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and the Putative Class*

13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

17 DAVID KAUFFMAN, individually and
18 on behalf of others similarly situated,

19 Plaintiff,

20 vs.

21 800 POUND GORILLA MEDIA, LLC,
22

23 Defendant.

Case No: '24CV0787 DMS VET

CLASS ACTION

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

INTRODUCTION

1
2 1. David Kauffman (“Plaintiff”), individually and on behalf of all other
3 similarly situated consumers (“Class Members”), brings this action for damages and
4 injunctive relief against 800 Pound Gorilla Media, LLC (“800 Pound” or “Defendant”),
5 for disclosing consumers’ identities and video-viewing preferences to Meta Platforms
6 Inc. (“Meta”), in violation of the Video Privacy Protection Act (“VPPA”) and California
7 Civil Code § 1799.3.

8 2. The VPPA prohibits “video tape service providers,” such as 800 Pound,
9 from knowingly disclosing a consumer’s personally identifiable information (“PII”)—
10 in particular, “information which identifies a person as having requested or obtained
11 specific video materials or services from a video tape service provider”—unless the
12 consumer expressly consented to the disclosure in a standalone consent form.

13 3. 800 Pound shares consumers’ personal information with Meta using a
14 “Meta Pixel” which is a snippet of programming code that, once installed on a webpage,
15 sends information to Meta.

16 4. The Meta Pixel sends information to Meta in a data packet containing PII,
17 which Meta then stores on its own servers.

18 5. The information that 800 Pound shares with Meta includes the consumer’s
19 unique Facebook ID (“FID”) and the titles of prerecorded videos that the consumer
20 requested or obtained. A consumer’s FID is linked to their Facebook profile, which
21 generally contains a wide range of demographic and other information about the
22 consumer.

23 6. 800 Pound discloses the consumer’s FID and viewing content to Meta
24 together in a single transmission. Because the FID uniquely identifies an individual’s
25 Facebook account, Meta, as well as any other person, can use the FID to quickly and
26 easily locate, access, and view that person’s corresponding Facebook profile. In
27 simplest terms, the Meta Pixel allows Meta to know what video content one of its
28 members viewed on Defendant’s website.

1 collection of information from California citizens while those citizens were engaged in
2 commercial activity on Defendant’s website. Defendant chose to benefit from
3 marketing and doing business in California. The claims alleged herein arise from those
4 activities.

5 16. Furthermore, on information and belief, Defendant has team members
6 based in Los Angeles, California.

7 17. Venue is proper pursuant to 28 U.S.C. § 1391 for the following reasons:
8 (i) the conduct complained of herein occurred within this judicial district; and (ii)
9 Defendant conducted business within this judicial district at all times relevant.

10 **FACTUAL ALLEGATIONS**

11 **A. Common Allegations**

12 18. 800 Pound is one of the world’s leading comedy media companies. It
13 produces, distributes, and markets stand-up comedy video specials and audio albums to
14 comedy fans across the globe.

15 19. 800 Pound website visitors can access a variety of comedy video content
16 on its website located at 800poundgorillamedia.com. Website visitors can also pay to
17 rent pre-recorded video content from Defendant’s website. Defendant provides and
18 delivers prerecorded audiovisual content to its visitors.

19 20. Website visitors can also subscribe on Defendant’s website.

20 21. When Plaintiff and Class members requested and viewed prerecorded
21 video content on Defendant’s website, Defendant transmitted their viewing choices to
22 Meta.

23 22. Defendant’s transmission of viewing information to Meta includes the
24 specific titles of video content viewed by consumers, as well as the consumer’s FID
25 which is a string of numbers unique to each Facebook profile that personally identifies
26 the member.

27 23. Anyone who possesses a FID may use this number to quickly and easily
28 locate, access, and view the corresponding Facebook profile by simply visiting

1 www.facebook.com/[the user's FID]. Facebook profiles contain large amounts of
2 personal information.

3 24. A Facebook profile typically shows the Facebook user's name, gender,
4 place of residence, career, educational history, a multitude of photos, and the content of
5 the user's posts. This information may reveal even more sensitive personal
6 information—for instance, posted photos may disclose the identity of family members,
7 and written posts may disclose religious preferences, political affiliations, personal
8 interests and more.

9 25. Just as Meta can easily identify any individual on its Facebook platform
10 with only their unique FID, so too can any ordinary person who comes into possession
11 of a FID. Thus, equipped with a FID and the video content name and URL, any ordinary
12 person could determine the identity of the 800 Pound member and the specific video or
13 media content they viewed on Defendant's website.

