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KING COUNTY
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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

18-2-18287-5 SEA

In re:

FACEBOOK, INC.

Respondent.

NO.

ASSURANCE OF
DISCONTINUANCE

I. INTRODUCTION

1.1. The State of Washington (State), by and through its attorneys, Robert W. Ferguson, Attorney General, Marsha Chien, Assistant Attorney General, and Daniel Davies, Assistant Attorney General, files this Assurance of Discontinuance pursuant to the Consumer Protection Act (CPA), RCW 19.86.020.

1.2. Facebook Inc. ("Facebook") is a for-profit corporation organized under the laws of Delaware with headquarters in Menlo Park, California.

1.3. This Assurance of Discontinuance, entered into between the State and Facebook (the "Parties"), resolves the State's concerns that Facebook engaged in unfair acts or practices under RCW 19.86.020 based on its development and operation of an advertising platform with targeting options for reaching Facebook users that the State contends could indicate a Protected Characteristic (as defined in Section 3.2.6) and may have been used improperly by third-party advertisers to exclude those users from receiving advertisements for housing, employment, credit, insurance and/or public accommodations in violation of RCW 49.60.030(1).

1 1.4. Facebook believes that its advertising platform fully complies with all applicable
2 laws, denies that it has engaged in any act or practice in violation of RCW 19.86.020, RCW
3 49.60.030(1), or any other law, and contends that Section 230 of the Communications Decency
4 Act of 1996 bars any claim against Facebook arising from or relating to the availability, use, or
5 potential use of the challenged targeting tools on its advertising platform. Facebook does not
6 admit the allegations in this Assurance of Discontinuance but consents to this Court's jurisdiction
7 solely for purposes of entering into this AOD and any actions by the State based on a violation of
8 this AOD.

9 1.5. Nonetheless, because Facebook is committed to ensuring that its platform is used
10 by third-party advertisers and others in an inclusive manner, Facebook has agreed to this
11 Assurance of Discontinuance to strengthen Facebook's existing prohibitions against
12 discrimination on Facebook.

13 II. INVESTIGATION

14 2.1. In November 2016, the State initiated an investigation into the use of ethnic
15 affinity targeting options on Facebook's platform by third-party advertisers. Based on that
16 investigation, the State alleges the following:

17 2.2. Facebook developed and operates a platform that allows advertisers to create
18 and target advertisements using thousands of options based on user interests, including, at
19 certain times, interests in one or more of the following ethnic affinities: "African American
20 (US)", "Asian American (US)", "Hispanic(US-All)", "Hispanic (US-Bilingual)", "Hispanic
21 (US-Spanish dominant)", and "Hispanic (US-English dominant)" (collectively, "ethnic affinity
22 targeting options"). There is no targeting option based on Caucasian or European American
23 interests.

24 2.3. Facebook users may be associated with no ethnic affinities or with one or more
25 ethnic affinities based on their interests as expressed through activities on Facebook, *e.g.*,

1 “likes” and/or other interactions with Facebook content. These associations are not based on
2 knowledge of a user’s race, ethnicity or cultural background.

3 2.4. Facebook does not require use of ethnic affinity targeting by any advertisers.
4 Advertisers who chose to use the ethnic affinity targeting options may have included or
5 excluded those options from the audiences for their advertisements.

6 2.5. For example, if a third-party advertiser chose to include the ethnic affinity
7 targeting option “African American (US)” for a particular advertisement, users who were
8 associated with that targeting option would have been eligible (but not guaranteed) to receive
9 that advertisement depending on variable inputs to Facebook’s advertising auction and delivery
10 technologies, including without limitation advertising preferences set by users and other
11 targeting options selected by the advertiser. Similarly, if a third-party advertiser chose to
12 exclude the ethnic affinity targeting option “African American (US)” for a particular
13 advertisement, the associated users would not have been eligible to receive that advertisement
14 on the Facebook platform.

15 2.6. Some third-party advertisers have chosen to target advertisements they created
16 and placed on the Facebook platform using the ethnic affinity targeting options.

17 **III. ASSURANCE OF DISCONTINUANCE**

18 3.1. The State alleges that the following constitutes unfair acts and practices in
19 violation of RCW 19.86.020: Development and operation of an advertising platform that
20 allows third-party advertisers to exclude persons from receiving advertisements for
21 employment, housing, credit, insurance and/or places of public accommodation based on
22 membership in any of the following protected classes under RCW 49.60.030(1): race, creed,
23 color, national origin, veteran or military status, sexual orientation, or disability status.

24 3.2. Although Facebook denies these allegations, Facebook agrees to take the
25 following steps intended to prevent third party advertisers from excluding persons from
26 receiving advertisements for employment, housing, credit, insurance and/or places of public

1 accommodation based on the Protected Characteristics to the extent they affect citizens of
2 Washington State: Within the Exclusion Targeting Tool of the Advertising Platform,
3 Facebook will not allow third-party advertisers the option of limiting the audience for Covered
4 Advertisements using Covered Targeting Options for residents of Washington State as the
5 capitalized terms are defined below:

6 3.2.1. "Advertising Platform" means Facebook's advertiser-facing, self-serve
7 online tool for the creation and placement of advertisements on Facebook's service.

8 3.2.2. "Exclusion Targeting Tool" means the function within the Advertising
9 Platform that allows an advertiser to define the potential audience for an advertisement by
10 choosing to "exclude" certain targeting options from that audience. For the sake of clarity, the
11 function within the Advertising Platform that allows an advertiser to define the potential
12 audience for an advertisement by choosing to "include" certain targeting options for that
13 audience shall not be considered to be within the Exclusion Targeting Tool.

