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8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

10  
11 KEITH CARROLL, individually and on  
behalf of all others similarly situated,

12 Plaintiff,

13 v.

14 MATTEL INC.; AMERICAN GIRL  
15 BRANDS LLC; and DOES 1 through 25,  
inclusive,

16 Defendants.  
17

Case No. 3:22-cv-8954

**CLASS ACTION COMPLAINT**

1 **I. INTRODUCTION**

2 Whenever someone watches a video on www.americangirl.com (the “Website”),  
3 Defendants secretly report all the details to Facebook: the visitor’s identity, the titles  
4 watched, and more. Why? So Facebook can bombard the person with *more* ads urging  
5 the person to buy products from Defendants.

6 As shown below, Defendants’ actions violate the Video Privacy Protection Act  
7 (“VPPA”). As such, Defendants are liable to each class member for \$2,500 and related  
8 relief.

9 **II. JURISDICTION AND VENUE**

10 1. This Court has subject matter jurisdiction over this action pursuant to 28  
11 U.S.C. § 1331 because it arises under the Video Privacy Protection Act (“VPPA”), a  
12 federal law.

13 2. Venue is proper pursuant to 28 U.S.C. § 1391 because a substantial part of  
14 the acts and events giving rise to the claims occurred in this District.

15 3. Defendants are subject to personal jurisdiction because they have sufficient  
16 minimum contacts with California and do business with California residents.

17 **III. PARTIES**

18 4. Plaintiff is an individual and consumer advocate.

19 5. Defendants are Delaware entities that own, operate, and/or control the  
20 Website.

21 6. The above-named Defendants, along with their affiliates and agents, are  
22 collectively referred to as “Defendants.” The true names and capacities of the Defendants  
23 sued herein as DOE DEFENDANTS 1 through 25, inclusive, are currently unknown to  
24 Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants  
25 designated herein as a DOE is legally responsible for the unlawful acts alleged herein.  
26 Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and  
27 capacities of the DOE Defendants when such identities become known.  
28



1 11. The Facebook Tracking Pixel is a device included programming code that  
 2 advertisers can integrate into their website. Once activated, the Facebook Tracking Pixel  
 3 “tracks the people and type of actions they take.”<sup>7</sup> When the Facebook Tracking Pixel  
 4 captures an action, it sends a record to Facebook, which Facebook then assimilates into  
 5 the Custom Audiences dataset.

6 12. Advertisers control what actions—or, as Facebook calls it, “events”— the  
 7 Facebook Tracking Pixel will collect, including the website’s metadata, along with what  
 8 pages a visitor views.<sup>8</sup>

9 13. Advertisers control how the Facebook Tracking Pixel identifies visitors. The  
 10 Facebook Tracking Pixel is configured to automatically collect “HTTP Headers” and  
 11 “Pixel-specific Data.”<sup>9</sup> HTTP Headers collect “IP addresses, information about the web  
 12 browser, page location, document, referrer and persons using the website.”<sup>10</sup> Pixel-  
 13 specific Data includes “the Pixel ID and cookie.”<sup>11</sup>

## 14 **B. AMERICANGIRL.COM AND THE FACEBOOK PIXEL**

15 14. Defendants’ business plan involves persuading potential customers to  
 16 purchase their products via videos about American Girl dolls. As such, Defendants are  
 17 “video tape service providers” under the VPPA because, as part of their business, they  
 18 deliver “prerecorded video” content or other “similar audio visual materials.”

19 15. Americangirl.com hosts and delivers content including videos.

20 16. Americangirl.com hosts the Facebook tracking Pixel and transmits  
 21 numerous distinct events to Facebook.<sup>12</sup>

22 \_\_\_\_\_  
 23 AUDIENCE,  
<https://www.facebook.com/business/help/1474662202748341?id=2469097953376494>  
 (last visited December 15, 2022).

