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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 FOR THE COUNTY OF SAN MATEO

14 FACEBOOK, INC., a Delaware corporation,

15 Plaintiff,

16 v.

17 RANKWAVE CO., LTD.,

18 Defendant.

CASE NO. _____

19 CIV 02592

COMPLAINT FOR

- 1) BREACH OF CONTRACT
- 2) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
- 3) UNLAWFUL, UNFAIR, OR FRAUDULENT BUSINESS PRACTICES

DEMAND FOR JURY TRIAL

24 Plaintiff Facebook, Inc. brings this action for monetary damages and equitable relief against
25 Defendant Rankwave Co., Ltd. ("Rankwave").

19 - CIV - 02592
CMP
Complaint
1816498



FILED
SAN MATEO COUNTY

MAY 10 2019

Clerk of the Superior Court
By [Signature]
DEPUTY CLERK

1 **INTRODUCTION**

2 1. Rankwave is an application (“app”) developer that breached its contract with Facebook
3 by violating Facebook’s policies and California law. Specifically, Rankwave (i) used data associated
4 with Rankwave’s apps to offer advertising and marketing services, and (ii) failed to comply with
5 Facebook’s requests for proof of Rankwave’s compliance with Facebook policies, including an audit.
6 These actions are prohibited by Facebook’s policies, by which Defendant contractually agreed to abide.

7 2. Since approximately 2010, Rankwave has developed and operated different kinds of
8 apps on the Facebook Platform. Rankwave used the Facebook data associated with Rankwave’s apps
9 to create and sell advertising and marketing analytics and models—which violated Facebook’s policies
10 and terms.

11 3. Facebook brings this action for breach of contract and violations of California law.
12 Facebook seeks damages and an injunction requiring Rankwave’s specific performance of its
13 obligations under Facebook Platform Policy 7.9, which requires Rankwave to respond to Facebook’s
14 requests for proof of Rankwave’s compliance with Facebook policies, comply with Facebook’s request
15 for an audit, and delete any Facebook data that Rankwave possesses in violation of Facebook’s policies.

16 **PARTIES**

17 4. Facebook is a Delaware corporation with its principal place of business in Menlo Park,
18 San Mateo County, California.

19 5. Defendant Rankwave Co., Ltd., is a South Korean corporation that provides computer
20 programming services and data analytics solutions. Rankwave is headquartered and registered at 521
21 Teheran Road, 8th Floor (Samsun-dong, Parnass Tower), Gangnam-gu, Seoul, South Korea. During
22 the period from approximately 2010 to 2019, and potentially at other times, one or more Rankwave
23 employees and developers created and administered multiple apps on behalf of Rankwave.

24 **JURISDICTION AND VENUE**

25 6. This Court has subject matter jurisdiction pursuant to California Code of Civil
26 Procedure § 410.10. The amount in controversy exceeds the jurisdictional minimum of this Court, and
27 the total amount of damages sought exceeds \$25,000, exclusive of interest and costs. The contractual
28

1 interest at stake in this litigation has significant value to Facebook. Further, Rankwave's unlawful
2 conduct and breaches have interfered with Facebook's business.

3 7. The Court has personal jurisdiction over Rankwave as a result of its substantial,
4 continuous, and systematic contacts with the State of California; because it has purposely availed itself
5 of the benefits and privileges of conducting business activities in California; and because the claims
6 asserted in this Complaint arise from and relate to those actions Rankwave directed toward California,
7 causing foreseeable harm and injuries within this State.

8 8. The Court also has personal jurisdiction over Rankwave because Rankwave used the
9 Facebook Platform and thereby agreed to Facebook's Terms of Service ("TOS"). By agreeing to the
10 TOS, Rankwave, in relevant part, agreed to submit to the personal jurisdiction of this Court for
11 litigating claims, causes of action, or disputes with Facebook.

12 9. Venue is proper in this Court because a substantial part of the events giving rise to the
13 claims raised in this lawsuit occurred in San Mateo County and because Rankwave agreed to comply
14 with Facebook's TOS, which require disputes to be resolved in the Northern District of California or a
15 state court located in San Mateo County.

16 FACTS

17 **A. Background**

18 10. Facebook is a social networking website and mobile application that enables its users to
19 create their own personal profiles and connect with each other on mobile devices and personal
20 computers. As of March 2019, Facebook daily active users averaged 1.5 billion and monthly active
21 users averaged 2.3 billion, worldwide.

