

8TH JUDICIAL DISTRICT COURT
TAOS COUNTY NM
FILED IN MY OFFICE
4/29/2015 2:28:43 PM
BERNABE P. STRUCK
DISTRICT COURT CLERK

STATE OF NEW MEXICO
COUNTY OF TAOS
EIGHTH JUDICIAL DISTRICT COURT
105 Albright St., Suite N
Taos, NM 87571
Ph.: 575-758-3173

lm

Cause No. D-820-CV-2015-00148

JAMES HAMILTON,

Plaintiff,

Defendant Name:
Facebook, Inc.

vs.

Address:

FACEBOOK, INC.,
a Delaware Corporation,

1601 Willow Road
Menlo Park, California 94025

Defendant.

SUMMONS
THE STATE OF NEW MEXICO

TO THE ABOVE NAMED DEFENDANT(S): Take notice that

1. A lawsuit has been filed against you. A copy of the lawsuit is attached. The Court issued this Summons.
2. You must respond to this lawsuit in writing. You must file your written response with the Court no later than thirty (30) days from the date you are served with this Summons. (The date you are considered served with the Summons is determined by Rule 1-004 NMRA) The Court's address is listed above.
3. You must file (in person or by mail) your written response with the Court. When you file your response, you must give or mail a copy to the person who signed the lawsuit.
4. If you do not respond in writing, the Court may enter judgment against you as requested in the lawsuit.
5. You are entitled to a jury trial in most types of lawsuits. To ask for a jury trial, you must request one in writing and pay a jury fee.
6. If you need an interpreter, you must ask for one in writing.
7. You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at www.nmbar.org; 1-800-876-6657; or 1-505-797-6066.

Dated at Taos, New Mexico, this 29th day of April, 2015.

BENABE P. STRUCK
DISTRICT COURT CLERK


By:
Court Clerk II



/s/ Richard De Stefano
Signature of Attorney for Plaintiff
Name: Richard De Stefano
De Stefano Law Firm, P.C.
Address: 509 Camino de la Placita
Telephone No.: 575-751-7100
Fax No.: 575-751-1234
Email Address: rick@destefanolaw.com

THIS SUMMONS IS ISSUED PURSUANT TO RULE 1-004 OF THE NEW MEXICO
RULES OF CIVIL PROCEDURE FOR DISTRICT COURTS.

Signature of person making service

Title (if any)

Subscribed and sworn to before me this _____ day of _____, 2015.

Judge, notary or other officer
authorized to administer oaths

Official title

TAOS COUNTY NM
FILED IN MY OFFICE
4/27/2015 2:55:31 PM
BERNABE P. STRUC
DISTRICT COURT CLERK

BLP

STATE OF NEW MEXICO
EIGHTH JUDICIAL DISTRICT COURT
COUNTY OF TAOS

Case No. D-820-CV-2015 _____ D-820-CV-2015-00148

JAMES HAMILTON,

Plaintiff,

v.

FACEBOOK, INC., a Delaware Corporation,

Defendant.

**COMPLAINT FOR PERMANENT INJUNCTION,
COMPENSATORY AND PUNITIVE DAMAGES,
AND STATUTORY DAMAGES AND PENALTIES**

Plaintiff, JAMES HAMILTON, by his undersigned attorney, for his complaint,
against Defendant, FACEBOOK, INC., respectfully alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff is a resident of Llano Quemado, in the unincorporated portion of Taos County, New Mexico.
2. Defendant, FACEBOOK, INC., is a Delaware Corporation whose principal place of business is 1601 Willow Road, Menlo Park, California 94025.
3. The events, injuries, and damages complained of herein occurred in Taos County, New Mexico.
4. Defendant has substantial business contacts with New Mexico, including, on information and belief, more than 100,000 subscribers to the Facebook network who reside in New Mexico. On information and belief, FACEBOOK, INC., has business

equipment in New Mexico, employees, and other facilities in New Mexico. This court has jurisdiction over FACEBOOK, INC., based on its general business activities in New Mexico, the specific activities complained of herein, and causation of harm in New Mexico by FACEBOOK, INC.,'s intentional actions as alleged herein. Venue is proper in Taos County pursuant to NMSA Section 38-3-1.

