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14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA

	)	Case No.: 3:21-cv-01495
	)	
LAG SHOT GOLF LLC,	)	<b><u>COMPLAINT</u></b>
SCRATCH GOLF ACADEMY LLC, and	)	
GGG MARKETING LLC,	)	<b>1) VIOLATION OF CAL. BUSINESS</b>
	)	<b>AND PROFESSIONS CODE §</b>
Plaintiffs,	)	<b>17200 ET SEQ.,</b>
	)	<b>2) BREACH OF CONTRACT,</b>
vs.	)	<b>3) BREACH OF IMPLIED</b>
	)	<b>COVENANT OF GOOD FAITH</b>
FACEBOOK, INC.,	)	<b>AND FAIR DEALING, AND</b>
	)	<b>4) FRAUD</b>
Defendant.	)	
	)	<b><u>JURY TRIAL DEMANDED</u></b>
	)	

21  
22 Plaintiffs Lag Shot Golf LLC, Scratch Golf Academy LLC, and GGG Marketing LLC  
23 allege as follows against Defendant Facebook, Inc.

**INTRODUCTION AND OVERVIEW**

1  
2 1. Facebook, Inc. (“Facebook”) sells advertising services to individuals and  
3 businesses desiring to promote goods or services on the Facebook platform.<sup>1</sup> Facebook  
4 represents that it has 10 million business advertising customers, the vast majority of which are  
5 small and medium-sized businesses.<sup>2</sup> Plaintiffs are among the businesses that have purchased  
6 Facebook’s advertising services.

7 2. Modern business advertisers like Plaintiffs have little choice but to advertise with  
8 Facebook. Facebook (which now owns Instagram and WhatsApp) has over 70% market share in  
9 the social media market.<sup>3</sup> If a business wants to avoid using Facebook advertising, it will reach  
10 only about 30% of the social media market.

11 3. Facebook’s own Advertising Policies, which are integrated into the Facebook  
12 Terms of Service, explain the ad review process and state that if an ad is disapproved, Facebook  
13 will provide an email with details explaining how the user can create a compliant ad.<sup>4</sup> To this  
14 day, those Advertising Policies state that “[i]f your ad doesn't get approved, we'll send you an  
15 email with details that explain why. Using the information in your disapproval email, you can  
16 edit your ad and create a compliant one.”

17 4. Contrary to this representation, and starting at least as early as the second quarter  
18 of 2019, Facebook has routinely rejected ads without providing an explanation sufficient to  
19 enable the advertisers to create compliant ads. Plaintiffs’ advertisements are among the ads that  
20 have been rejected without the explanation promised under Facebook’s policies.  
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23 <sup>1</sup> <https://www.cnn.com/2020/06/30/tech/facebook-ad-business-boycott/index.html>;  
24 <https://www.investopedia.com/ask/answers/120114/how-does-facebook-fb-make-money.asp>.

25 <sup>2</sup> <https://www.facebook.com/iq/insights-to-go/200m-more-than-200-million-businesses-use-our-free-tools-to-connect-with-customers-we-also-have-more-than-10-million-active-advertisers-across-our-services-the-vast-majority-of-which-are-small-and-medium-sized-businesses>; note that the information in  
26 <https://www.nytimes.com/2021/02/11/style/disabled-fashion-facebook-discrimination.html?referringSource=articleShare> (mentioning 3 million business advertisers) is from 2016.

27 <sup>3</sup> See <https://gs.statcounter.com/social-media-stats>.

28 <sup>4</sup> See <https://www.facebook.com/policies/ads>.



1 2020.<sup>7</sup> Facebook’s decision to completely disable that business’ advertising privileges “without  
2 warning or explanation” caused the loss of several pages that had amassed “25 million  
3 enthusiastic fans” over the course of several years.<sup>8</sup> According to the business, the revocations  
4 came out of the blue, when the business’ Facebook portal contemporaneously showed that none  
5 of the advertising pages had any violations.<sup>9</sup> The business owner reported that two of his  
6 companies had been “shut down” as a result of Facebook’s actions.<sup>10</sup>

7 9. Plaintiffs’ experience has been similar. Plaintiffs’ ads have been systematically  
8 rejected without the promised explanations. After each of Plaintiffs’ ad accounts accumulated  
9 several such rejections, each was suspended by Facebook without explanation. After  
10 accumulation of several such ad account suspensions, Plaintiffs’ advertising privileges were  
11 completely suspended or revoked, also without any explanation.

12 10. Under California Law, Facebook has a duty to deliver its advertising services in  
13 good faith and to deal with its advertisers fairly. Here, that requires Facebook to provide  
14 advertisers reasonable advance notice of an impending suspension or revocation of advertising  
15 privileges and a fair opportunity to remedy the perceived defects in order to avoid such a  
16 suspension or revocation.