24 <sup>7</sup> FACEBOOK, RETARGETING, [https://www.facebook.com/business/oals/reta getting](https://www.facebook.com/business/oals/reta%20getting).  
 25 <sup>8</sup> See FACEBOOK, FACEBOOK PIXEL, ACCURATE EVENT TRACKING,  
 26 ADVANCED, <https://developers.facebook.com/docs/facebook-pixel/advanced/>; see also  
 27 FACEBOOK, BEST PRACTICES FOR FACEBOOK PIXEL SETUP,  
 28 <https://www.facebook.com/business/help/218844828315224?id=1205376682832142>  
 (last visited December 15, 2022).

<sup>9</sup> FACEBOOK, FACEBOOK PIXEL, <https://developers.facebook.com/docs/facebook-pixel/> (last visited December 15, 2022).

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

<sup>11</sup> *Id.*

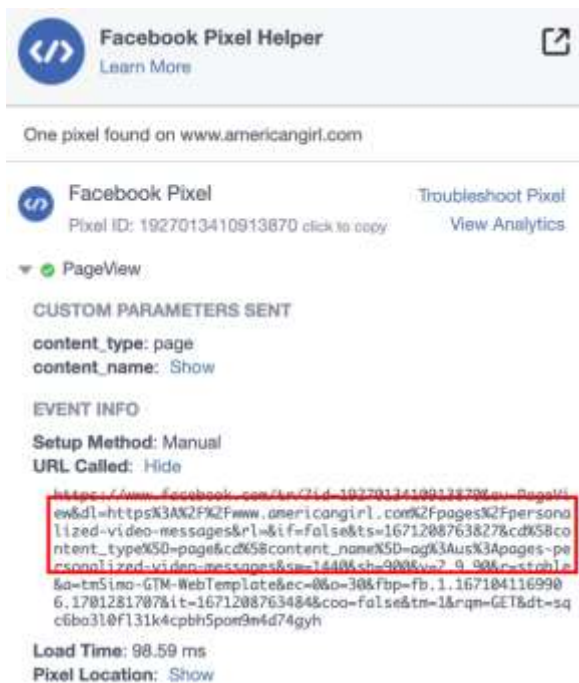
<sup>12</sup> This data is derived from a tool created and offered by Facebook.

1 **Figure 1**



2  
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9 17. Defendants have configured the PageView event to transmit the URL and  
10 the category of content selected.

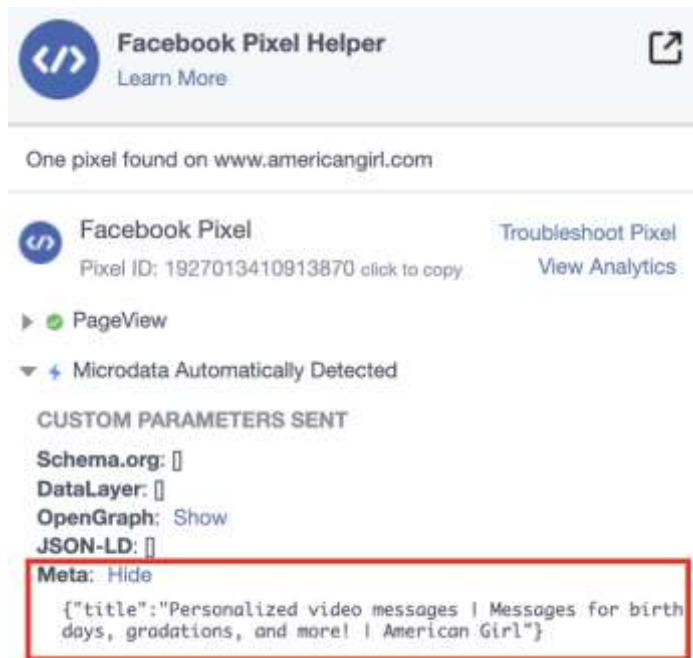
11 **Figure 2**



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25 18. In the above figure, for example, Defendants disclose a webpage's  
26 Universal Resource Locator ("URL").