ALLEGATIONS COMMON TO ALL COUNTS

5. Plaintiff is a cell phone subscriber who uses his cell phone as a residential and personal telephone.

6. Plaintiff is enrolled in the national "do-not-call" list.

7. Commencing in August 2014 and continuing to the present time, Defendant has repeatedly sent not less than 54 solicitations and unwelcome, unsolicited advertising messages via text message to Plaintiff's cell phone number. These messages consisted of false statements, such as "Jim, you have messages on Facebook," and contained links to Facebook's website. Although these links differed in minor ways from each other, they always led to the same Facebook page, where members must sign in, or nonmembers must register to become members.

8. Plaintiff is not a member of Facebook, and does not have a Facebook page. Plaintiff has no interest in becoming a member of Facebook or having a Facebook page. Plaintiff has never requested contact nor consented to contact by auto-dialed text messages. Plaintiff attempted to communicate with Facebook by reply to the text messages requesting they cease sending the solicitations, to no avail. Plaintiff searched on the Facebook website for a method of communicating the same lack of desire to receive unsolicited advertising, but there is no way to communicate with

Facebook management through the Facebook website, unless and possibly except for members of Facebook. Plaintiff is unsure whether even Facebook members can communicate with Facebook management on the Facebook website.

9. Plaintiff has complained to the Federal Communications Commission, who advised that they lack jurisdiction to act on behalf of any individual Complainant, but that Plaintiff should take this legal action against Defendant under the Telephone Consumer Protection Act.

COUNT ONE – VIOLATIONS OF TELEPHONE CONSUMER PROTECTION ACT

10. Defendant sent not less than 54 telephonic solicitations via text message to Plaintiff's cellular telephone number, in violation of the Telephone Consumers Protection Act, 27 U.S.C. Section 227 (the "TCPA"), which expressly prohibits the automated sending of telephonic communications, including text messages, to cell phones or residential phones, for advertising purposes, except where the recipient has affirmatively requested contact, or there is some established business relationship.

11. The TCPA provides for a private right of action in state court, in conformance with the rules of the state court.

12. The TCPA provides for statutory penalties of \$500 per violation, and gives the Court discretion to treble the penalty to \$1,500 per violation.

13. Defendant owns and operates the third largest and first most popular¹

¹ See Attachment 1, showing Facebook's site as most popular, by far, among polled internet users, and Attachment 2, showing Facebook's site has the third highest number of monthly unique visitors, more than 800 million visitors, behind only Google and Microsoft. Both charts from Kleiner Perkins Caulfield Byers Report "Internet Trends" dated May 29, 2013.

social network business in the world, having more than 1.3 billion subscriber/members. On information and belief, FACEBOOK, INC., is so well established with advertisers, that substantial marketing effort is directed to getting new subscribers and members to view its website, as distinguished from effort to get advertisers. On information and belief, adding subscribers, without any other effort, would increase Facebook's gross revenues pursuant to existing contracts with advertisers.² The temptation for a company in the position of FACEBOOK, INC., to violate the law and the privacy rights of non-subscribers, is strong, nearly irresistible. The actions of Facebook in invading Plaintiff's privacy were intentional, egregious, willful, and malicious, and in such a case as this, the TCPA provides for triple statutory penalties of \$1,500 per violation.

COUNT TWO – VIOLATION OF UNFAIR PRACTICES ACT

14. The text message advertisements complained of were false and misleading, in violation of the New Mexico Unfair Practices Act, §57-12-1, et seq., specifically, §57-12-3, which prohibits unfair, deceptive, and unconscionable acts, and especially §57-12-23, which prohibits automated dialing of unwelcome telephonic solicitations.

15. Plaintiff is entitled to a permanent injunction prohibiting Defendant from contacting Plaintiff, by text message, telephone, fax, or email, for any purpose, unless and except for any contact to which Plaintiff has consented to, in advance and in writing.

² See, Facebook Inc., Annual Report for FYE 12/31/2014, SEC Form 10K, Notes to Consolidated Financial Statements, where the Defendant states: "Marketers pay for ad products either directly or through their relationships with advertising agencies, based on the number of clicks made by our users, the number of actions taken by our users, or the number of impressions delivered."

16. Plaintiff is entitled to actual damages according to proof at trial, and that such amount be trebled. Plaintiff is entitled to at least \$100 per violation, regardless of proven actual damages, and that such amount be trebled to \$300 per violation.