17 11. Facebook has violated that duty and the underlying contract established by  
18 Facebook’s Terms of Service. Facebook could have, but deliberately chose not to, devote  
19 appropriate resources (including but not limited to human employees or contractors) to ensure  
20 that the required explanations for ad rejections and advance notice of advertising suspensions or  
21 revocations were supplied to business advertisers. Instead, Facebook chose to maximize its  
22 profits, which burgeoned to \$29.1 billion in 2020.<sup>11</sup>

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24 <sup>7</sup> <https://www.businessinsider.com/facebook-removed-shared-ceo-spent-46-million-on-ads-2021-1>.

25 <sup>8</sup> <https://jordan-shared.medium.com/after-spending-over-57-million-on-facebook-ads-they-kicked-me-and-my-pages-off-without-warning-c6d7e611b01c>

26 <sup>9</sup> *Id.*

27 <sup>10</sup> *Id.*

28 <sup>11</sup> <https://www.investopedia.com/ask/answers/120114/how-does-facebook-fb-make-money.asp>.

1           12. Like the rest of the general public that purchases advertising services from  
2 Facebook, Plaintiffs have suffered economic harm during the still-pending suspension of their  
3 advertising privileges, which occurred either without explanation or with only vague  
4 explanations that were insufficient to enable Plaintiffs to create compliant ads or avoid  
5 suspension of advertising privileges, in direct contravention of Facebook's Advertising Policies  
6 and duties.

7           13. On information and belief, Facebook has been aware of this problem since at least  
8 2019 and has deliberately and willfully failed to devote appropriate resources to address the  
9 problem. According to an online message board, Facebook representatives have specifically told  
10 ad account holders that the reasons underlying the account closures would not be shared.<sup>12</sup> On  
11 information and belief, Facebook made the conscious, willful, and deliberate decision to  
12 withhold the contractually assured explanations during the ad review process and the required  
13 advance notice of advertising privilege suspensions or revocations to minimize costs and  
14 maximize profits through the use of an unduly automated ad review process.

15           14. As a consequence of Facebook's willful actions and omissions in this regard,  
16 many of Facebook's business advertisers have gone out of business. Facebook business  
17 advertisers, including Plaintiffs, also paid a higher price for advertisements than they otherwise  
18 would have had they understood that Facebook would not provide the contracted-for advertising  
19 support. Facebook business advertisers, including Plaintiffs, further suffered lost revenue and  
20 failed to enjoy the benefit of their bargains with Facebook, including in that businesses such as  
21 Plaintiffs devoted substantial time, effort and money developing Facebook advertising  
22 campaigns and attracting millions of followers only to have their accounts suddenly closed or  
23 their privileges suspended without explanation or warning.

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27 <sup>12</sup> [https://www.reddit.com/r/PPC/comments/165q4v/heres\\_proof\\_that\\_facebook\\_is\\_a\\_mess\\_right\\_now/](https://www.reddit.com/r/PPC/comments/165q4v/heres_proof_that_facebook_is_a_mess_right_now/), last  
accessed on Feb. 2, 2021.



**FACTUAL ALLEGATIONS**

23. Facebook represents that it sold advertising services to over 10 million advertisers in 2020.<sup>13</sup> Facebook represents that the “vast majority” of those advertisers are “small and medium-sized businesses.”<sup>14</sup>

24. Businesses have little choice but to advertise with Facebook. Facebook (which now owns Instagram and WhatsApp) accounted for about 70% of all social media site visits in the U.S. in January 2021.<sup>15</sup> Pinterest trails far behind with about 12% market share and Twitter comes in a distant third at about 10% market share.

25. Facebook has acquired a monopoly or an otherwise dominant market position over social media advertising. As noted in the Federal Trade Commission’s and the State Attorney Generals’ antitrust complaints, Facebook is the world’s dominant personal social networking service and has monopoly or otherwise dominant market power in a market for personal social networking services.<sup>16</sup> The FTC complaint correctly alleges as follows:

Facebook is the world’s dominant online social network. More than 3 billion people regularly use Facebook’s services to connect with friends and family and enrich their social lives. But not content with attracting and retaining users through competition on the merits, Facebook has maintained its monopoly position by buying up companies that present competitive threats and by imposing restrictive policies that unjustifiably hinder actual or potential rivals that Facebook does not or cannot acquire.<sup>17</sup>

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<sup>13</sup> <https://www.facebook.com/iq/insights-to-go/200m-more-than-200-million-businesses-use-our-free-tools-to-connect-with-customers-we-also-have-more-than-10-million-active-advertisers-across-our-services-the-vast-majority-of-which-are-small-and-medium-sized-businesses>.

<sup>14</sup> *Id.*

<sup>15</sup> See <https://gs.statcounter.com/social-media-stats>.

<sup>16</sup> *FTC v. Facebook, Inc.*, No. 1:20-cv-03590 (D.D.C. Jan. 13, 2021); *New York v. Facebook, Inc.*, 1:20-cv-03589 (D.D.C. Dec. 9, 2020).

<sup>17</sup> *FTC v. Facebook, Inc.*, No. 1:20-cv-03590 (D.D.C. Jan. 13, 2021).

1           26. Due to Facebook’s monopoly power or otherwise dominant market position over  
2 social media advertising and/or related anticompetitive behavior, businesses have no practical  
3 choice but to advertise on Facebook platforms. The alternative is to omit more than 70% of the  
4 social media market as measured by share of visits.