22 11. Facebook also operates a "Development Platform" referred to as the "Facebook
23 Platform." This technological medium enables app developers ("Developers") to run apps that interact
24 with Facebook and Facebook users.

1 12. Facebook permits Developers to access and interact with the Facebook Platform, subject
2 to and restricted by Facebook's TOS and Platform Policies.¹

3 **Facebook's TOS**

4 13. All Facebook users, including Developers, agree to comply with Facebook's TOS when
5 they create a Facebook account. Everyone who uses Facebook must agree to Facebook's TOS
6 (available at <https://www.facebook.com/terms.php>), and other rules that govern different types of
7 access to, and use of, Facebook. These other rules include Facebook's Community Standards
8 (available at <https://www.facebook.com/communitystandards/>), and Platform Policies (available at
9 <https://developers.facebook.com/policy/>).

10 14. Section 3.2 of the TOS prohibits using Facebook to do anything "[t]hat violates these
11 Terms, and other terms and policies," and that "is unlawful, misleading, discriminatory or fraudulent."

12 **Platform Policies**

13 15. Developers operating on the Facebook Platform agree to the Platform Policies.

14 16. The Platform Policies impose obligations and restrictions on Developers, including that
15 Developers must obtain consent from the users of their apps before they can access their data on
16 Facebook. The Platform Policies largely restrict Developers from using Facebook data outside of the
17 environment of the app, for any purpose other than enhancing the app users' experience on the app.

18 17. Through the Platform Policies, Developers agree that Facebook can audit their apps to
19 ensure compliance with the Platform Policies and other Facebook policies. Developers agree to
20 provide proof of such compliance if Facebook so requests. Developers agree to the Platform Policies
21 at the time they first sign up to the Platform, and continue to agree to the Platform Policies as a condition
22 of using Facebook's Platform. Over time, the Platform Policies have imposed substantially the same
23 restrictions on the use and collection of Facebook data.

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28 ¹ Over the years, the "Platform Policies" have been called the "Developer Principles and Policies,"
the "Platform Guidelines," or the "Developer Terms of Service." For simplicity, this Complaint
uses the term "Platform Policies" to refer to these policies.

1 18. The relevant Platform Policies state:

2 “Only use an entity's data on behalf of the entity (i.e., only to provide services to that entity
3 and not for your own business purposes or another entity's purposes).” Facebook Platform
4 Policy, Section 6.1.

5 “[Facebook] or an independent auditor acting on our behalf may audit your app, systems, and
6 records to ensure your use of Platform and data you receive from us is safe and complies with
7 our Terms, and that you've complied with our requests and requests from people who use
8 Facebook to delete user data obtained through our Platform. If requested, you must provide
9 proof that your app complies with our terms.” Facebook Platform Policy, Section 7.9.

10 **B. Rankwave Agreed to Facebook's TOS and Platform Policies**

11 19. Rankwave created a public Facebook Page—a profile on Facebook used to promote a
12 business or other commercial, political, or charitable organization or endeavor—on or about February
13 3, 2012. Rankwave also created a Facebook business account on or about September 15, 2014. At all
14 relevant times, Rankwave was a Facebook user that agreed to and was bound by the TOS.

15 20. Between approximately 2010 and 2019, Rankwave's employees and agents created and
16 operated apps on behalf of Rankwave on the Facebook Platform. Rankwave's employees and agents
17 accepted and agreed to be bound by the Platform Policies on behalf of Rankwave.

18 **C. Rankwave Created and Operated Different Apps on the Facebook Platform**

19 21. Between 2010 and 2019, Rankwave operated at least thirty apps on the Facebook
20 Platform (collectively, “Rankwave's apps”). Before Rankwave's apps could access Facebook data,
21 Rankwave had to obtain the app users' consent.

22 22. Rankwave developed different kinds of apps including apps used by businesses
23 (“business to business” or “B2B apps”) and apps used by individual Facebook users (“consumer apps”).
24 Rankwave's B2B apps were installed and used by businesses to track and analyze activity on their
25 Facebook Pages (“Facebook Pages data”). Facebook Pages data commonly includes public comments
26 and likes on Facebook Pages. Users of Rankwave's B2B apps included a South Korean department
27 store, tourism organization, and baseball team.

