

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALEKSANDR KOGAN,

Plaintiff,

v.

FACEBOOK, INC., PAUL GREWAL, ALEX
STAMOS, and MARK ZUCKERBERG,

Defendants.

**FIRST AMENDED
COMPLAINT**

Case No.1:19-cv-02560-PAE

Plaintiff Aleksandr Kogan, Ph.D. (“plaintiff” or “Dr. Kogan”), by and through his attorneys Beckage PLLC, for his amended complaint against defendants Facebook, Inc. (“Facebook”), Paul Grewal (“Mr. Grewal”), Alex Stamos (“Mr. Stamos”) and Mark Zuckerberg (“Mr. Zuckerberg”) (collectively “Defendants”), alleges upon information and belief as follows:

NATURE OF THE ACTION

1. Defendant Facebook’s business model leverages free content from its users, and free development work from application developers, to create a platform that has earned it billions of dollars in advertising revenue annually.
2. Facebook relies on developers to create, at no cost to Facebook, games and applications (“apps”) for use on Facebook’s platform, which drive up Facebook user engagement and user data sharing, and increases Facebook’s ability to, among other things, sell access to its users’ data to third parties and advertising companies.
3. Selling and allowing access to its users’ data is the primary component of Facebook’s business model.

4. However, when Facebook's data practices came under scrutiny from federal and international governments and the public, Defendants took aim at one app developer and one developer alone: plaintiff Dr. Aleksandr Kogan, a former University of Cambridge Professor.

5. To avoid public scrutiny and protect its own reputation, Facebook and the individual defendants leveraged their global power, immense influence, and unlimited resources and set about on a deliberate and public effort to make Dr. Kogan their scapegoat through a series of public statements accusing Dr. Kogan of, among other things, "lying," committing a "fraud," and running a "scam." These defamatory statements prevented Dr. Kogan to co-author and work on academic papers, decimating his academic career.

6. Defendants knew the statements that they were making about Dr. Kogan were untrue because they knew of, supported and allowed his actions, and the actions of thousands of developers like him. Despite their knowledge of practices utilized by Dr. Kogan and other developers, Defendants affirmatively singled out and imposed deliberate harm to Dr. Kogan in making those misstatements about him to the public.

7. In fact, Defendants continue to make knowingly false statements about Dr. Kogan to this date. These and prior statements were made as part of a concerted, deliberate scheme to publicly blame Dr. Kogan for Facebook's practice of granting broad access to its users' data and information to third parties and advertisers.

8. Facebook was double faced – it and the individual defendants valued Dr. Kogan's work and used him as a consultant, only to then publicly cast him aside as rogue actor and a fraud – which the Defendants each knew was not true.

9. Defendants engaged in a deliberate and public smear campaign, attacking Dr. Kogan as the fall guy to protect their lucrative business model. Their disregard for the truth and public accusations against plaintiff is actionable under the law.

THE PARTIES

10. Plaintiff, Aleksandr Kogan, Ph.D., is a domiciliary of the State of New York and presently a resident of Erie County. At the time the facts set out below occurred, he resided in New York County.

11. Defendant Facebook, Inc. is a foreign corporation authorized to do business in New York with a principal office located in New York County.

12. Defendant Paul Grewal is an individual resident of the State of California and the Vice President and Deputy General Counsel of Defendant Facebook.

13. Defendant Alex Stamos is an individual resident of the State of California and the former Chief Security Officer of Defendant Facebook. At the time the facts set out below occurred, Mr. Stamos was an executive of Defendant Facebook.

14. Defendant Mark Zuckerberg is an individual resident of the State of California, the Chairman and Chief Executive Officer and controlling shareholder of Defendant Facebook.

JURISDICTION AND VENUE

15. On March 21, 2019, Facebook removed to this Court *Aleksandr Kogan v. Facebook, Inc., Paul Grewal, Alex Stamos, and Mark Zuckerberg*, Index No. 152794/2019, filed by Dr. Kogan on March 15, 2019 (the “State Court Action”) in the Supreme Court of the State of New York, County of New York.

16. As a removed action, the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1332 and 1441.

17. This Court has jurisdiction over this matter in controversy pursuant to 28 U.S.C. § 1332(a) based on the presence of federal diversity jurisdiction. Diversity of citizenship exists where the parties in interest are citizens of different States, and the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a).