5           27. Plaintiffs have been advertising on Facebook since at least early 2019. As of late  
6 2020, Plaintiffs were spending over \$100,000 per month on Facebook ads. Most of the ads have  
7 related to the golf instruction services or golf training aids offered by Scratch Golf Academy  
8 LLC and Lag Shot Golf LLC. Both companies’ Facebook accounts are managed by their  
9 common founder and owner, Mr. Gary Guerrero (“Guerrero”).

10           28. Facebook’s Terms of Service<sup>18</sup> provide that the Self-Serve Ad Terms,<sup>19</sup>  
11 Advertising Policies<sup>20</sup> and Commercial Terms<sup>21</sup> apply to business advertising customers. The  
12 Self-Serve Ad Terms indicate that ad services provided by Facebook are subject to the  
13 Advertising Policies.

14           29. The Advertising Policies (“Advertising Policies”) indicate the steps an  
15 advertising customer is to take if an ad is disapproved. In particular, the Advertising Policies  
16 indicate that “[i]f your ad doesn’t get approved, we’ll send you an email with details that explain  
17 why” and that, using that information, the ad customer will be able to create a compliant ad. The  
18 salient portion of the Advertising Policies is reproduced below.

19           If your ad isn't approved for not fully complying with our policies, you can edit it and resubmit for  
20 review. To edit your ad:

- 21           • Check the email address associated with your advertising account. If your ad doesn't get  
22 approved, we'll send you an email with details that explain why.
- 23           • Using the information in your disapproval email, you can edit your ad and create a compliant  
24 one. Check this page for [editing steps](#).
- 25           • Save your edited changes. Once you save your changes, your ad will be resubmitted for  
26 review.

27           <sup>18</sup><https://www.facebook.com/legal/terms>.


28           <sup>19</sup> [https://www.facebook.com/legal/self\\_service\\_ads\\_terms](https://www.facebook.com/legal/self_service_ads_terms).

<sup>20</sup> <https://www.facebook.com/policies/ads>.

<sup>21</sup> [https://www.facebook.com/legal/commercial\\_terms](https://www.facebook.com/legal/commercial_terms).



1           30. Starting at least as early as the second quarter of 2019, Plaintiffs periodically  
2 received ad rejection notifications in their corresponding Facebook account portals. However,  
3 neither the notifications nor any corresponding emails included information sufficient to identify  
4 the alleged defect in the ad. Rather, the notifications and emails generally referred only to an  
5 alleged failure to comply with an unidentified advertising policy. As seen in the representative  
6 email, reproduced below, no explanation was provided. When Plaintiffs navigated to the pages  
7 to which the View Ad buttons were directed, the notification was similarly generic and  
8 unspecific.


9 Facebook Ads Team <advertise-noreply@support.facebook.com>  
10 To Gary Guerrero Jr  
11  If there are problems with how this message is displayed, click here to view it in a web browser.

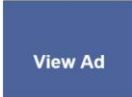
12  Fix your ad or request a review

13 Hi,

14 Your ad was rejected because it doesn't comply with our advertising policies.

15 To learn more, view your ad in Account Quality. You can request a review if you think your ad was incorrectly rejected.

16  The following ad needs your attention (1)

17 Ad: **ATC 7D - 1** 

18 Account: Scratch Golf Academy  
19 Campaign: 3 - FSMS Retargeting  
20 Ad Set: ATC 7D

21 This message was sent to [ignwealthmentor@gmail.com](mailto:ignwealthmentor@gmail.com). If you don't want to receive these emails from Facebook in the future, please [unsubscribe](#).  
22 Facebook, Inc., Attention: Community Support, 1 Facebook Way, Menlo Park, CA 94025  
23 To help keep your account secure, please don't forward this email. [Learn More](#)

24           31. Being unable to decipher the reasons underlying certain ad rejections, in late  
25 2019, Guerrero hired a digital marketing agency specializing in Facebook advertising. That  
26 marketing agency had access to its own dedicated Facebook account representative who, in  
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1 response to the agency’s query, explained that certain of Plaintiffs’ ads apparently violated a  
2 Facebook policy against “split testing” of websites. That policy was not and, it is believed, still  
3 is neither identified nor explained anywhere on any publicly accessible Facebook pages.

4 32. Because the notifications sent by Facebook contained little more than a  
5 generalized reference to the Advertising Policies, Guerrero – a sophisticated user who runs a  
6 digital marketing consultancy – was unable to determine how to fix his ads and bring them into  
7 compliance with Facebook’s policies. Rather, he needed to hire a third-party digital advertising  
8 agency who had access to a dedicated, live Facebook representative. Facebook’s Terms of  
9 Service and policies fail to inform customers that such specialized expertise or VIP access to  
10 Facebook representatives may be necessary to successfully navigate Facebook’s Advertising  
11 Policies and ad review process.