17. Plaintiff is entitled to recover his attorneys' fees and costs of suit.

COUNT THREE – INVASION OF PRIVACY

18. The text message solicitations complained of herein constitute wrongful invasions of Plaintiff's privacy.

19. It is not reasonable for Plaintiff to change his phone number, forego the use of a cellular telephone, or take any other step to protect himself from such invasions of privacy as have been committed by Defendant, and Plaintiff is without recourse to protect his privacy other than through legal action.

20. Defendant's invasion of Plaintiff's privacy has proximately caused Plaintiff inconvenience and mental distress, all to Plaintiff's damage in an amount to be proven at trial.

21. Defendant's invasions of Plaintiff's privacy were willful, malicious, and oppressive, and Plaintiff is entitled to punitive damages in an amount to be proven at trial in order to punish FACEBOOK, INC., and by way of example.

WHEREFORE, Plaintiff prays for judgment in favor of Plaintiff and against FACEBOOK, INC., as follows:

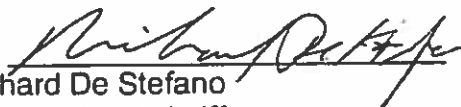
A. For an order that Defendant be permanently enjoined and restrained from contacting Plaintiff by text message, telephone, facsimile, email, or any other method, to solicit his membership in Facebook or any other purpose, unless Plaintiff has first consented in writing to such solicitation;

- B. For statutory damages for violations of the Telephone Consumer Protection Act, and that said amount be trebled;
- C. For statutory damages for violation of the New Mexico Unfair Practices Act, and that such amount be trebled;
- D. For actual damages according to proof for repeated invasions of Plaintiff's privacy;
- E. For punitive damages according to proof;
- F. For reasonable attorney's fees;
- G. For cost of suit; and,
- H. For such other and further relief as the Court deems proper.

Respectfully submitted,

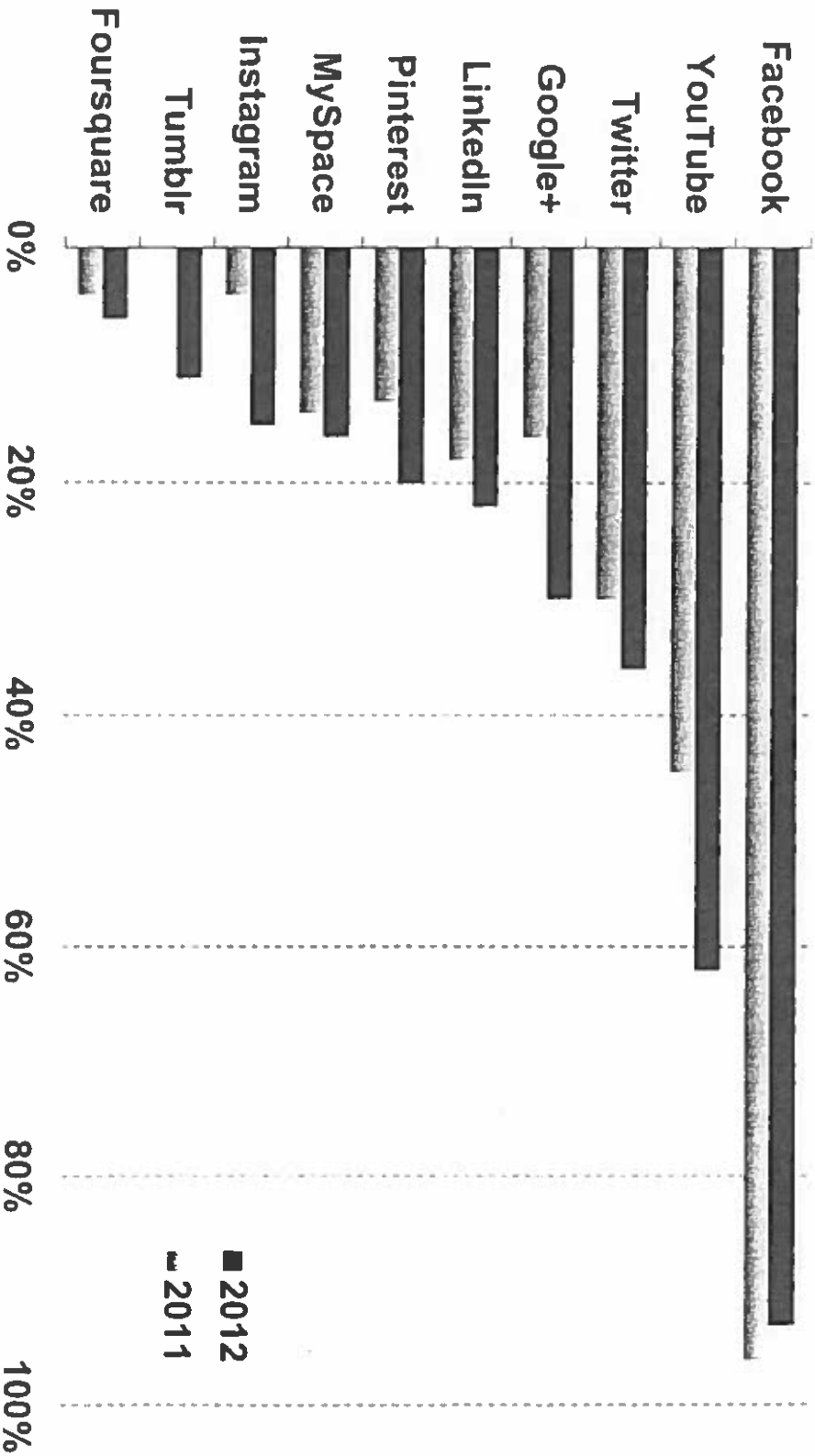
DE STEFANO LAW FIRM, P.C.

