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CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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E-filing

12 Attorneys for Individual and Representative  
13 Plaintiff Unified ECM, Inc.

14 **UNITED STATES DISTRICT COURT**

15 **NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION**

16 UNIFIED ECM, INC., on behalf of itself  
17 and all others similarly situated,

CV Case No. 09

3430

PVT

18 Plaintiff,

**CLASS ACTION COMPLAINT**

19 vs.

20 FACEBOOK, INC.,

**JURY TRIAL DEMANDED**

21 Defendant.  
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1 Plaintiff Unified ECM, Inc. ("Plaintiff"), on behalf of itself and all others similarly situated,  
2 alleges the following against Facebook, Inc., based on personal knowledge, information and belief and  
3 its counsel's investigation:

#### 4 INTRODUCTION

5 1. Plaintiff brings this class action suit against Facebook, Inc. ("Defendant") for  
6 systematically charging its advertisers for non-existent, fraudulent or invalid clicks.

7 2. Defendant offers a popular, free-access social networking website at [www.facebook.com](http://www.facebook.com)  
8 ("Facebook") that, as of June 2009, is the most popular social networking site on the Internet with over  
9 200 million active users. Facebook users interact with the site by creating profiles, creating and joining  
10 networks of other users, and interacting with them in various ways, such as by reviewing others'  
11 profiles, playing games, exchanging private or public messages or posting links to outside material.

12 3. Businesses that advertise on Facebook have two options to pay for ads: pay per click  
13 ("CPC"), or pay per thousand impressions ("CPM"). The CPC advertising option allows a business to  
14 specify a certain amount that it is willing to pay each time a user clicks on the business' ad. The CPM  
15 option allows a business to specify how much it is willing to pay for 1000 views, or impressions, of its  
16 ad. Facebook represents that the amount the advertiser is charged will be based on the number of clicks  
17 it receives or impressions that are viewed. For example, in response to the frequently asked question  
18 posted on Facebook, "Will I ever be billed more than my maximum cost per click or maximum CPM?"  
19 the response is "**No, you will never be billed more than your maximum cost per click** or the maximum  
20 CPM that you have specified."  
21

22 4. In spite of Defendant's representations, advertisers have reported being charged for more  
23 clicks than are actually received. According to an article carried by *The Washington Post* on June 21,  
24 2009, "A big part of [Facebook's] revenue comes from cost-per-click advertising from small self serve  
25 advertisers. And right now those advertisers aren't very happy. They've been complaining about click  
26 fraud of up to 100% for weeks, and the situation doesn't seem to be getting any better." The article cites  
27 scores of complaint on web message boards, where advertisers are complaining that they are being  
28 overcharged by Defendant in the magnitude of "1000s of clicks." These advertisers claim that

1 Defendant is charging them for thousands of “clicks that don’t exist at all” in violation of its explicit  
2 promise to advertisers.

3 5. Defendant’s conduct, as alleged herein, violates Cal. Bus. & Prof. Code §§ 17200 *et seq.*,  
4 and constitutes a breach of contract and unjust enrichment.

5 **JURISDICTION AND VENUE**

6 6. This Court has personal jurisdiction over the parties in this case. Defendant is a  
7 California corporation with headquarters in this District. Defendant conducts substantial business in this  
8 State and has systematic and continuous contacts with this State. Defendant operates an interactive  
9 website available in California, and offers advertising services on that website to its advertising  
10 customers in California. Defendant transacts business with users and advertisers located throughout  
11 California.

12 7. This Court has subject matter jurisdiction over this action pursuant to the Class Action  
13 Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one Class member is of diverse citizenship  
14 from Defendant; there are more than 100 Class members nationwide; and the aggregate amount in  
15 controversy exceeds \$5,000,000.

16 8. Venue is proper in this District under 28 U.S.C. § 1391(a) because Defendant maintains  
17 headquarters within this District. A substantial part of the events or omissions giving rise to the claim  
18 occurred within this District and Defendants have caused harm to Class members residing within this  
19 District.

20 9. Further, the wrongful conduct at issue in this complaint emanates from California.  
21 Defendant improperly billed advertisers for non-existent, fraudulent or invalid clicks from its  
22 headquarters in California. Employees and agents of Defendant who are responsible for this wrongful  
23 conduct are located in California. The misrepresentations and deceptive conduct that form the basis of  
24 Plaintiff’s claims emanate from California.

25 **INTRADISTRICT ASSIGNMENT**

26 10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391. Pursuant to Civil  
27 L.R. 3-2, this case should be assigned to the San Jose Division. Defendant is headquartered in Palo  
28

1 Alto, California. Additionally, Defendant conducts business in this Division and a substantial part of the  
2 events giving rise to the claims asserted herein occurred within or emanated from this Division.