12 33. On information and belief, even such expertise and VIP access to Facebook  
13 representatives is currently insufficient to successfully navigate Facebook’s Advertising Policies  
14 and review process in many circumstances. According to an online message board, even  
15 Facebook representatives have been unable to determine why their own ad accounts have been  
16 disabled, and in one such instance a Facebook representative reported that he was advertising on  
17 his mother’s account for several months while the automated review was pending.<sup>22</sup>

18 34. During the remainder of 2020, Facebook sent Plaintiffs at least a dozen ad  
19 rejection notifications, none of which included or directed Plaintiffs to an explanation of the  
20 alleged problem with any of the ads, in direct contradiction of Facebook’s own Advertising  
21 Policies. Some of the notifications indicated that the account had been disabled for  
22 “circumventing systems policy,” but merely included a copy of the corresponding paragraph  
23 from the Facebook Advertising Policies without any suggestion for remedial action. Most of the  
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27 <sup>22</sup> [https://www.reddit.com/r/PPC/comments/l65q4v/heres\\_proof\\_that\\_facebook\\_is\\_a\\_mess\\_right\\_now/](https://www.reddit.com/r/PPC/comments/l65q4v/heres_proof_that_facebook_is_a_mess_right_now/), last  
accessed on Feb. 2, 2021.

1 notifications, however, did not even identify which policy or policies supposedly triggered the  
2 rejection.

3 35. In most or all of these situations, Plaintiffs simply appealed the rejection since  
4 they were unable to decipher how the ads were noncompliant or how they were circumventing  
5 any enforcement effort. Shortly after each appeal, Plaintiffs received a notification that the ads  
6 or advertising privileges had been “incorrectly disabled” or simply stating that the ads or  
7 privileges would be “reactivated.” This is the same experience generally reported by many  
8 Facebook advertisers.<sup>23</sup>

9 36. Plaintiffs took the appeal decision notifications at face value and, based thereon,  
10 reasonably concluded that their activities did not in fact circumvent any systems policy as  
11 suggested by some of the rejection or “account disabled” notifications.

12 37. On or about January 6, 2021, Guerrero received yet another notification that  
13 indicated his ads violated some unspecified policy:



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21 38. As he had in the past, Guerrero filed an appeal, expecting the same result – that a  
22 Facebook representative would respond that the ad had been “incorrectly disabled.” However, in  
23 response to this appeal, Facebook informed Guerrero that all accounts under his management,  
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26 <sup>23</sup> See [https://www.reddit.com/r/PPC/comments/bku8j2/facebook\\_disabled\\_my\\_ad\\_account\\_i\\_have\\_appealed\\_5/](https://www.reddit.com/r/PPC/comments/bku8j2/facebook_disabled_my_ad_account_i_have_appealed_5/);  
27 <https://www.nytimes.com/2021/02/11/style/disabled-fashion-facebook-discrimination.html?referringSource=articleShare>.

1 including Scratch Golf Academy LLC, Lag Shot Golf LLC, and GGG Marketing LLC, were  
2 completely stripped of all advertising privileges. Following the appeal, Guerrero sought further  
3 guidance, and Facebook responded that his account would not be reactivated but rather that  
4 Guerrero would need to wait at least several weeks for an unspecified review process to occur.

5 39. On February 5, 2021, Plaintiffs received an email from a Facebook representative  
6 concerning the appeal. The email stated that the “specific policy or policies violated” were not  
7 shared with the Facebook representative (and thus obviously were not being shared with  
8 Plaintiffs). The email provided only a vague assertion that the account may have been suspended  
9 due to noncompliance with Advertising Policies, Community Standards, or the Terms of Use, or  
10 alternatively reasons relating to Plaintiffs’ payment history “and the like.” The body of the email  
11 is reproduced below.

12 Hi Gary,

13  
14 This is Mary from Facebook Concierge Support. I hope you are doing well. I am writing about your  
15 concern on disabled Ad Account.

16 Upon checking, I found out that his profile and Ad Account has been flagged for non-compliance in  
17 our Advertising Policies. You may review our policies through this  
18 link:<https://www.facebook.com/policies/ads>. You may also visit this help center link for more  
19 information: <https://www.facebook.com/business/help/975570072950669>.

20 What's visible to us is only the status of the account. Having said this, the specific policy or policies  
21 violated is not shared to us as either. However, I can give you an idea. Please note there are a lot  
22 of factors being considered for being disabled due to a violation of our policies - some of which is  
23 non-adherence to the Advertising Policies, non-compliance to our Community Standards, and  
24 Facebook Terms of Use, your Ad Account payment history, and the like.

25 To make sure that you are fully supported, apart from the links I shared earlier, I am sharing this  
26 link with you as well: <https://www.facebook.com/communitystandards/>

27 For this issue, the Admin can file an appeal here <https://www.facebook.com/accountquality>

28 40. As noted above, Plaintiffs collectively had been spending over \$100,000 per  
month on Facebook advertising in reliance on the understanding that Facebook would comply  
with its policies and provide Plaintiffs guidance on how allegedly noncompliant ads could be  
made compliant.

1           41.     Given Facebook’s failure to comply with its stated Advertising Policies, Plaintiffs  
2 have been unable to remedy the alleged defects in their advertisements and have suffered  
3 economic harm as a result of their inability to advertise on Facebook.