18. Venue is appropriate in this District under 28 U.S.C. § 1391(b)(1) as Defendant Facebook does business and maintains a corporate office in this District, in which it is subject to the Court's personal jurisdiction, and pursuant to 28 U.S.C. § 1391(b)(2) in that a substantial part of the events or omissions giving rise to the claims occurred in this District.

19. The Court has personal jurisdiction over the Defendants pursuant to Fed. R. Civ. P. 4(k)(1), in that Facebook, and the individual defendants who are executives with Facebook, maintain a corporate office in this District located at 335 Madison Avenue, New York, New York, 10017 and the statements caused harm in the District.

20. Facebook is registered with the New York State Department of Corporations and assigned Department of State identification number #38423671, with an appointed agent for service located at 80 State Street, Albany, New York.

FACTUAL BACKGROUND

The Facebook Application Programming Interface ("API")

21. As early as 2009, Facebook recruited developers to build programs and applications for its user platform, by granting those developers access to Facebook users' data and other technical data via an application programming interface (the "Facebook API").

22. The Facebook API is a tool that allowed developers like Dr. Kogan to build applications and connect them to Facebook's platform, users and users' data.

23. As Facebook provides the API, Facebook and the individual defendants at all times had access to its systems, which would, among other things, show exactly what data passed through its systems and to developers and the apps available on the Facebook platform.

24. At all times, Facebook provided the API and Facebook maintained the tools to restrict access to the API, its users, and to users' data.

25. At all times, Facebook knew what data was shared with or accessed by developers through the Facebook API through its purported audit teams and technical tools that show what permissions were provided to developers and third parties to access data and what in fact was accessed and collected by them from the platform.

26. Overall, Facebook encouraged hundreds of thousands of developers to develop applications leveraging its API. Facebook actively recruited developers for this purpose through its online advertising and other efforts to make its users' data open to them.

27. In most instances Facebook never compensated developers for their applications. Instead, Facebook offered developers access to, and use of, what is likely the world's largest data set: Facebook users' information.

28. Facebook allowed developers access to its API and its users' data for commercial purposes, including market research, and also for academic research purposes.

29. Facebook also allowed developers to access its API and its users' data for political consulting and campaign purposes and numerous other purposes.

30. For example, "in 2011, Carol Davidsen, director of data integration and media analytics for Obama for America, built a database of every American voter . . . Any time people used Facebook's log-in button to sign on to the campaign's website, the Obama data scientists were able to access their profile as well as their friends' information. That allowed them to chart the closeness of people's relationships and make estimates about which people would be most likely to influence other people in their network to vote."¹

¹ https://www.washingtonpost.com/business/economy/facebooks-rules-for-accessing-user-data-lured-more-than-just-cambridge-analytica/2018/03/19/31f6979c-658e-43d6-a71f-afdd8bf1308b_story.html.

31. According to Ms. Davidsen of Obama for America: “We ingested the entire U.S. social graph” . . . “We would ask permission to basically scrape your profile, and also scrape your friends, basically anything that was available to scrape. We scraped it all.”²

32. All developers had to do was create a “Facebook for Developers” account and they were allowed access to the Facebook API.

33. At all times, Facebook controlled developer access to its API and to its users’ data via the Facebook API.

34. Additionally, at all times, Facebook had technical controls in place by which it observed and logged its user data as that data was accessed or downloaded by developers leveraging the API, which also allowed it to monitor and audit use.

35. At all times, Facebook retained complete control over access to the API portal and the appearance of the API portal and disclosures to its users.

36. During the relevant time period, Facebook allowed developers, in essence, unfettered access to its users’ data while using the Facebook API.

Dr. Kogan’s Academic and Research Background

37. Dr. Kogan graduated from the University of California Berkeley with highest honors. His research on the positive side of human nature and community efforts provided him with the Department Citation—the highest honor a department can award a student.

38. Dr. Kogan continued his studies at the University of Hong Kong, focusing again on human nature and the cross-cultural differences in love, where he received awards and scholarships for research excellence.