3 **PARTIES**

4 11. Plaintiff United ECM, Inc. is a company with its principal place of business in Beverly  
5 Hills, California. Plaintiff paid for advertising on Facebook and was wrongfully charged for non-  
6 existent clicks, fraudulent or invalid clicks.

7 12. Defendant Facebook, Inc., is a Delaware corporation with its principal place of business  
8 at 156 University Ave., Palo Alto, California 94301-1605.

9 **FACTUAL ALLEGATIONS**

10 13. Defendant operates and privately owns the popular, free-access social networking  
11 website at www.facebook.com ("Facebook"). As of June 2009, Facebook is the most popular social  
12 networking site on the Internet with over 200 million active users.

13 14. Facebook allows users to create profiles which can include user-uploaded photos, videos,  
14 location data, education and work information, lists of personal interests and other user-defined  
15 information. Once a profile is created, users can create and join networks of other users and interact  
16 with them in various ways, such as by reviewing others' profiles, playing games, exchanging private or  
17 public messages or posting links to outside material.

18 15. More than 100 million users log in and interact with Facebook each day and, according to  
19 the Facebook Press Room, these users are active: More than 850 million photos and more than 10  
20 million videos are uploaded to the site each month. More than 1 billion pieces of content, including web  
21 links, news stories, blog posts, notes, photos, etc. are shared each week. More than 30 million users  
22 update their statuses at least once each day.

23 16. To take advantage of its tremendous base of active users, Defendant offers online  
24 advertising on its website which it promotes as helping businesses reach their "exact audience" and  
25 "connect real customers" to their businesses. Due to the voluminous personal information that  
26 Facebook has about each user, advertisers are able to "target [their] exact audience with demographic  
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1 and psychographic filters,” including by, among other things, geographic location, age, sex, keywords,  
2 education, workplace, relationship status and interests, and languages.

3 17. In 2008, Defendant generated \$280 million in revenue, most of which comes from  
4 advertising by small, self-serve advertisers. For 2009, Facebook has set a revenue target of \$550 million  
5 according to investors.

6 18. Businesses that wish to advertise on Facebook have two options to pay for ads: (1) pay  
7 per click (“CPC”), or (2) pay per thousand impressions (“CPM”). The CPC advertising option allows a  
8 business to specify a certain amount that it is willing to pay each time a user clicks on the business’ ad.  
9 The CPM option allows a business to specify how much it is willing to pay for 1000 views, or  
10 impressions, of its ad.

11 19. Defendant represents that when a business runs an ad on Facebook, it will only be  
12 charged for the number of clicks received (CPC option), or for the number of impressions of its ad that  
13 are displayed (CPM option).

14 20. In creating their ad campaign, the advertiser is prompted to provide the parameters of its  
15 advertisement. For example, advertisers provide a Title, a Destination URL, proposed Body Text, and  
16 user targeting information (such as keywords, relationship status, or other attributes):

17 21. Under the “Campaigns and Pricing” section, for example, advertisers are prompted to  
18 answer the question, “What is the most you want to spend per day?” (the “Daily Budget”). In that same  
19 section, advertisers who select the “Pay for Clicks (CPC)” option are prompted to input a “Max Bid” by  
20 answering the question, “How much are you willing to pay per click? (*i.e.*, min. \$0.01).”

21 22. According to the Frequently Asked Questions (“FAQ”) available at Facebook’s Help  
22 Center (under the section for Ads: Campaign Cost and Budgeting), the CPC option “allows you to  
23 specify a certain amount that you are willing to pay ***each time a user actually clicks on your ad.***”  
24 (emphasis added.)

25 23. In response to the question, “Should I choose CPC or CPM for my campaign?” the Help  
26 Center FAQ states that, “***As a CPC advertiser you are indicating that what is most important to you is***  
27 ***having people click through to your website and controlling the actual cost to drive each individual***  
28

1 **person to your site.**” In response to the question, “How much will my campaign cost?” the Help Center  
2 states that, “**When you run your ad you will only be charged for the number of clicks you receive**  
3 **(CPC)** or the number of impressions of your ad that are displayed (CPM). The amount that you are  
4 charged will never exceed your daily budget.” (emphasis added.)

5 24. Finally, in response to the question “Will I ever be billed more than my maximum cost  
6 per click or maximum CPM?” the Help Center states that “**No, you will never be billed more than your**  
7 **maximum cost per click** or the maximum CPM that you have specified.” (emphasis added.)

8 25. Defendant thus clearly represents that users will be billed based on the number of clicks  
9 actually received or the number of ad impressions actually viewed.