4           42.     The New York Times has reported that many advertising customers have had  
5 strikingly similar experiences. In a February 11, 2021 article, the New York Times reported that  
6 several businesses selling adaptive clothing had their ads suspended without the promised  
7 explanation, namely, a detailed explanation sufficient to create a compliant ad.<sup>24</sup> Rather, in the  
8 rejection notifications, the “word or part of the image that created the problem is not identified,  
9 meaning it is up to the company to effectively guess where the problem lies.”<sup>25</sup> One business,  
10 being utterly unable to determine how to create compliant ads, started a remedial “petition” on  
11 change.org.<sup>26</sup> After the petition received 800 signatures, Facebook lifted the restrictions on that  
12 business.<sup>27</sup>

13           43.     Another business reported that it is “impossible” to create compliant ads without  
14 the help of an “outside media buying agency” who “could actually get a Facebook person on the  
15 phone.”<sup>28</sup> Yet another business reported that it had at least 200 ads rejected due to vague and  
16 unspecified “policy violations.”<sup>29</sup> That business owner was “exhausted by the constant attempts  
17 to reason with the void of an algorithm.”<sup>30</sup> The New York Times article quoted a professor as  
18 observing that “[a]lgorithms solve the problem of efficiency at grand scale’ — by detecting  
19 patterns and making assumptions — ‘but in doing that one thing, they do all sorts of other things,  
20 too, like hurting small businesses.’”<sup>31</sup>

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23 <sup>24</sup> See <https://www.nytimes.com/2021/02/11/style/disabled-fashion-facebook-discrimination.html?referringSource=articleShare>.

24 <sup>25</sup> *Id.*

25 <sup>26</sup> *Id.*

26 <sup>27</sup> *Id.*

27 <sup>28</sup> *Id.*

28 <sup>29</sup> *Id.*

29 <sup>30</sup> *Id.*

30 <sup>31</sup> *Id.*

1           44. As noted above, Business Insider recently reported Facebook disabled an ad  
 2 account without explanation despite the fact that the owner had spent \$46 million on Facebook  
 3 advertising from 2006 to 2020. Facebook’s decision to completely disable that business’  
 4 advertising privileges “without warning or explanation” caused the loss of pages that had  
 5 amassed “25 million enthusiastic fans” that had been accumulated over the course of many  
 6 years.<sup>32</sup> The revocations came without warning, as “Facebook’s own Page Quality tab showed  
 7 that all of [the business’] pages were green (no violations).”<sup>33</sup> When the business sought an  
 8 explanation, Facebook responded that “[u]nfortunately, for safety and security reasons, we can’t  
 9 give you any additional information as to why your account was disabled. For more information  
 10 about our policies, please review the Facebook terms.”<sup>34</sup> The business owner reported that:

11                   Facebook has systematically shut down our 2 small businesses during a  
 12 pandemic and economic crisis without explanation. Part of me is still  
 13 convinced that it was a glitch in their system and nobody has taken the  
 14 time to fully review it. Another part of me thinks someone saw something  
 15 they didn’t like, didn’t take the time to understand it and won’t give us the  
 16 chance to explain it and make it right.

17           45. Similar stories are ubiquitous on discussion boards. Selected excerpts from a  
 18 representative January 2021 discussion board thread are reproduced below:<sup>35</sup>

- 19                   • “I just got my ad account restricted a few days ago after 6 years and  
 20 hundreds of thousands spent. I have no idea why. . . . I submitted a  
 21 request for review but who knows when they’ll get back to me. Seems  
 22 to me like this is happening to a LOT of people right now though.”

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 25 <sup>32</sup> <https://jordan-shared.medium.com/after-spending-over-57-million-on-facebook-ads-they-kicked-me-and-my-pages-off-without-warning-c6d7e611b01c>.

26 <sup>33</sup> *Id.*

27 <sup>34</sup> *Id.*

28 <sup>35</sup> [https://www.reddit.com/r/PPC/comments/l65q4v/heres\\_proof\\_that\\_facebook\\_is\\_a\\_mess\\_right\\_now/](https://www.reddit.com/r/PPC/comments/l65q4v/heres_proof_that_facebook_is_a_mess_right_now/), last accessed on Feb. 2, 2021.

- 1 • “I had my longest standing account disabled last week for no reason I  
2 can isolate. Of course Facebook’s support is just a micro-step above  
3 non-existent too. So much fun!”
- 4 • “This happened to me as well today. Haven’t run ads or touched  
5 anything for several months, ~50k spent on the account. Ridiculous”
- 6 • “I had 3 accounts banned and now get no support responses. This has  
7 been causing chaos amongst the direct-response/performance  
8 marketing community for months. FB has become hypersensitive,  
9 gives no details, this ‘compliance team’ review comment is completely  
10 fake -- the accounts are being disabled using AI tools, not real  
11 compliance team members reviewing something. This is improbable as  
12 the scale is too large for humans to be individually reviewing these  
13 accounts and the reasons for the disabling.”