² *Id.*

39. After receiving his Ph.D., Dr. Kogan took a postdoctoral fellowship at the University of Toronto.

40. After global studies and recognition for his work on understanding human nature, Dr. Kogan took a position as a Senior Research Associate and University Lecturer in the Department of Psychology at the University at Cambridge, where he also established and led the Cambridge Prosociality and Well-Being Lab (“CPW”), furthering his research on the positive side of human nature.

41. At the relevant time period, Dr. Kogan was an enthusiastic, spirited, young mathematician excited about innovation, data analysis, research, teaching, and academics. Dr. Kogan traveled to numerous countries and the most prestigious universities to speak on these topics and share his insight with others.

42. Like others in his field, Dr. Kogan worked toward creating large data sets composed of a variety of information to study human behavior and help make predictions.

43. In connection with this academic research, and later for commercial purposes, Dr. Kogan created a developer account with Facebook and was granted access by Facebook to its API, its users, and its users’ data and network.

Dr. Kogan Develops an Application Leveraging Facebook’s API

44. From 2013 through 2015, Dr. Kogan developed three versions of an application for Facebook, which was made available to Facebook users (the “App”).

45. Each version of the App provided access to a user survey. Specifically, users would interact with the App by answering questions or participating in surveys, and in some instances compensated, and Dr. Kogan would collect and analyze the results of the surveys.

46. The first version of the App, “CPW App,” was developed in 2013 and was for academic research purposes.

47. Dr. Kogan did not intend that the CPW App be for commercial use, nor was it. The information collected was used for academic research purposes only.

48. Specifically, the CPW App collected demographic and other information of participants and their “friends” in their social network, including whether users’ friends on Facebook “liked” something.

49. With this information, Dr. Kogan pursued his academic studies of human behavior, and did not sell the information.

Dr. Kogan Forms GSR and Updates the App and its Terms of Service

50. For background, since at least the early 2000’s, many developers were developing apps for Facebook that were intended for commercial or market research use, including gaming apps that provided games to users and commercialize on users’ data.

51. Also, many researchers at universities engaged in commercial enterprises to supplement their income.

52. In or around 2014, Dr. Kogan formed a company called Global Science Research, Ltd. (“GSR”) to engage in projects to evaluate various data sets with the intention to use this market research for commercial purposes.

53. In the spring of 2014, Dr. Kogan created the second version of the App and renamed it the “GSR App.”

54. The GSR App provided an updated Terms of Service.

55. The Terms of Service explicitly disclosed to users of the App and to Facebook that the App was designed to collect and analyze certain information, and that GSR intended to use this data for commercial purposes.

56. The GSR App Terms of Use included, but was not limited to, the following disclosures:

- a. “Information Collected: We collect any information that you choose to share with us by using the Application. This may include, inter alia, the name, demographics, status updates and *Facebook likes of your profile and of your network.*” (emphasis added).
- b. “Intellectual Property Rights: *If you click “OKAY” or otherwise use the Application or accept payment, you permit GSR to edit, copy, disseminate, publish, transfer, append or merge with other databases, sell, licence (by whatever means and on whatever terms) and archive your contribution and data.* Specifically, agreement to these Terms also means you waive any copyright and other intellectual property rights in your data and contribution to GSR, and *grant GSR an irrevocable, sublicenceable, assignable, non-exclusive, transferrable and worldwide license to use your data and contribution for any purpose. . . .*” (emphasis added and other text omitted).
- c. “Informed Consent: By signing this form, you indicate that you have read, understand, been informed about and agree to these Terms. You also are consenting to have your responses, opinions, likes, *social network and other related data* recorded and for the data collected from you to be used by GSR. If you do not understand these Terms, or if you do not agree to them, then we strongly advise that you do not continue, do not click “OKAY”, do not use the Application and do not to collect any compensation from us.” (emphasis added).

57. In short, the GSR App disclosed to users of the App that it would collect data from Facebook and the ways that data would be used, and in return GSR compensated users of the App for which they were paid.

58. Certain survey data and related information collected from GSR App users and analysis drawn from certain page “likes” by those users, and certain “likes” by the users’ network were shared as the Terms of Use disclosed.

59. At all relevant times, Facebook knew that Dr. Kogan (and hundreds of thousands of other developers like him) developed apps for commercial purposes, and that those apps collected users’ data and at times compensated users for their participation in those apps and for the data collected related thereto.