28 23. Rankwave also operated different consumer apps, which were installed by individual
29 app users. For example, between March 19, 2012 and March 30, 2018, Rankwave operated a consumer
30 app called the “Rankwave App.” This consumer app was designed to measure the app user's popularity
31 on Facebook by analyzing the level of interaction that other users had with the app user's Facebook

1 posts. On its website, Rankwave claimed that this app calculated a user's "social influence score" by
2 "evaluating your social activities" and receiving "responses from your friends." The Rankwave App
3 stopped operating on the Facebook Platform on or about March 30, 2018.

4 **D. Facebook's Investigation of Rankwave's Acquisition by a Korean Entertainment**
5 **Company**

6 24. In or about June 2018, Facebook began investigating Rankwave in connection with its
7 acquisition by a Korean entertainment company.

8 25. On information and belief, at the time of the acquisition in May 2017, the Facebook data
9 associated with Rankwave's various apps received a valuation of approximately 11 billion South
10 Korean won (approximately \$9,800,000).

11 26. On information and belief, beginning no later than 2014, instead of only using data
12 associated with its apps to enhance the app experience, Rankwave also used Facebook Pages data
13 associated with its apps for its own business purposes, which include providing consulting services to
14 advertisers and marketing companies. This is prohibited by Facebook Policy 6.1.

15 **E. Facebook's Attempts to Exercise Its Contractual Right to an Audit Pursuant to the**
16 **Platform Policies**

17 27. As part of its investigation, Facebook sought to determine whether Rankwave had used
18 any user data (as opposed to Facebook Pages data) to provide marketing and advertising services. On
19 or about January 17, 2019, Facebook sent Rankwave a written request for information ("RFI") by
20 email. The RFI requested proof that Rankwave was in compliance with its contractual obligations
21 under Facebook's Policies and TOS. Facebook also sought to determine which specific Facebook data
22 Rankwave used to sell advertising and marketing services, including whether any user data had been
23 impacted. Rankwave's response to the RFI was due January 31, 2019.

24 28. On January 29, 2019, Facebook sent an email to Rankwave reminding them that their
25 response to the RFI was due on January 31, 2019.

26 29. Rankwave did not respond to Facebook's emails or the RFI by January 31, 2019, despite
27 its obligations under Platform Policy 7.9 to provide proof of compliance with Facebook's Platform
28 Policies and TOS.

1 30. On February 13, 2019, Facebook sent Rankwave a cease and desist letter (“C&D
2 Letter”). The C&D Letter informed Rankwave that it had violated and continued to violate the Platform
3 Policies, including Policy 7.9, by failing to provide proof of compliance with Facebook’s Platform
4 Policies and TOS.

5 31. The C&D Letter demanded that Rankwave:

- 6 (i) Provide a full accounting of Facebook user data in its possession;
- 7 (ii) Identify all individuals, organizations, and governmental entities to which it had sold,
8 or otherwise distributed, Facebook user data;
- 9 (iii) Provide a full record of the access logs and permissions it had granted third parties to
10 access the data;
- 11 (iv) Delete and destroy all Facebook user data after returning it to Facebook; and
- 12 (v) Provide Facebook with full access to all storage and related devices so that Facebook
13 could confirm deletion and destruction of the data through an audit.

14 32. In the C&D Letter, Facebook reserved all rights to take action to enforce Facebook’s
15 policies and terms, including the Platform Policies and TOS, in order to protect its users, website,
16 services, network, and Platform. The letter explained that Facebook would consider Rankwave’s
17 failure to respond as an admission that it had violated Facebook policies and terms.

18 33. On or about February 17, 2019, Rankwave began to try to lull Facebook with false
19 representations that it would respond to Facebook but needed more time. Specifically, Rankwave
20 responded to Facebook’s C&D Letter in an email and stated that Rankwave’s chief technology officer
21 had resigned, and thus Rankwave needed more time to respond.

22 34. Facebook replied on or about February 19, 2019, explained this was a serious and urgent
23 matter for Facebook, and demanded that Rankwave comply with the C&D Letter and respond in writing
24 to the RFI by February 21, 2019.