14 46. On information and belief, Facebook made the conscious and deliberate decision  
15 to withhold the explanations promised in its Advertising Policies to minimize cost and maximize  
16 profit by implementing an AI-based ad review system without appropriate human supervision  
17 and management.

18 47. Facebook has failed to devote appropriate resources such as human contractors  
19 and employees to help advertisers and ensure that users comply with Facebook’s policies. As  
20 noted above, Plaintiffs received an email on February 5, 2021 stating that even Facebook’s  
21 appeal representative was not informed of the reasons underlying the ad rejections or account  
22 suspensions. A January 2021 discussion board post provided a screen shot of a chat session with  
23 a Facebook representative that appears to confirm that Facebook has been deliberately  
24 withholding explanations of policy violations:<sup>36</sup>

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27 <sup>36</sup> *Id.*

- “I duplicated an ad set on a long-time running campaign with no rejected or disabled ads and suddenly I was banned. Support stated that duplicating an ad set was against policy. I asked why. This is what they said...

Sure, thank you. Is duplicating an ad set against some policy that I am unaware of?

Well to answer it should have not affect the quality of your account, Chris. About the specific policy violation, this information is strictly confidential to the internal Policy team. Due to the nature of their department, they are unable to provide any additional information on what policies are violated or why this decision was made as this information becoming external could lead to potential misuse of the platform.



I do minimal advertising on Facebook because of \*\*\*\*\* just like this. It’s literally the only ad platform I’ve ever used that you can get an account banned or restricted simply for using it’s function. Oh, and FYI I only duplicated it so I could make one small change while retaining data from the old ad set. Very common practice. Sorry for the rant, but at least this wasn’t another cookie-cutter “my account was banned!” post. I’m just as tired of those as you all are, I’m sure. I’m honestly just super thankful that I don’t rely on Facebook for my businesses and empathize will the many small and medium businesses that struggle to make ends meet when this \*\*\*\*\* happens to them.”

48. On information and belief, and as suggested in this discussion thread, many enterprises have been driven out of business by Facebook’s deliberate refusal to provide the promised explanations during the ad review process. On information and belief, Facebook has consciously refused to provide these explanations to reduce its internal costs (including the costs associated with hiring the staff necessary to provide the promised explanations) and limit its own liability and public relations risk at the expense of business owners around the world.







1 Policies constituted an affirmative representation and contractual commitment by Facebook to  
2 provide such explanations. Plaintiffs understood that the Advertising Policies provided the terms  
3 under which the advertising services would be provided by Facebook.

4 59. Prior to deciding to continue advertising on Facebook in 2020, Plaintiffs read and  
5 reasonably relied upon the Advertising Policies, including specifically the provisions explaining  
6 that when an ad is rejected, Facebook would provide an explanation sufficient to enable the user  
7 to create a compliant ad. Plaintiffs understood that the Advertising Policies constituted an  
8 affirmative representation and commitment by Facebook to provide such explanations. Plaintiffs  
9 understood that the Advertising Policies provided the terms under which the advertising services  
10 would be provided by Facebook.

11 60. On information and belief, prior to deciding to advertise or continue advertising  
12 on Facebook in 2019 to present, other businesses advertising on Facebook read and reasonably  
13 relied upon the Advertising Policies, including specifically the provisions explaining that when  
14 an ad is rejected, Facebook would provide an explanation sufficient to enable the user to create a  
15 compliant ad. Other businesses advertising on Facebook understood that the Advertising  
16 Policies constituted an affirmative representation and commitment by Facebook to provide such  
17 explanations. Other businesses advertising on Facebook understood that the Advertising Policies  
18 provided the terms under which the advertising services would be provided by Facebook.

19 61. Facebook's failure to provide the promised explanations during the ad review  
20 process is unscrupulous and gave it an unfair competitive advantage, as it allowed Facebook to  
21 provide advertising services at a lower cost and, during the ad sales process, made those  
22 advertising services appear to be more valuable than they were. Facebook could have, but  
23 deliberately chose not to, devote appropriate resources to supply the promised explanations.  
24 Instead, Facebook chose to maximize its profits, which grew to \$29.1 billion in 2020.<sup>38</sup>

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27 <sup>38</sup> <https://www.investopedia.com/ask/answers/120114/how-does-facebook-fb-make-money.asp>.





1 law, all claims against us arising out of or otherwise related to the  
2 transaction.<sup>39</sup>

3 70. As this Court held in *dotStrategy Co. v. Facebook, Inc.*, 3:20-cv-00170 (N.D. Cal  
4 Aug. 28, 2020), “Facebook’s waiver provision [in the Payment Terms] is unenforceable because  
5 thirty days was an unreasonably short period of time for plaintiff to identify, investigate, and  
6 then bring a claim.”<sup>40</sup>

7 71. Plaintiffs have suffered harm by inclusion of the above-quoted Payment Terms to  
8 the extent that they purport to limit Plaintiffs’ ability to recover their actual damages, which  
9 exceed the amounts charged by Facebook within the last thirty days.