60. At all times the GSR App Terms of Use was available to Facebook and to anyone viewing, accessing, and/or downloading the GSR App.

61. There were no restrictions on Facebook or its employees to prevent them from reading the GSR App Terms of Use, or any other apps' terms of use.

62. During the relevant period, Facebook was an "open book" when it came to the way things were done with its user data, allowing thousands of app developers and researchers, including Dr. Kogan, access to certain users' data for commercial purposes.

63. Ultimately, however, an investigation by the New York Times found that "Facebook's larger partners got far more access [to user data] than Cambridge Analytica did."³ (These larger partners include technology companies and device makers with whom Facebook had deep data sharing agreements).

64. Indeed, information gathered by the App was information that could be obtained by hundreds of thousands of other developers using the Facebook API.

65. Much of the information gathered by the App could be obtained manually by Facebook users or other parties because it was publicly available.

66. Dr. Kogan's efforts to study, access, and share Facebook users' data via an App on the Facebook API was not unique. Such practices were widely accepted by Facebook and in furtherance of Facebook's business model.

67. Following the GSR App, Dr. Kogan updated the App again, resulting in a third version of the App known as "thisisyourdigitallife."

68. The "thisisyourdigitallife" App collected limited information from a few hundred users and did not share this data with any party.

³ <https://www.nytimes.com/2018/12/18/us/politics/facebook-data-sharing-deals.html>.

Facebook Knew of Dr. Kogan's App, and Hired Dr. Kogan For Work

69. All versions of Dr. Kogan's App were specifically known to Facebook and to certain of its employees and were authorized, allowable and permitted.

70. In fact, during the relevant time period, Facebook hired Dr. Kogan to collaborate with its own "UX" Team. "UX" stands for User Experience.

71. For years Facebook provided Dr. Kogan with data sets and aggregate users' data on friend relationships and emotional expressions across countries' boundaries for analysis.

72. Dr. Kogan worked with Facebook, its employees, and in-house researchers to analyze Facebook data.

73. Together, Dr. Kogan help author at least ten papers with Facebook's in-house researchers, based on Facebook's request that Dr. Kogan analyze its data sets, which included data concerning users' "friends."

74. One such paper was entitled "On wealth and the diversity of friendships: High social class people around the world have fewer international friends." ("Academic Paper"). <https://www.sciencedirect.com/science/article/pii/S0191886915004973>.

75. The Academic Paper studied the social ties between wealthy people around the world and was published in the Journal *Personality and Individual Differences* in 2015.

76. Facebook and Dr. Kogan collaborated on a number of other papers and projects from 2013 to 2015.

77. In November 2015, Facebook invited Dr. Kogan to its corporate offices as a paid consultant for Facebook for one week.

78. During this time, Dr. Kogan met with high-ranking Facebook employees, such as Facebook's "research czar" and the head of its Academic Relations department, to discuss potential commercialization of Facebook users' data.

79. During this time, Dr. Kogan discussed with Facebook employees' concepts and learnings, which were founded on his App work.

80. The App, including the GSR App version, and the manner by which the App obtained and evaluated users' data, was known to Facebook and its employees.

Facebook Comes Under Scrutiny for Its Data Sharing Practices

81. Eventually, Facebook came under scrutiny regarding its data sharing practices.

82. At some point thereafter, in the Spring 2014, Facebook purported to change its policies to limit the access of app developers.

83. However, Facebook explicitly allowed historical developers leveraging the Facebook API, like Dr. Kogan, to continue to have access to Facebook user and friend data until, at least, May 2015.⁴

84. Around this time, Dr. Kogan was working directly with Facebook and its employees on the UX Team, and had launched his third version of the App, "thisisyourdigitallife" on the Facebook platform.

85. At this time, Facebook and its employees discussed with Dr. Kogan an arrangement wherein information evaluated from the "thisisyourdigitallife" version of the App could be of value for Facebook's own commercial purposes.

86. At all times, Facebook knew that Dr. Kogan was collecting and evaluating users' and friends' "likes" data.

87. Defendants intentionally made statements representing that Dr. Kogan and his App collected certain data that it did not collect, when they knew these statements were not true.

⁴ <https://developers.facebook.com/blog/post/2014/04/30/the-new-facebook-login>.