10 26. In spite of these representations, Defendant has overcharged advertisers by charging them  
11 for more clicks than are actually received. According to an article carried by *The Washington Post* on  
12 June 21, 2009, “A big part of [Facebook’s] revenue comes from cost-per-click advertising from small  
13 self serve advertisers. And right now those advertisers aren't very happy. They've been complaining  
14 about click fraud of up to 100% for weeks, and the situation doesn't seem to be getting any better.” The  
15 article cites scores of complaints on web message boards, where advertisers are complaining that they  
16 are being overcharged by Defendant in the magnitude of “1000s of clicks.” These advertisers claim that  
17 Defendant is charging them for thousands of “clicks that don’t exist at all” in violation of its explicit  
18 representations to advertisers.

19 27. “Click Fraud” is the term used in the online advertising industry to describe when a  
20 person, automated script or computer program imitates a legitimate user of a web browser by clicking on  
21 an ad for the purpose of increasing the pay-per-click fees paid by rivals, boosting the placement of their  
22 own advertisements, or otherwise directly profiting from the activity. Some fraudulent clickers have  
23 used software programs that automatically click on ads hundreds or thousands of times.

24 28. Business rivals rely on Click Fraud to drive up the advertising costs of their competitors,  
25 often to the point that they use up a competitor’s budget and cause the competitor’s pay-per-click  
26 advertisement to be removed from further search results, which may boost the prominence of the  
27 competitor’s advertisements.  
28



1 34. Plaintiff uses reliable software to track the number of clicks it receives on its website  
2 from its Facebook ad. According to the data collected from Plaintiff's software, Defendant has charged  
3 Plaintiff for non-existent, fraudulent or invalid clicks.

4 35. Plaintiff's experience is not an isolated event. Numerous advertisers across the country  
5 have complained about being overcharged for non-existent, fraudulent or invalid clicks. Numerous  
6 advertisers have also complained that their Facebook ads are not generating clicks to their websites or  
7 only at inconsistent intervals.

8 **CLASS ALLEGATIONS**

9 36. This action has been brought, and may be properly maintained, under Federal Rules of  
10 Civil Procedure 23(a) (1)-(4) and 23 (b) (3).

11 37. Plaintiff brings this action as a class action on behalf of itself and all others similarly  
12 situated as members of a Class initially defined as follows:

13 **All persons and/or entities in the United States who paid money to Facebook, Inc.  
14 for CPC advertising.**

15 Excluded from the proposed Class is any entity in which Defendant has a controlling interest; any of  
16 Defendant's officers, directors, or employees; the legal representatives, heirs, successors, and assigns of  
17 Defendant; and any judge to whom this case is assigned and his or her immediate family.

18 38. **Numerosity**—Fed. R. Civ. P. 23(a) (1): The members of the Class are so numerous and  
19 widely dispersed that joinder of them in one action is impractical. The precise numbers of Class  
20 members are unknown to Plaintiff, but each Class member should be readily identifiable from  
21 information and records in Defendant's possession and control.

22 39. **Existence and Predominance of Common Questions of Law and Fact**—  
23 Fed. R. Civ. P. 23(a)(2); 23(b)(3): Common questions of law and fact exist as to Plaintiff and all Class  
24 members and predominate over any questions affecting only individual Class members. These common  
25 legal and factual questions include, but are not limited to, the following:

26 a. Whether Defendant represented to Plaintiff and Class members that they would be  
27 charged only for actual clicks;  
28

1           b.     Whether Defendant failed to disclose and/or adequately disclose to Plaintiff and  
2           Class members material information, namely, that it failed to implement processes and  
3           procedures to protect Plaintiff and Class members from non-existent, fraudulent or  
4           invalid clicks;

5           c.     Whether Defendant failed to disclose and/or adequately disclose to Plaintiff and  
6           Class members material information, namely, that advertisers will be charged for non-  
7           existent, fraudulent, or invalid clicks;

8           d.     Whether Defendant agreed to charge Plaintiff and Class members for only actual  
9           clicks;

10          e.     Whether Defendant charged Plaintiff and Class members for non-existent,  
11          fraudulent, or invalid clicks;

12          f.     Whether Defendant failed to implement processes and procedures to protect  
13          Plaintiff and Class members from non-existent, fraudulent or invalid clicks;

14          g.     Whether Defendant's conduct as alleged herein violated the California consumer  
15          protection statute alleged herein;

16          h.     Whether Defendant's conduct constitutes a breach of contract;

17          i.     Whether as a result of the conduct alleged herein, Defendant has unjustly enriched  
18          itself; and

19          j.     Whether Plaintiff and Class members are entitled to damages, restitution,  
20          injunctive relief and declaratory relief.

21          40.    **Typicality**—Fed. R. Civ. P. 23(a)(3): Plaintiff's claims are typical of the claims of the  
22          Class, as Plaintiff was charged for non-existent, fraudulent or invalid clicks.