14 26. Defendant transmits the FID and video title to Meta in a single
15 transmission, through a Meta Pixel. A Meta Pixel is a snippet of a programming code
16 that, once installed on a webpage, sends information to Meta. This transmission occurs
17 when a member views a prerecorded video on Defendant's website.

18 27. The Meta Pixel is an advertising tool that allows website owners to track
19 visitor actions on their websites for purposes of sending the corresponding information
20 to Meta; websites use the Pixel in hopes of better targeting their products and services
21 on Facebook to interested consumers. Thus, a business such as Defendant chooses to
22 install the Pixel on its website in order to increase its profits.

23 28. According to Meta's website, the Meta Pixel allows it "to match your
24 website visitors to their respective Facebook User accounts" and that "[o]nce matched,
25 we can tally their actions in the Facebook Ads Manager so you can use the data to
26 analyze your website's conversion flows and optimize your ad campaigns."¹

27 _____
28 ¹ <https://developers.facebook.com/docs/meta-pixel/get-started> (last visited April 23,
2024).

1 29. Defendant knew that by installing the Pixel on its website, the Pixel would
2 send Meta information identifying website visitors and their video-watching habits.

3 30. Meta’s website explains that, to begin using the Meta Pixel, a business
4 must first “install” the Pixel “by placing the Meta Pixel base code on all pages of your
5 website.”² Defendant made the conscious decision to undertake this installation process.

6 31. Meta benefits from websites like Defendant installing its Pixel. When the
7 Pixel is installed on a business’s website, the business has a greater incentive to
8 advertise through Facebook or other Meta owned platforms, like Instagram. In addition,
9 even if the business does not advertise with Facebook, the Pixel assists Meta in building
10 more fulsome profiles of its own users, which in turn allows Meta to profit from
11 providing more targeted ads. The Pixel is installed on a variety of websites and,
12 accordingly, provides Meta with information about its users’ preferences, other
13 distinguishing traits, and web browsing activities outside of Meta-owned platforms.

14 32. Using the Meta Pixel likewise benefits Defendant’s business by improving
15 its ability to promote its content and services to its members, thereby increasing its
16 profits.

17 33. Through use of the Meta Pixel, Defendant discloses to Meta the full name
18 of each video a person watched, together with the person’s FID, thus linking members’
19 viewing content choices and preferences to their Facebook profiles.

20 34. Defendant violates and invades the privacy rights of consumers with its
21 practice of sending their FIDs, together with their viewing content, to Meta. Plaintiff
22 and Class members did not know of or consent to Defendant’s disclosure of their
23 prerecorded video requests and their identities to Meta.

24 35. The VPPA requires that consent be obtained in a form “distinct and
25 separate from any form setting forth other legal or financial obligations of the
26 consumer.” 18 U.S.C. § 2710.

27 _____
28 ² Id.; <https://www.facebook.com/business/tools/meta-pixel/get-started> (last visited
April 23, 2024).

1 36. At no point was Plaintiff or any other 800 Pound website visitor given a
2 standalone consent form disclosing Defendant’s practices at issue and requesting
3 consent. Hence, no individual consented to Defendant’s offending practice of sharing
4 video preferences with third parties.

5 37. Defendant shared with Meta the personal information of Plaintiff and Class
6 members, including their video-viewing histories and associated FIDs, which they
7 reasonably expected would be kept private.

8 38. Plaintiff and Class members used Defendant’s website, and not another
9 competitor’s website, because they trusted that Defendant’s privacy practices
10 comported with their privacy preferences.

11 39. Defendant’s practice of sharing consumers’ personal information and
12 prerecorded video content with Meta without their consent, and its failure to disclose
13 this practice, caused Defendant to profit from advertising revenue it would otherwise
14 not have received.

15 **B. Plaintiff’s Allegations**

16 40. Plaintiff used his internet-connected device and the browsers installed on
17 that device to visit, rent and watch video content on 800 Pound’s website, during the
18 Class Period as defined herein.

19 41. Plaintiff paid to rent and watched videos on Defendant’s website during
20 the Class Period.

21 42. Plaintiff is a Facebook user. Plaintiff’s Facebook profile includes his name
22 and other personal details.

23 43. Plaintiff visited Defendant’s website to request and watch prerecorded
24 video content using the same browser that he uses to log in to Facebook, including while
25 he was logged in to Facebook.

26 44. Defendant sent Plaintiff’s PII, including his FID, as well as the title of each
27 prerecorded video he viewed, to Meta without obtaining his consent through a
28 standalone consent form.