25 35. On or about February 20, 2019, Rankwave responded by email and claimed that it had
26 not violated Facebook’s TOS or Platform Policies, but Rankwave failed to provide any proof in
27 support, any responses to the RFI, and ignored the demands in the C&D Letter, including the audit
28 request. Rankwave further claimed that it had not had access to any of its Facebook apps since 2018.

1 This statement was false, however, as Rankwave continued to use at least one of its B2B apps until at
2 least April 2019.

3 36. On or about February 23, 2019, Facebook sent an email to Rankwave demanding that
4 Rankwave comply with the C&D Letter and provide written answers to the RFI by February 25, 2019.

5 37. On or about February 25, 2019, Rankwave claimed in an email that it would need nine
6 additional days to respond because its leadership was visiting Spain.

7 38. On or about February 27, 2019, Facebook agreed via email to extend the time for
8 Rankwave to respond to March 6, 2019, but warned that it would not give any further extensions of
9 time. Rankwave failed to respond.

10 39. To date, Rankwave has failed to comply with the RFI, C&D Letter, audit request, and
11 Facebook's other requests for proof of Rankwave's compliance with Facebook's policies, including
12 the Platform Policies and TOS.

13 **F. Rankwave's Unlawful Acts Have Caused Facebook Harm**

14 40. Rankwave's breaches of Facebook's Platform Policies and other misconduct described
15 above have harmed Facebook, including by negatively impacting Facebook's service.

16 41. Rankwave's misconduct also has harmed Facebook's reputation, public trust, and
17 goodwill, and caused Facebook to spend resources investigating and redressing Rankwave's wrongful
18 conduct. Facebook has suffered damages attributable to the efforts and resources it has used to
19 investigate, address, and mitigate the matters set forth in this Complaint.

20 42. Rankwave has been unjustly enriched by its activities at the expense of Facebook.

21 43. Monetary damages would not adequately remedy the breach of Facebook's contractual
22 right to audit Rankwave to determine Rankwave's compliance with Facebook's Platform Policies and
23 TOS.

24 44. The only adequate remedy for Rankwave's breach with respect to Facebook's audit right
25 is Rankwave's specific performance of its contractual obligations to Facebook to comply with
26 Facebook's audit request and provide proof of compliance with Facebook's Platform Policies and TOS.

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1 55. As a result of Rankwave's breaches of the covenant of good faith and fair dealing,
2 Facebook has suffered actual and tangible damages.

3 56. Rankwave has been unjustly enriched in the amount of \$9,800,000 by violating
4 Facebook's policies, including the Platform Policies and TOS.

5 **THIRD CAUSE OF ACTION**

6 (Unlawful, Unfair, or Fraudulent Business Practices)

7 57. Facebook incorporates all other paragraphs as if fully set forth herein.

8 58. Rankwave's actions described above, constitute unlawful, unfair, or fraudulent acts or
9 practices in the conduct of a business, in violation of California's Business and Professions Code
10 Section 17200 et seq., including actions that are forbidden by other state law.

11 59. Facebook suffered damages as a result of these violations.

12 **PRAYER FOR RELIEF**

13 Facebook seeks judgment awarding the following relief:

14 (a) Injunctive relief restraining Rankwave from accessing the Facebook Platform;

15 (b) Injunctive relief requiring Rankwave to comply with Platform Policy 7.9 and respond
16 fully and accurately to Facebook's RFI and other requests for proof of compliance with Facebook's
17 Platform Policies and TOS, including a forensic data audit;

18 (c) Injunctive relief requiring Rankwave to delete any and all Facebook data as appropriate
19 after Rankwave complies with Platform Policy 7.9;

20 (d) Money damages, including, but not limited to, actual, consequential, incidental, and
21 exemplary damages in an amount to be determined in the course of this proceeding;

22 (e) Disgorgement of the value of the Facebook data that Rankwave has unjustly received
23 and retained in violation of its obligations to Facebook;

24 (f) Attorney's fees, costs, and expenses incurred in connection with investigating and
25 redressing Rankwave's misconduct;

26 (g) Pre-judgment and post-judgment interest; and

27 (h) All other equitable or legal relief the Court deems just and proper.
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1 **PLAINTIFFS RESPECTFULLY DEMAND A JURY TRIAL.**

2 **DATED: May 10, 2019**

3 **GIBSON, DUNN & CRUTCHER LLP**

4
5 By: 

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