10 72. As another example, Facebook’s terms include an arbitration clause coupled with  
11 a class action waiver that is unconscionable at least in the context of an adhesion contract with  
12 Facebook, a company with a monopoly or otherwise dominant power in the social media  
13 market.<sup>41</sup> Facebook’s terms include at least the following unconscionable provision:

14 You agree to arbitrate Commercial Claims between you and Facebook,  
15 Inc. This provision does not cover any commercial claims relating to  
16 violations of your or our intellectual property rights, including, but not  
17 limited to, copyright infringement, patent infringement, trademark  
18 infringement, violations of the Brand Usage Guidelines, violations of your  
19 or our confidential information or trade secrets, or efforts to interfere with  
20 our Products or engage with our Products in unauthorized ways (for  
21 example, automated ways). If a Commercial Claim between you and  
22 Facebook, Inc. is not subject to arbitration, you agree that the claim must  
23 be resolved exclusively in the U.S. District Court for the Northern District  
24 of California or a state court located in San Mateo County, and that you  
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26 <sup>39</sup> [https://www.facebook.com/payments\\_terms](https://www.facebook.com/payments_terms).

27 <sup>40</sup> D89 at 6.

28 <sup>41</sup> See <https://gs.statcounter.com/social-media-stats>.

1 submit to the personal jurisdiction of either of these courts for the purpose  
2 of litigating any such claim.

3 We and you agree that, by entering into this arbitration provision, all  
4 parties are waiving their respective rights to a trial by jury or to participate  
5 in a class or representative action. THE PARTIES AGREE THAT EACH  
6 MAY BRING COMMERCIAL CLAIMS AGAINST THE OTHER  
7 ONLY IN ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF  
8 OR CLASS MEMBER IN ANY PURPORTED CLASS,  
9 REPRESENTATIVE, OR PRIVATE ATTORNEY GENERAL  
10 PROCEEDING.<sup>42</sup>

11 As the California Supreme Court held in *McGill v. Citibank, N.A.*, 2 Cal. 5th 945 (2017), a  
12 contract provision that purports to waive a customer's right to seek public injunction in any form  
13 is unenforceable. The above-quoted provisions are unconscionable for at least substantially the  
14 same reasons discussed in *McGill*. The class action waiver is itself unconscionable at least in the  
15 narrow context of an adhesion contract with Facebook, which holds a monopoly or otherwise  
16 dominant position in the social media advertising market.

17 73. Plaintiffs have also been harmed by the class action waiver in the Commercial  
18 Terms, including to the extent that it purports to limit Plaintiffs' ability to bring a legal action to  
19 seek redress for the injuries discussed herein.

20 74. Further, Facebook's terms include a waiver of punitive damages and other  
21 limitations of liability that are unconscionable at least in the narrow context of an adhesion  
22 contract with Facebook, a company with monopoly or otherwise dominant power in the social  
23 media market. Facebook's terms include at least the following unconscionable provision:

24 We cannot predict when issues might arise with our Products.

25 Accordingly, our liability shall be limited to the fullest extent

26  
27 <sup>42</sup> [https://www.facebook.com/legal/commercial\\_terms](https://www.facebook.com/legal/commercial_terms).

1 permitted by applicable law, and under no circumstance will we be liable  
2 to you for any lost profits, revenues, information, or data,  
3 or consequential, special, indirect, exemplary, punitive, or incidental  
4 damages arising out of or related to these Terms or the  
5 Facebook Products, even if we have been advised of the possibility of  
6 such damages. Our aggregate liability arising out of or  
7 relating to these Terms or the Facebook Products will not exceed the  
8 greater of \$100 or the amount you have paid us in the past  
9 twelve months.<sup>43</sup>

10 75. The above-quoted provisions are unconscionable for at least the reason that they  
11 purport to permit Facebook to evade monetary and punitive damages even in the case of wanton  
12 and willful conduct. *See Silicon Valley Self Direct, LLC v. Paychex, Inc.*, No. 5:15-cv-01055,  
13 2015 WL 4452373 (N.D. Cal. Jul. 20, 2015) (finding waiver of “special, indirect, incidental, or  
14 consequential or punitive damages” in adhesion contract to be procedurally and substantively  
15 unconscionable).

16 76. The unconscionability of Facebook’s punitive damage waiver is further  
17 demonstrated by the fact that it is in direct violation of the Consumers Legal Remedies Act §  
18 1751, which provides that “[a]ny waiver by a consumer of the provisions of this title is contrary  
19 to public policy and shall be unenforceable and void.” That statutory provision has been in force  
20 and effect since 1970, and Facebook’s punitive damage waiver constitutes a deliberate and  
21 illegal attempt to deprive consumers of the protections provided by California law.

22 77. Plaintiffs are harmed by this provision because Plaintiffs have suffered damages  
23 which exceed the amount paid by Plaintiffs in the past twelve months and because Plaintiffs are  
24 entitled to an award of punitive damages for Facebook’s brazen, deliberate, and false  
25 representations and failure to abide by its own terms of service.

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27 <sup>43</sup> <https://www.facebook.com/terms>.





1 Facebook’s Ads Manager,<sup>49</sup> Facebook’s Power Editor,<sup>50</sup> Facebook’s Ads Manager App,  
2 Facebook Pages, and Facebook Ads API.