/s/ Richard De Stefano

By: 
Richard De Stefano
Attorney for Plaintiff
509 Camino De La Placita
Taos, NM 87571
575-751-7100
rick@destefanolaw.com

Social Media – Facebook Leads, YouTube + Twitter + Google+ + Pinterest + Instagram + Tumblr Rising Fast

Which of the Following Social Media Do You Use?



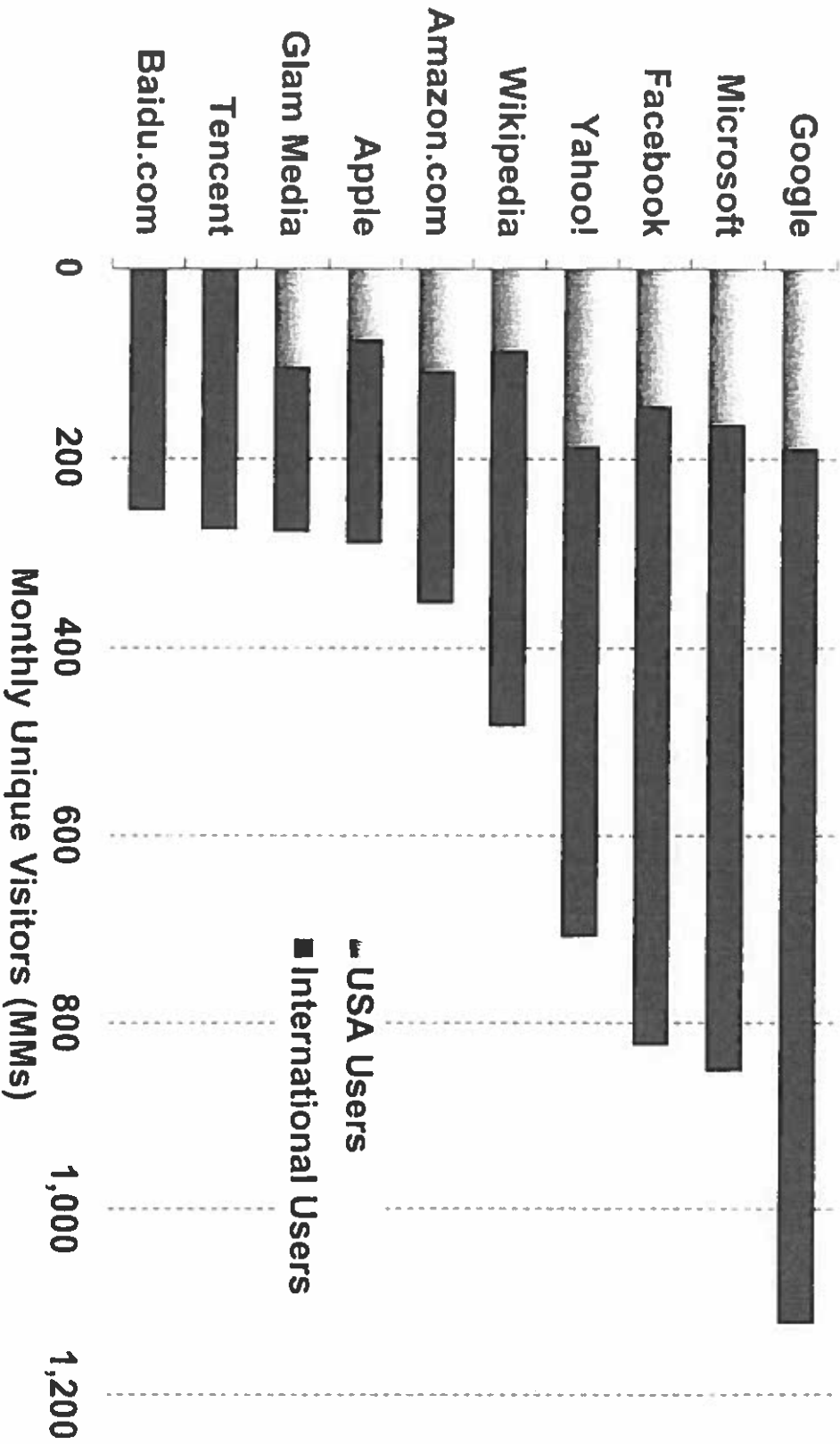
Source: Frank N. Magid Associates, "Facebook Fatigue - Fact or Fiction?" March 2013. Based on a study of 2K social media users aged 12-64 who were asked "Which of the Following Social Media Do You Use?" 2011 Pinterest and Instagram data from 9/12 / 4/12