27 19. Microdata discloses the video's title and other descriptors.

1 **Figure 3**



14 20. The aggregate pixel events (Page View and Microdata Automatically  
15 Detected) permit an ordinary person to identify a video's content, title, and location.

16 21. When a visitor watches a video on Americangirl.com while logged into  
17 Facebook, Defendants compel a visitor's browser to transmit the c user cookie to  
18 Facebook. The c user cookie contains that visitor's unencrypted Facebook ID. When  
19 accessing the above video, for example, Defendants compelled the browser to send ten  
20 cookies:

**Figure 5**

Name	Value	Domain
presence	C%7B%22t3%22%3A%5B%5D...	.facebook.com
fr	0iLmxmGApZkrtQX6F.AWXZ2LZ...	.facebook.com
c_user	100087271304389	.facebook.com
wd	1292x722	.facebook.com
locale	en_US	.facebook.com
sb	Z7VeY5082dzpP0ecvF3j2thu	.facebook.com
dpr	2	.facebook.com
datr	ErdeY8DwZw6OUY5T3qHVChfr	.facebook.com
xs	31%3ANFD0WMbxAPE-6Q%3A...	.facebook.com

22. When a visitor's browser has recently logged out of Facebook, Defendants will compel the browser to send a smaller set of cookies:

**Figure 6**

Name	Value	Domain
fr	0iLmxmGApZkrtQX6F.AWU4I2I3v...	.facebook.com
wd	1292x722	.facebook.com
locale	en_US	.facebook.com
sb	Z7VeY5082dzpP0ecvF3j2thu	.facebook.com
dpr	2	.facebook.com
datr	ErdeY8DwZw6OUY5T3qHVChfr	.facebook.com

23. The fr cookie contains an encrypted Facebook ID and browser identifier.<sup>13</sup> The datr cookies also identifies a browser.<sup>14</sup> Facebook, at a minimum, uses the fr cookie to identify particular users.<sup>15</sup>

24. The \_fbp cookie contains, at least, an unencrypted value that uniquely identifies a browser.<sup>16</sup> As with the fr cookie, Facebook uses the \_fbp cookie to identify users.

<sup>13</sup> DATA PROTECTION COMMISSIONER, FACEBOOK IRELAND LTD, REPORT OF RE-AUDIT (Sept. 21, 2012), [http://www.europe-v.facebook.org/ODPC\\_Review.pdf](http://www.europe-v.facebook.org/ODPC_Review.pdf) (last visited December 15, 2022).

<sup>14</sup> FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES, <https://www.facebook.com/policy/cookies/> (last visited December 15, 2022).

<sup>15</sup> FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES, <https://www.facebook.com/policy/cookies/> (last visited December 15, 2022).

<sup>16</sup> FACEBOOK, CONVERSION API, <https://developers.facebook.com/docs/marketingapi/conversions-api/parameters/fbp-and-fbc/> (last visited December 15, 2022).

1 **Figure 7**

2

Name	Value	Domain
_fbp	fb.1.1671209621689.592642531	.americangirl.com

3

4

5 25. The Facebook Tracking Pixel uses both first- and third-party cookies. A

6 first-party cookie is “created by the website the user is visiting”—i.e.,

7 Americangirl.com.<sup>17</sup> A third-party cookie is “created by a website with a domain name

8 other than the one the user is currently visiting”—i.e., Facebook.<sup>18</sup> The \_fbp cookie is

9 always transmitted as a first-party cookie. A duplicate \_fbp cookie is sometimes sent as

10 a third-party cookie, depending on whether the browser has recently logged into

11 Facebook.

12 26. Facebook, at a minimum, uses the fr, \_fbp, and c\_user cookies to link to

13 Facebook IDs and corresponding Facebook profiles.

14 27. A Facebook ID is personally identifiable information. Anyone can identify

15 a Facebook profile—and all personal information publicly listed on that profile—by

16 appending the Facebook ID to the end of Facebook.com.