23          41.    **Adequacy of Representation**—Fed. R. Civ. P. 23(a)(4): Plaintiff is an adequate  
24          representative of the Class because its interests do not conflict with the interests of Class members it  
25          seeks to represent. Plaintiff has retained competent and experienced class action counsel who intend to  
26          vigorously prosecute this action. The Class members' interests will be fairly and adequately protected  
27          by Plaintiff and its counsel.  
28



- b) Failing to disclose or adequately disclose material information, namely, that advertisers will be charged for non-existent, fraudulent, or invalid clicks; and
- c) Failing to implement processes and procedures to protect advertisers against charges for non-existent, fraudulent or invalid clicks.

47. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff and Class members are therefore entitled to equitable relief, including restitution of all monies paid to Defendant as a result of its alleged misconduct, a permanent injunction enjoining Defendant from its unlawful, unfair, and fraudulent business activities as alleged herein and requiring it to implement processes and procedures to protect advertisers against charges for non-existent, fraudulent or invalid clicks, and appropriate declaratory relief as described herein.

**COUNT II**  
**(Breach of Contract)**

48. Plaintiff incorporates by reference and realleges all paragraphs previously alleged herein.

49. Plaintiff and Defendant entered into a contract with the term that Plaintiff would be charged for actual clicks. Plaintiff, however, was charged for non-existent, fraudulent or invalid clicks.

50. Further, Plaintiff's contract with Defendant contains an implied covenant of good faith and fair dealing that Defendant would not do anything that would have the effect of injuring the right of Plaintiff and the Class to receive the benefits of the contract.

51. Defendant breached its contract with Plaintiff and Class members, including the covenant of good faith and fair dealing, by collecting fees from Plaintiff and the Class for non-existent, fraudulent or invalid clicks even though Defendant knew, or should have reasonably known, that it was charging for non-existent, fraudulent or invalid clicks.

52. As a direct and proximate result of Defendant's breach of the contract, including the implied covenant of good faith and fair dealing, Plaintiff and the Class have been damaged in an amount to be determined at trial, but in excess of an aggregated amount of \$5,000,000.

**COUNT III**

**(Unjust Enrichment)**

53. Plaintiff incorporates by reference and realleges all paragraphs previously alleged herein.

54. Defendant has been enriched by its unfair and fraudulent acts and omissions alleged herein in the State of California where Defendant resides.

55. The unfair and fraudulent acts and omissions allowed Defendant to unlawfully receive monies that would not have been obtained but for Defendant's acts and omissions.

56. Plaintiff and the other Class members agreed to pay Defendant for CPC advertising. Defendant represented that advertisers are billed based on the number of actual clicks received, yet charged advertisers for non-existent, fraudulent or invalid clicks. Defendant failed to implement processes or procedures to protect advertisers against charges for non-existent, fraudulent or invalid clicks and thus has been unjustly enriched.

57. Plaintiff and Class members have paid money to Defendant for non-existent, fraudulent or invalid clicks.

58. Defendant lacks any legal justification for having engaged in a course of fraudulent acts and omissions as alleged herein at Plaintiff's and Class members' expense.

59. No other remedy at law can adequately compensate Plaintiff and the Class for the damages occasioned by Defendant's conscious choice to engage in a course of fraudulent acts and omissions.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment on behalf of itself and the proposed Class as follows:

A. For an order certifying the Class herein under Federal Rule of Civil Procedure 23(a) and (b)(3) and appointing Plaintiff and its undersigned counsel to represent said Class under Federal Rule of Civil Procedure 23(g);

B. A declaration that Defendant is financially responsible for notifying Class members of the pendency of this suit;

1 C. For an order pursuant to Cal. Bus. & Prof. Code §§ 17200 *et seq.* requiring Defendant to:  
2 (1) end the unlawful, unfair, and deceptive practices alleged herein; and (2) implement processes and  
3 procedures to protect Plaintiff and Class members from charges for non-existent, fraudulent or invalid  
4 clicks.

5 D. For an order pursuant to Cal. Bus. & Prof. Code §§ 17200 *et seq.* and the claim for unjust  
6 enrichment awarding restitution to Plaintiff and Class members for all monies paid for non-existent,  
7 fraudulent or invalid clicks;

8 E. Monetary damages, including, but not limited to any compensatory, incidental, or  
9 consequential damages in an amount to be determined at trial, together with prejudgment interest at the  
10 maximum rate allowable by law;

11 F. For an order awarding Plaintiff and Class members the reasonable costs and expenses of  
12 suit, including their attorneys' fees; and

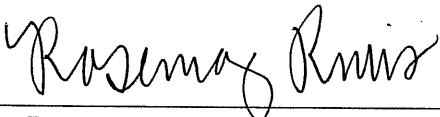
13 G. For any further relief that the Court may deem appropriate.  
14

15 **JURY TRIAL DEMANDED**

16 Plaintiff demands a trial by jury for all claims so triable.

17 DATED: July 27, 2009

**FINKELSTEIN THOMPSON LLP**

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