1 45. Plaintiff values his privacy while web-browsing and watching videos.

2 46. Plaintiff’s viewing preferences constitute personal information of a private
3 and confidential nature and are assets to which no third party has a presumptive right to
4 access.

5 **TOLLING**

6 47. Any applicable statute of limitations has been tolled by the “delayed
7 discovery” rule. Plaintiff did not know, and had no way of knowing, that his
8 information was being transmitted to Meta, because Defendant kept this information
9 secret.

10 **CLASS ACTION ALLEGATIONS**

11 48. Plaintiff brings this lawsuit as a class action under F.R.C.P. 23.

12 49. Plaintiff proposes the following Class and Subclass, consisting of and
13 defined as follows:

14 **Nationwide Class:** All persons in the United States who viewed
15 prerecorded video content on 800poundgorillamedia.com during the
16 Class Period and had a Facebook account at the same time.

17 **California Subclass:** All persons in California who viewed prerecorded
18 video content on 800poundgorillamedia.com during the Class Period and
19 had a Facebook account at the same time.
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21 50. The “Class Period” is defined as two years prior to the date of the filing of
22 this action plus any applicable tolling, through the date of final disposition of this action.
23

24 51. Excluded from each Class are: (1) Defendant, any entity or division in
25 which Defendant has a controlling interest, and its legal representatives, officers,
26 directors, assigns, and successors; (2) the Judge to whom this case is assigned and the
27 Judge’s staff; and (3) those persons who have suffered personal injuries as a result of
28 the facts alleged herein. Plaintiff reserves the right to redefine each Class and to add

1 subclasses as appropriate based on discovery and specific theories of liability.

2 52. **Numerosity**: The Class Members are so numerous that joinder of all
3 members would be unfeasible and impractical. The membership of each Class is
4 currently unknown to Plaintiff at this time; however Plaintiff believes there are
5 thousands of Class Members.

6 53. **Commonality**: There are common questions of law and fact as to Class
7 Members that predominate over questions affecting only individual members,
8 including, but not limited to:

- 9 • Whether Defendant's use of the Meta Pixel was without
10 consumers' consent or authorization;
- 11 • Whether Defendant obtained and shared or caused to be obtained
12 and shared Plaintiff's and Class members' personal information
13 through use of the Meta Pixel, which Defendant installed on its
14 webpages;
- 15 • Whether third parties obtained Plaintiff's and Class members'
16 personal information as a result of Defendant's conduct described
17 herein;
- 18 • Whether Defendant's conduct violates the Video Privacy
19 Protection Act, 18 U.S.C. § 2710, et seq.;
- 20 • Whether Defendant's conduct violates California Civil Code §
21 1799.3; and
- 22 • Whether Defendant should be enjoined from engaging in such
23 conduct in the future.

24 54. **Typicality**: Plaintiff's and Class Members' video viewing history was
25 transmitted by Defendant to Meta without their consent and the injuries are typical to
26 all Class Members.

27 55. **Adequacy**: Plaintiff is qualified to, and will, fairly and adequately protect
28 the interests of each Class Member with whom Plaintiff is similarly situated, as

1 demonstrated herein. In addition, Plaintiff's attorneys, the proposed class counsel, are
2 well versed in the rules governing class action discovery, certification, and settlement.
3 The proposed class counsel are experienced in handling claims involving violations of
4 the VPPA.

5 56. **Predominance**: The questions of law or fact in this case are common to
6 all Class Members and predominate all their claims. The elements of the legal claims
7 brought by Plaintiff and Class Members are capable of proof at trial through evidence
8 that is common to each Class rather than individual to its members.

9 57. **Superiority**: A class action is a superior method for the fair and efficient
10 adjudication of this controversy because:

11 a. Class-wide damages are essential to induce Defendant to
12 comply with the law.

13 b. Because of the relatively small size of the individual Class
14 Members' claims, it is likely that only a few Class Members could
15 afford to seek legal redress for Defendant's misconduct.

16 c. Management of these claims is likely to present significantly
17 fewer difficulties than those presented in many class claims.

18 d. Absent a class action, most Class Members would likely find
19 the cost of litigating their claims prohibitively high and would
20 therefore have no effective remedy at law.

21 e. Class action treatment is manageable because it will permit a
22 large number of similarly situated persons to prosecute their
23 common claims in a single forum simultaneously, efficiently, and
24 without the unnecessary duplication of effort and expense that
25 numerous individual actions would endanger.