14 3.2.3. "Covered Targeting Options" means targeting options within the
15 Exclusion Targeting Tool that, on their face, directly describe a group of Facebook users as
16 possessing a Protected Characteristic.

17 3.2.3.1. For the sake of clarity and by way of example, Facebook
18 would not allow the option within the Exclusion Targeting Tool to limit audiences based on a
19 targeting category for "Chinese people" or "Wheelchair users" because these categories, on
20 their face, act as direct descriptors of Protected Characteristics. However, Facebook would not
21 remove targeting categories such as "Chinese literature" or "Disability rights" as those
22 categories identify interests and do not describe Protected Characteristics.

23 3.2.5. "Covered Advertisements" means "Housing Advertisements,"
24 "Employment Advertisements," "Credit Advertisements," "Insurance Advertisements," and
25 "Public Accommodations Advertisements," which shall be defined as follows:
26

1 3.2.5.1. "Housing Advertisement" means an advertisement identified
2 by Facebook as offering a housing opportunity.

3 3.2.5.2. "Employment Advertisement" means an advertisement
4 identified by Facebook as offering an employment opportunity.

5 3.2.5.3. "Credit Advertisement" means an advertisement identified by
6 Facebook as offering a credit opportunity.

7 3.2.5.4. "Insurance Advertisement" means an advertisement identified
8 by Facebook as an offer for an insurance product.

9 3.2.5.5. "Public Accommodation Advertisement" means advertisements
10 placed by advertisers whose Facebook Pages have been self-classified by the advertiser into
11 the categories listed in Appendix A.

12 3.2.6. "Protected Characteristic" means the following characteristics: race,
13 creed, color, national origin, veteran or military status, sexual orientation (as defined in RCW
14 49.60.040), or disability status.

15 **IV. RELEASE, IMPLEMENTATION AND MODIFICATIONS**

16 4.1 Release. The undersigned attorneys, on behalf of the State, agree to release and
17 hold harmless Facebook and its officers, employees, directors, successors, affiliates, parents,
18 subsidiaries, assigns, principals, and agents from any and all causes of action that the State may
19 have against Facebook, including under RCW 19.86.020, RCW 49.60.030, insofar as those
20 causes arise from or relate to the availability, use, or potential use of tools or features that allow
21 third-party advertisers using Facebook's advertising platform to target or exclude consumers from
22 receiving Covered Advertisements on or before the Effective Date of this Assurance, as defined
23 below.
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25
26

1 4.2 Notice and cure. The Parties agree that the steps required to implement Section
2 3.2 of this Assurance involve a high degree of technical complexity and the coordination of
3 multiple systems and business teams within Facebook. In light of that extraordinary
4 complexity, the State agrees that if it believes that Facebook is not in compliance with this
5 Assurance, and before seeking to enforce this Assurance, the State shall contact Facebook to
6 attempt to resolve the State's concern, providing a cure period of 30 days, before initiating any
7 public or formal action, provided that Facebook has undertaken reasonable efforts to
8 implement the requirements of Section 3.2 of this Assurance.
9

10 4.3 Timeline for Implementation. The Parties agree that Facebook shall implement
11 the steps set forth in Section 3.2 within 90 days of the entry of this Assurance of
12 Discontinuance.
13

14 4.4 Future consultation on Covered Targeting Options. The Parties reserve the right
15 to discuss the continued viability and potential modifications of any or all of these provisions
16 as they are implemented in the future, having due regard for changes in laws and regulations,
17 as well as changes in equipment, technology, or methodology of the Advertising Platform.
18

19 4.5 This Assurance shall not be considered or construed in any way as an admission
20 of a violation of any law for any purpose. However, proof of failure to comply with this
21 Assurance of Discontinuance shall be *prima facie* evidence of a violation of RCW 19.86.020 in
22 accordance with RCW 19.86.100. Proof of failure to comply with this Assurance of
23 Discontinuance does not constitute *prima facie* evidence of any other basis for asserting a
24 violation of RCW 19.86.020 or any other law including RCW 49.60.030.
25
26

1 **V. PAYMENT TO STATE**

2 5.1. Within thirty (30) days of entry of this Assurance of Discontinuance, Facebook
3 shall pay \$90,000.00 to the Attorney General of Washington. The Attorney General shall use the
4 payment for recovery of its fees and costs in investigating this matter, monitoring compliance
5 with this Assurance of Discontinuance, future enforcement of RCW 49.60 and RCW 19.86, or
6 for any lawful purpose in the discharge of the Attorney General's duties at the sole discretion of
7 the Attorney General.

8 5.2. No part of the payment or relief required by this Assurance of Discontinuance
9 shall be designated as a civil penalty, fine, and/or forfeiture.

10 **VI. ADDITIONAL PROVISIONS**

11 6.1. The parties acknowledge and agree that no other promises, representations, or
12 agreements of any nature have been made or entered into by the parties. The parties further
13 acknowledge that this Assurance of Discontinuance constitutes a single and entire agreement that
14 is not severable or divisible, except that if any provisions herein are found to be legally
15 insufficient or unenforceable, the remaining provisions shall continue in full force and effect.

16 APPROVED on this ___ day of 7/24, 2018.

17
18 
19 _____
20 JUDGE/COURT COMMISSIONER

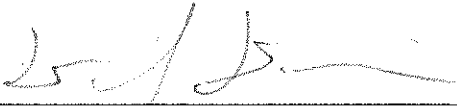
21 **HENRY H. JUDSON**

22 JUL 24 2018

23 COURT COMMISSIONER

19 Presented by:

20 ROBERT W. FERGUSON
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22 
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7 Agreed to and approved for entry by:

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