17 28. Through the Facebook Tracking Pixel’s code, these cookies combine the

18 identifiers with the event data, allowing Facebook to know, among other things, what

19 Americangirl.com videos a user has watched.<sup>19</sup>

20 29. By compelling a visitor’s browser to disclose the c\_user cookie alongside

21 event data for videos, Defendants knowingly disclose information sufficiently permitting

22 an ordinary person to identify a specific individual’s video viewing behavior.

23

24

25 <sup>17</sup> PC MAG, FIRST-PARTY COOKIES, <https://www.pcmag.com/encyclopedia/term/first-party-cookie> (last visited December 15, 2022). This is confirmable by using developer tools to inspect a website’s cookies and track network activity.

26 <sup>18</sup> PC MAG, THIRD-PARTY COOKIES, <https://www.pcmag.com/encyclopedia/term/third-party-cookie> (last visited December 15, 2022). This is also confirmable by tracking network activity.

27 <sup>19</sup> FACEBOOK, GET STARTED, <https://developers.facebook.com/docs/meta-pixel/get-started> (last visited December 15, 2022).

28



1 30. By compelling a visitor’s browser to disclose the fr and \_fbp cookies  
2 alongside event data for videos, Defendants knowingly disclose information sufficient to  
3 permit an ordinary person to identify a specific individual’s video viewing behavior.

4 31. By compelling a visitor’s browser to disclose the fr cookie and other browser  
5 identifiers alongside event data for videos, Defendants knowingly disclose information  
6 sufficiently permitting an ordinary person to identify a specific individual’s video  
7 viewing behavior.

8 32. Facebook confirms that it matches activity on Americangirl.com with a  
9 user’s profile. Facebook allows users to download their “off-site activity,” which is a  
10 “summary of activity that businesses and organizations share with us about your  
11 interactions, such as visiting their apps or websites.”<sup>20</sup> The off-site activity report  
12 confirms Defendants identify an individual’s video viewing activities.

### 13 **C. EXPERIENCE OF PLAINTIFF**

14 33. Plaintiff is a consumer privacy advocate with dual motivations for watching  
15 a video on Defendants’ Website. First, Plaintiff was genuinely interested in learning  
16 more about the goods and services offered by Defendants. Second, Plaintiff is a “tester”  
17 who works to ensure that companies abide by the privacy obligations imposed by federal  
18 law. As someone who advances important public interests at the risk of vile personal  
19 attacks, Plaintiff should be “praised rather than vilified.” *Murray v. GMAC Mortgage*  
20 *Corp.*, 434 F.3d 948, 954 (7th Cir. 2006).

21 34. In enacting the VPAA, Congress intentionally chose to extend its  
22 protections to all persons who watch videos, not simply those who purchase them or  
23 claim pecuniary loss. As such, statutes like the VPPA are largely enforced by civic-  
24 minded “testers” such as Plaintiff. *See Tourgeman v. Collins Fin. Servs., Inc.*, 755 F.3d  
25 1109 (9th Cir. 2014) (explaining why testers have Article III standing and generally

26  
27 <sup>20</sup> See <https://www.facebook.com/help/2207256696182627> (Off-Facebook Activity is  
28 only a “summary” and Facebook acknowledges “receiv[ing] more details and activity  
than what appears in your Facebook activity.” What is more, it omits “information we’ve  
received when you’re not logged into Facebook, or when we can’t confirm that you’ve  
previously used Facebook on that device.”) (last visited December 15, 2022).

1 discussing value and importance of testers in enforcement of consumer protection and  
2 civil rights statutes).<sup>21</sup>

3 35. During the relevant time period, Plaintiff visited Americangirl.com and  
4 watched one or more videos.

