA, Congress intentionally chose to extend its
25 protections to all persons who watch videos, not simply those who purchase them or
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27 ²¹ See <https://www.facebook.com/help/2207256696182627> (Off-Facebook Activity is
28 only a “summary” and Facebook acknowledges “receiv[ing] more details and activity
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 October 31, 2022).

1 claim pecuniary loss. As such, statutes like the VPPA are largely enforced by civic-
2 minded “testers” such as Plaintiff. *See Tourgeman v. Collins Fin. Servs., Inc.*, 755 F.3d
3 1109 (9th Cir. 2014) (explaining why testers have Article III standing and generally
4 discussing value and importance of testers in enforcement of consumer protection and
5 civil rights statutes).²²

6 36. During the relevant time period, Plaintiff visited Weightwatchers.com and
7 watched a video.

8 37. When Plaintiff watched videos on Weightwatchers.com, Defendants
9 disclosed event data, which recorded and disclosed the video’s title and URL, along with
10 every time Plaintiff clicked a button to pause or play the video. Alongside this event data,
11 Defendants also disclosed identifiers for Plaintiff, including the c_user and fr cookies. In
12 other words, Defendants did exactly what the VPPA prohibits: they disclosed Plaintiff’s
13 video viewing habits to a third party.

14 38. Given the nature of Defendants’ business, the content of videos that visitors
15 watch is highly sensitive. Visitors would be shocked and appalled to know that
16 Defendants secretly disclose to Facebook all of key data regarding a visitors’ viewing
17 habits.”

18 39. 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.

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²² Civil rights icon Rosa Parks was acting as a “tester” when she initiated the Montgomery Bus Boycott in 1955, as she voluntarily subjected herself to an illegal practice to obtain standing to challenge the practice in Court. *See* <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 downloaded November 2022).

1 40. By disclosing his event data and identifiers, Defendantx disclosed Plaintiff's
2 personally identifiable information ("PII") to a third-party.

3 41. Plaintiff discovered that Defendants surreptitiously collected and
4 transmitted his personally identifiable information in October 2022.

5 **CLASS ALLEGATIONS**

6 42. Plaintiff brings this action individually and on behalf of all others similarly
7 situated (the "Class") defined as follows:

8 **All persons in the United States who watched video content on**
9 **Weightwatchers.com and whose PII was disclosed by Defendants to**
10 **Facebook during the Class Period.**

11 43. **Numerosity (Fed. R. Civ. P. 23(a)(1)):** At this time, Plaintiff does not know
12 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 to
14 be so numerous that joinder of all members is impractical.

15 44. **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 Defendants collected Plaintiff's and the Class's PII;
20 b) whether Defendants unlawfully disclosed and continues to disclose their
21 users' PII in violation of the VPPA;
22 c) whether Defendants' disclosures were committed knowingly; and
23 d) whether Defendants disclosed Plaintiff's and the Class's PII without
24 consent.
25

26 45. **Typicality (Fed. R. Civ. P. 23(a)(3)):** Plaintiff's claims are typical of those
27 of the Class because Plaintiff, like all members of the Class, used Weightwatchers.com
28 to watch videos, and had PII collected and disclosed by Defendants.

1 50. Defendants disclosed to a third party, Facebook, Plaintiff’s and the Class
2 members’ personally identifiable information. Defendants utilized the Facebook
3 Tracking Pixel to compel Plaintiff’s web browser to transfer Plaintiff’s identifying
4 information, like his Facebook ID, along with Plaintiff’s event data, like the title of the
5 videos he viewed.

6 51. Plaintiff and the Class members viewed videos using Weightwatchers.com.

7 52. Defendants knowingly disclosed Plaintiff’s PII because it used that data to
8 build audiences on Facebook and retarget them for its advertising campaigns.

9 53. Plaintiff and Class members did not provide Defendants with any form of
10 consent—either written or otherwise—to disclose their PII to third parties.

11 54. Defendant’s disclosures were not made in the “ordinary course of business”
12 as the term is defined by the VPPA because they were not necessary for “debt collection
13 activities, order fulfillment, request processing, [or] transfer of ownership.” 18 U.S.C. §
14 2710(a)(2).


15 **PRAYER FOR RELIEF**

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

- 18 a. For an order certifying the Class under Rule 23 of the Federal Rules of Civil
19 Procedure, naming Plaintiff as representative of the Class;
20 b. For an order declaring that Defendant’s conduct violates the VPPA;
21 c. For an order finding in favor of Plaintiff and the Class on all counts asserted
22 herein;
23 d. An award of statutory damages under the VPAA;
24 e. An award of punitive damages;
25 f. For prejudgment interest on all amounts awarded;
26 g. For injunctive relief to stop the illegal conduct; and
27 h. For an order awarding Plaintiff and the Class their reasonable attorneys’
28 fees, expenses and costs of suit.

1 Dated: November 1, 2022

PACIFIC TRIAL ATTORNEYS, APC

2 By: 
3 Scott. J. Ferrell
4 Attorneys for Plaintiff

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