26 f. Absent a class action, Class Members will continue to incur
27 damages, and Defendant's misconduct will continue without
28 remedy.

1 58. Plaintiff and Class Members have suffered, and will continue to suffer,
2 harm and damages as a result of Defendant’s unlawful and wrongful conduct. A class
3 action is superior to other available methods because as individuals, Class Members
4 have no way of discovering that Defendant transmitted their viewing history to Meta
5 without their knowledge or consent.

6 59. Each Class may also be certified because:

- 7 • The prosecution of separate actions by individual Class Members
8 would create a risk of inconsistent or varying adjudication with
9 respect to individual Class Members, which would establish
10 incompatible standards of conduct for Defendant;
- 11 • The prosecution of separate actions by individual Class Members
12 would create a risk of adjudications with respect to them that
13 would, as a practical matter, be dispositive of the interests of other
14 Class Members not parties to the adjudications, or substantially
15 impair or impede their ability to protect their interests; and
- 16 • Defendant has acted, or refused to act, on grounds generally
17 applicable to each Class, thereby making appropriate final and
18 injunctive relief with respect to the members of each Class as a
19 whole.

20 60. This suit seeks only damages and injunctive relief for recovery of
21 economic injury on behalf of Class Members and it expressly is not intended to request
22 any recovery for personal injury and claims related thereto.

23 61. The joinder of Class Members is impractical and the disposition of their
24 claims in the Class action will provide substantial benefits both to the parties and to
25 the court. The Class Members can be identified through Defendant’s records.
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27
28

FIRST CAUSE OF ACTION

VIOLATION OF THE VIDEO PRIVACY PROTECTION ACT

18 U.S.C. § 2710, *ET SEQ.*

(On Behalf of the Nationwide Class)

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5 62. Plaintiff incorporates by reference each of the allegations contained in the
6 preceding and following paragraphs of this Complaint and further alleges as follows.

7 63. The VPPA prohibits a “video tape service provider” from knowingly
8 disclosing “personally identifiable information” concerning any consumer to a third-
9 party without the “informed, written consent (including through an electronic means
10 using the Internet) of the consumer.” 18 U.S.C. § 2710.

11 64. As defined in 18 U.S.C. § 2710(a)(4), a “video tape service provider” is
12 “any person, engaged in the business, in or affecting interstate commerce, of rental, sale,
13 or delivery of prerecorded video cassette tapes or similar audiovisual materials.”

14 65. Defendant is a “video tape service provider” as defined in 18 U.S.C. §
15 2710(a)(4) because it is engaged in the business of renting and delivering audiovisual
16 materials through its online platform, including the prerecorded videos that Plaintiff
17 rented and viewed, which are similar to prerecorded video cassette tapes. Defendant’s
18 rental, sale, and delivery of video content affects interstate and foreign commerce.

19 66. As defined in 18 U.S.C. § 2710(a)(3), “personally identifiable
20 information” is defined to include “information which identifies a person as having
21 requested or obtained specific video materials or services from a video tape service
22 provider.”

23 67. Defendant knowingly caused personal viewing information, including
24 FIDs, concerning Plaintiff and Class members to be disclosed to Meta. This information
25 constitutes personally identifiable information under 18 U.S.C. § 2710(a)(3) because it
26 identified each Plaintiff and each Class member to Meta as an individual who viewed
27 Defendant’s video content, including the specific prerecorded video materials each such
28 individual watched on Defendant’s website. This information allowed Meta to identify

1 each Plaintiff and each Class members' specific individual video-viewing preferences
2 and habits.

3 68. As defined in 18 U.S.C. § 2710(a)(1), a "consumer" means "any renter,
4 purchaser, or subscriber of goods or services from a video tape service provider." As
5 alleged above, Plaintiff is a renter of Defendant's video content and viewed prerecorded
6 videos provided on Defendant's platform. Hence, Plaintiff is a "consumer" under this
7 definition.

8 69. As set forth in 18 U.S.C. § 2710(b)(2)(B), "informed, written consent"
9 must be (1) in a form distinct and separate from any form setting forth other legal or
10 financial obligations of the consumer; and (2) at the election of the consumer, is either
11 given at the time the disclosure is sought or is given in advance for a set period of time
12 not to exceed two years or until consent is withdrawn by the consumer, whichever is
13 sooner. Defendant failed to obtain informed, written consent under this definition.