3 83. One of Facebook’s obligations is to provide businesses advertising on Facebook  
4 an explanation of why an ad is being rejected or advertising privileges are being suspended or  
5 revoked. For example, the Advertising Policies provide that “[i]f your ad doesn’t get approved,  
6 we’ll send you an email with details that explain why” and that, using that information, the ad  
7 customer will be able to create a compliant ad.

8 84. Facebook has breached its contractual obligation to the public, including  
9 Plaintiffs, by rejecting ads without the promised explanation, which was the direct and proximate  
10 cause of the restriction or revocation of many business advertisers’ advertising privileges.

11 85. Facebook could have, but deliberately chose not to, devote appropriate resources  
12 (including human employees or contractors) to help supply the promised explanations. Instead,  
13 Facebook chose to maximize its profits, which swelled to \$29.1 billion in 2020.<sup>51</sup>

14 86. As a result, Plaintiffs and other businesses advertising on Facebook purchased  
15 advertising services they would not otherwise have purchased and failed to receive the benefit of  
16 their bargain.

17 87. This Court should award an injunction on behalf of the general public, including  
18 at least nearly 10 million Facebook business advertisers, preventing Facebook from rejecting ads  
19 without first providing the promised explanations, namely, explanations which are sufficiently  
20 detailed to enable each advertiser to create a compliant ad. Broad injunctive relief is appropriate  
21 in this circumstance, particularly because Facebook has inserted a class action waiver into its  
22 non-negotiable terms of use.

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<sup>49</sup> <https://www.facebook.com/ads/manager/creation/>.

27 <sup>50</sup> <https://www.facebook.com/ads/manage/powereditor>.

28 <sup>51</sup> <https://www.investopedia.com/ask/answers/120114/how-does-facebook-fb-make-money.asp>.

**THIRD CAUSE OF ACTION**

**Breach of Implied Covenant of Good Faith and Fair Dealing**

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2  
3 88. Plaintiffs re-allege and incorporate by reference herein all of the allegations  
4 contained above.

5 89. Plaintiffs met all or substantially all of their contractual obligations, including  
6 submitting their advertising for Facebook’s approval and paying for Facebook’s advertising  
7 services.

8 90. Facebook’s Advertising Policies include the following contractual provision:

9 If your ad isn’t approved for not fully complying with our policies, you can edit it and resubmit for  
10 review. To edit your ad:

- 11 • Check the email address associated with your advertising account. If your ad doesn't get  
approved, we'll send you an email with details that explain why.
- 12 • Using the information in your disapproval email, you can edit your ad and create a compliant  
one. Check this page for [editing steps](#).
- 13 • Save your edited changes. Once you save your changes, your ad will be resubmitted for  
review.

14 91. Under California law, Facebook was required to perform its contractual  
15 obligations in good faith and to avoid any acts or material omissions which unfairly interfere  
16 with the right of any other party to receive the benefits of the contract.

17 92. This duty required Facebook to provide business advertisers i) fair advance notice  
18 and warning that advertising privileges may be suspended or revoked, and ii) a reasonable  
19 opportunity to make the appropriate corrections or take the appropriate steps to avoid such  
20 suspension or revocation. A reasonable business advertiser would have expected these basic  
21 steps as part of the benefit of the bargain relating to the above-quoted contractual provision.

22 93. Facebook breached its implied duty of good faith and fair dealing by suspending  
23 or revoking advertising privileges without explanation. Had Facebook met its duty of good faith  
24 and fair dealing, it would have provided explanations that would have enabled ad customers to  
25 create compliant ads and thereby retain their advertising privileges.







1 C. An injunction on behalf of the general public, including at least nearly 10 million  
2 Facebook business advertisers, barring Facebook from attempting to enforce any contract  
3 provision deemed unconscionable by this Court;

4 D. Declaring Facebook's conduct to be wrongful, unfair and unconscionable, as  
5 well as fraudulent;

6 E. Restitution of all relevant fees paid to Facebook by Plaintiffs as a result of the  
7 wrongs alleged herein in an amount to be determined at trial;

8 F. Disgorgement of the ill-gotten gains derived by Facebook from its misconduct;

9 G. Actual damages in the amount of \$1,000,000, or according to proof;

10 H. Statutory damages as permitted by law;

11 I. Punitive and exemplary damages;

12 J. Pre-judgment interest at the maximum rate permitted by applicable law;

13 K. Costs and disbursements assessed by Plaintiffs in connection with this action,  
14 including reasonable attorneys' fees pursuant to applicable law; and

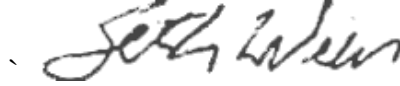
15 L. Such other relief as this Court deems just and proper.  
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**JURY TRIAL DEMAND**

Plaintiffs hereby request a jury trial for all issues so triable.

Dated: March 3, 2021

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of this document has been served on all parties through counsel of record on March 2, 2021 via the Court's CM/ECF system.



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Seth W. Wiener