5 36. When Plaintiff watched videos on Americangirl.com, Defendants disclosed  
6 event data, which recorded and disclosed the video's title and URL, along with every  
7 time Plaintiff clicked a button to pause or play the video. Alongside this event data,  
8 Defendants also disclosed identifiers for Plaintiff, including the c\_user and fr cookies. In  
9 other words, Defendants did exactly what the VPPA prohibits: they disclosed Plaintiff's  
10 video viewing habits to a third party.

11 37. Given the nature of Defendants' business, visitors would be shocked and  
12 appalled to know that Defendants secretly disclose to Facebook all of key data regarding  
13 a visitors' viewing habits.

14 38. Defendants' conduct is illegal, offensive, and contrary to visitor  
15 expectations: indeed, a recent study conducted by the Electronic Privacy Information  
16 Center, a respected thought leader regarding digital privacy, found that: (1) nearly 9 in  
17 10 adults are "very concerned" about data privacy, and (2) 75% of adults are unaware of  
18 the extent to which companies gather, store, and exploit their personal data.

19 39. By disclosing his event data and identifiers, Defendant disclosed Plaintiff's  
20 personally identifiable information ("PII") to a third-party.

### 21 **CLASS ALLEGATIONS**

22 40. Plaintiff brings this action individually and on behalf of all others similarly  
23 situated (the "Class") defined as follows:

24 <sup>21</sup> Civil rights icon Rosa Parks was acting as a "tester" when she initiated the Montgomery  
25 Bus Boycott in 1955, as she voluntarily subjected herself to an illegal practice to obtain  
26 standing to challenge the practice in Court. See [https://www.naacpldf.org/press-  
27 release/ldf-pays-tribute-to-rosa-parks-on-the-sixtieth-anniversary-of-her-courageous-  
28 stand-against-segregation/](https://www.naacpldf.org/press-release/ldf-pays-tribute-to-rosa-parks-on-the-sixtieth-anniversary-of-her-courageous-stand-against-segregation/) "(Contrary to popular myth, Rosa Parks was not just a tired  
seamstress who merely wanted to sit down on a bus seat that afternoon. She refused to  
give up her seat on principle. Parks had long served as the secretary of the Montgomery  
branch of the NAACP [and] challenging segregation in Montgomery's transportation  
system was on the local civil rights agenda for some time.") (last downloaded November  
2022).

1           **All persons in the United States who watched video content on**  
2           **Americangirl.com and whose PII was disclosed by Defendants to**  
3           **Facebook during the Class Period.**

4           41.   **Numerosity (Fed. R. Civ. P. 23(a)(1)):** At this time, Plaintiff does not know  
5 the exact number of members of the aforementioned Class. However, given the  
6 popularity of Defendant’s website, the number of persons within the Class is believed to  
7 be so numerous that joinder of all members is impractical.

8           42.   **Commonality and Predominance (Fed.R.Civ.P. 23(a)(2), 23(b)(3)):**  
9 There is a well-defined community of interest in the questions of law and fact involved  
10 in this case. Questions of law and fact common to the members of the Class that  
11 predominate over questions that may affect individual members of the Class include:

- 12           a) whether Defendants collected Plaintiff’s and the Class’s PII;
- 13           b) whether Defendants unlawfully disclosed and continues to disclose their  
14           users’ PII in violation of the VPPA;
- 15           c) whether Defendants’ disclosures were committed knowingly; and
- 16           d) whether Defendants disclosed Plaintiff’s and the Class’s PII without  
17           consent.

18           43.   **Typicality (Fed. R. Civ. P. 23(a)(3)):** Plaintiff’s claims are typical of those  
19 of the Class because Plaintiff, like all members of the Class, used Americangirl.com to  
20 watch videos, and had PII collected and disclosed by Defendants.