KPCB

ATTACHMENT 1

80% of Top Ten Global Internet Properties 'Made in USA' ...
81% of Users Outside America

Top 10 Internet Properties by Global Monthly Unique Visitors, 2/13



KPCB

ATTACHMENT 2

8TH JUDICIAL DISTRICT COURT
TAOS COUNTY NM
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5/12/2015 12:01:44 PM
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8TH JUDICIAL DISTRICT COURT
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STATE OF NEW MEXICO
COUNTY OF TAOS
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Address:
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7. You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at www.nmbar.org; 1-800-876-6657; or 1-505-797-6066.

Dated at Taos, New Mexico, this 29th day of April, 2015.

BENABE P. STRUCK
DISTRICT COURT CLERK


By: _____
Court Clerk II



/s/ Richard De Stefano
Signature of Attorney for Plaintiff
Name: Richard De Stefano
De Stefano Law Firm, P.C.
Address: 509 Camino de la Placita
Telephone No. 575-751-7100
Fax No. 575-751-1234
Email Address: rick@destefanolaw.com

THIS SUMMONS IS ISSUED PURSUANT TO RULE 1-004 OF THE NEW MEXICO
RULES OF CIVIL PROCEDURE FOR DISTRICT COURTS.

STATE OF NEW MEXICO)
)
COUNTY OF TAOS)

I, being duly sworn, on oath, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in Taos County on the 4th day of May, 2015, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

(check one box and fill in appropriate blanks)

to the defendant _____ (used when defendant accepts a copy of summons and complaint or refuses to accept the summons and complaint)

to the defendant by [mail] [courier service] as provided by Rule 1-004 NMRA (used when service is by mail or commercial courier service).

After attempting to serve the summons and complaint on the defendant by personal service or by mail or commercial courier service, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

to _____, a person over fifteen (15) years of age and residing at the usual place of abode of defendant _____ (used when the defendant is not presently at place of abode) and by mailing by first class mail to the defendant at _____ (insert defendant's last known mailing address) a copy of the summons and complaint.

to _____, the person apparently in charge at the actual place of business or employment of the defendant and by mailing by first class mail to the defendant at _____ (insert defendant's business address) and by mailing the summons and complaint by first class mail to the defendant at _____ (insert defendant's last known mailing address).

to _____, an agent authorized to receive service of process for defendant _____.

to _____, [parent] [guardian] [custodian] [conservator] [guardian ad litem] of defendant _____ (used when defendant is a minor or an incompetent person).

to _____ (name of person), _____ (title of person authorized to receive service. Use this alternative when the defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Fees _____ 0

Alicia K. Hales
Signature of person making service

Title (if any)

Subscribed and sworn to before me this 12th day of May, 2015.

Judge, notary or other officer
authorized to administer oaths

Richard DeStefano
Official title NOTARY PUBLIC