14 70. Defendant was aware that the disclosures to Meta that were shared through
15 the Pixel identified Plaintiff and Class members. Defendant also knew that Plaintiff's
16 and Class members' personal viewing content was disclosed to Meta because Defendant
17 programmed the Meta Pixel into its website code, knowing that Meta would receive
18 video titles and the individual's FID when they watched a prerecorded video.

19 71. By knowingly disclosing Plaintiff's and Class members' personal viewing
20 content, Defendant violated Plaintiff's and Class members' statutorily protected right
21 to privacy in their prerecorded video watching habits. See 18 U.S.C. § 2710(c).

22 72. As a result of the above violations, Defendant is liable to Plaintiff and Class
23 members for actual damages related to their loss of privacy in an amount to be
24 determined at trial or, alternatively, for "liquidated damages not less than \$2,500 per
25 plaintiff." 18 U.S.C. § 2710(c)(2)(A). Under the VPPA, Defendant also is liable for
26 reasonable attorney's fees, other litigation costs, injunctive and declaratory relief, and
27 punitive damages in an amount to be determined by a jury and sufficient to prevent and
28 deter the same or similar conduct by Defendant in the future.

1 **SECOND CAUSE OF ACTION**

2 ***VIOLATION OF CALIFORNIA CIVIL CODE § 1799.3***

3 **(On Behalf of the California Subclass)**

4 73. Plaintiff incorporates by reference each of the allegations contained in the
5 preceding and following paragraphs of this Complaint and further alleges as follows.

6 74. Cal. Civ. Code § 1799.3(a) prohibits a “person providing video recording
7 sales and rental services” from disclosing “any personal information or the contents of
8 any record, including sales or rental information, which is prepared or maintained by
9 that person, to any person, other than the individual who is the subject of the record,
10 without the written consent of that individual.”

11 75. Defendant is a “person providing video recording sales and rental services”
12 because it offers consumers access to prerecorded video content.

13 76. Defendant disclosed Plaintiff’s and the California Subclass members’
14 personal information and/or the records of Plaintiff and California Subclass members’
15 video viewing information to Meta. Defendant utilized the Meta Pixel to compel
16 Plaintiff’s web browser to transfer Plaintiff’s personal information and video request
17 records. For example, the Meta Pixel disclosed his Facebook ID and his event data, like
18 the title of the video content he watched.

19 77. Plaintiff and the California Subclass members requested, obtained, and
20 viewed video content provided via Defendant’s website.

21 78. Defendant willfully disclosed Plaintiff’s personal information because it
22 knowingly and intentionally installed the Meta Pixel on its website and controlled its
23 functionality on its site.

24 79. Plaintiff and California Subclass members did not provide Defendant with
25 any form of consent—either written or otherwise—to disclose their personal
26 information to third parties.

27 80. On behalf of himself and the California Subclass, Plaintiff seeks: (i)
28 declaratory relief; (ii) injunctive and equitable relief as is necessary to protect the

1 interests of Plaintiff and the California Subclass by requiring Defendant to comply with
2 Cal. Civ. Code §1799.3's requirements for protecting a consumer's personal
3 information; (iii) statutory damages of \$500 for each violation of the Cal. Civ. Code
4 §1799.3 pursuant to Cal. Civ. Code §1799.3(c); and (iv) reasonable attorneys' fees and
5 costs and other litigation expenses.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff demands judgment on behalf of himself, the Class and
8 California Subclass as follows:

- 9 A. An order certifying the proposed Class and California Subclass; appointing
10 Plaintiff as representative of the Class and California Subclass; and
11 appointing Plaintiff's undersigned counsel as Class counsel;
- 12 B. A declaration that Defendant is financially responsible for notifying Class
13 members of the pendency of this suit;
- 14 C. A declaration that Defendant has committed the violations alleged herein;
- 15 D. An award of statutory damages;
- 16 E. An award of punitive damages;
- 17 F. An order enjoining Defendant's unlawful and deceptive acts and practices;
- 18 G. Injunctive relief for Class members;
- 19 H. An order awarding Plaintiff and the other Class members the reasonable
20 costs and expenses of suit, including their attorneys' fees;
- 21 I. An order awarding prejudgment and post-judgment interest, consistent
22 with permissible law and pursuant to only those causes of action so
23 permitted; and
- 24 J. Any further relief that the Court may deem appropriate.

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26 **JURY TRIAL DEMANDED**

27 Plaintiff demands a trial by jury for all claims so triable.
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Respectfully submitted,

SWIGART LAW GROUP

Date: May 2, 2024

By: s/ Joshua Swigart

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [800 Pound Gorilla Media Facing Class Action for Allegedly Sharing User Data with Facebook](#)