21           44.   **Adequacy (Fed. R. Civ. P. 23(a)(4)):** Plaintiff has retained and is  
22 represented by qualified and competent counsel who are highly experienced in complex  
23 consumer class action litigation. Moreover, Plaintiff is able to fairly and adequately  
24 represent and protect the interests of the Class.

25           45.   **Superiority (Fed. R. Civ. P. 23(b)(3)):** A class action is superior to other  
26 available methods for the fair and efficient adjudication of this controversy because  
27 individual litigation of the claims of all members of the Class is impracticable. Even if  
28

1 every member of the Class could afford to pursue individual litigation, the court system  
2 could not. It would be unduly burdensome to the courts in which individual litigation of  
3 numerous cases would proceed. Individualized litigation would also present the potential  
4 for varying, inconsistent, or contradictory judgments, and would magnify the delay and  
5 expense to all parties and to the court system resulting from multiple trials of the same  
6 factual issues. By contrast, the maintenance of this action as a class action, with respect  
7 to some or all of the issues presented herein, presents few management difficulties,  
8 conserves the resources of the parties and of the court system and protects the rights of  
9 each member of the Class. Plaintiff anticipates no difficulty in the management of this  
10 action as a class action.

11 **CAUSE OF ACTION**

12 **VIOLATION OF THE VIDEO PRIVACY PROTECTION ACT**

13 **18 U.S.C. § 2710, *et seq.***

14 46. Defendants are a “video tape service provider” because they create, host,  
15 and deliver videos on The Website, thereby “engag[ing] in the business, in or affecting  
16 interstate or foreign commerce, of rental, sale, or delivery of prerecorded video cassette  
17 tapes or similar audio visual materials.” 18 U.S.C. § 2710(a)(4). Defendants also use the  
18 videos to collect and disclose viewers’ PII so it can later retarget them for advertisements.

19 47. Plaintiff and members of the Class are “consumers” because they have  
20 watched videos on Americangirl.com. 18 U.S.C. § 2710(a)(1).

21 48. Defendants disclosed to a third party, Facebook, Plaintiff’s and the Class  
22 members’ personally identifiable information. Defendants utilized the Facebook  
23 Tracking Pixel to compel Plaintiff’s web browser to transfer Plaintiff’s identifying  
24 information, like his Facebook ID, along with Plaintiff’s event data, like the title of the  
25 videos he viewed.

26 49. Plaintiff and the Class members viewed videos using Americangirl.com.

27 50. Defendants knowingly disclosed Plaintiff’s PII because it used that data to  
28 build audiences on Facebook and retarget them for its advertising campaigns.

1 51. Plaintiff and Class members did not provide Defendants with any form of  
2 consent—either written or otherwise—to disclose their PII to third parties.

3 52. Defendant’s disclosures were not made in the “ordinary course of business”  
4 as the term is defined by the VPPA because they were not necessary for “debt collection  
5 activities, order fulfillment, request processing, [or] transfer of ownership.” 18 U.S.C. §  
6 2710(a)(2).

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff seeks judgment against Defendant, individually and on  
9 behalf of all others similarly situated, as follows:

- 10 a. For an order certifying the Class under Rule 23 of the Federal Rules of Civil  
11 Procedure, naming Plaintiff as representative of the Class;  
12 b. For an order declaring that Defendant’s conduct violates the VPPA;  
13 c. For an order finding in favor of Plaintiff and the Class on all counts asserted  
14 herein;  
15 d. An award of statutory damages under the VPAA;  
16 e. An award of punitive damages;  
17 f. For prejudgment interest on all amounts awarded;  
18 g. For injunctive relief to stop the illegal conduct; and  
19 h. For an order awarding Plaintiff and the Class their reasonable attorneys’  
20 fees, expenses and costs of suit.

21 Dated: December 19, 2022

PACIFIC TRIAL ATTORNEYS, APC

22 By:   
23 \_\_\_\_\_  
24 Scott. J. Ferrell  
25 Attorneys for Plaintiff  
26  
27  
28