88. Shortly after creating the third version of the App and his consulting work at Facebook, there were heightened media queries about Facebook's privacy practices.

89. Unbeknownst to the public or to Dr. Kogan, Facebook as publicly reported also was allegedly in violation of a 2012 settlement order with the United States Federal Trade Commission ("FTC") regarding Facebook's privacy practices with its users.

90. At this time, Dr. Kogan ended his use of the App in all forms and took steps to remove users' data that had been previously collected.

**Facebook and its Executives Maliciously Attack
Dr. Kogan to Deflect Blame for Their Data Privacy Problems**

91. In March 2018, The New York Times and The Guardian published stories about the Trump campaign's links to SCL/Cambridge Analytica.

92. These stories – coupled with the growing concern about Russian involvement in the 2016 U.S. presidential campaign by Russian fake-news feeds – drew much unwanted attention to Facebook's business model. Specifically, the media criticized Facebook for its business model: the monetization of personal user data by granting access to user data to third-party developers or selling access to user data to third-party advertisers.

93. Also, at this time, reports of Facebook's "deep data sharing" agreements with select technology companies and devices makers, such as Amazon and Apple, were made public.

94. These reports found that Facebook granted select companies "far more access [to user data] than Cambridge Analytica did," including "the data of hundreds of millions of people a month, including email addresses and phone numbers — without users' knowledge or consent."⁵

⁵ <https://www.nytimes.com/2018/12/18/us/politics/facebook-data-sharing-deals.html>.

95. Instead of accepting the uncomfortable regulatory oversight and responsibility for any mistakes it might have made, Facebook went into “PR crisis mode,” quickly seizing upon Dr. Kogan as a convenient scapegoat for the *entirety* of its data privacy problems at a time when Defendants had the word’s undivided attention.

96. In a series of public statements made to national and international press and others, Defendants proceeded to unnecessarily and maliciously defame Dr. Kogan and make statements that were not true and omitted material facts.

97. On March 17, 2018, the New York Times quoted Facebook executive and Defendant Grewal said about Dr. Kogan and his work:

“‘This was a *scam* — *and a fraud*,’ Paul Grewal, a vice president and deputy general counsel at [Facebook], said in a statement to The Times earlier on Friday. (emphasis added). He added that the company was suspending Cambridge Analytica, Mr. [Christopher] Wylie and the researcher, Aleksandr Kogan, *a Russian-American academic*, from Facebook.” (emphasis added).

98. Facebook’s executives made knowingly false and defamatory statements about Dr. Kogan and did so in their official capacities as Facebook employees.

99. A partial list of these false, libelous, and defamatory publications follows:

- a. Mr. Grewal, Vice President and Deputy General Counsel of Facebook, stated, in a Facebook News release on March 16, 2018 that “*Dr. Aleksandr Kogan lied to us.*” (emphasis added).
- b. Mr. Grewal, on March 17, 2018, gave a statement to The New York Times, as quoted above: “This was a *scam* — *and a fraud.*” (emphasis added).
- c. On March 16, 2018, Mr. Grewal intentionally and knowingly misstated the purpose of Dr. Kogan’s App when he stated in the Facebook News release: “In 2015, we learned that a psychology professor at the University of Cambridge named *Dr. Aleksandr Kogan lied to us* and violated our Platform Policies ... His app, ‘thisisyourdigitallife,’ offered a personality prediction, and billed itself on Facebook as ‘a research app used by psychologists.’” (emphasis added).
- d. Alex Stamos, Facebook’s Chief Security Officer at the time, tweeted on March 17, 2018: “The researcher in question, *Aleksandr Kogan*, enticed several hundred thousand individuals to use Facebook to login to his personality quiz in 2014. *He*

lied to those users and he lied to Facebook about what he was using that data for.” Yet in the same statement he did acknowledge that “Although Kogan gained access to this information in a legitimate way and through the proper channels that governed all developers on Facebook at that time, he did not subsequently abide by our rules. By passing information on to a third party, including SCL/Cambridge Analytica and Christopher Wylie of Eunoia Technologies, he violated our platform policies.” (emphasis added).

- e. On March 21, 2018, Mr. Zuckerberg told CNN: “You can’t share data in a way that people don’t know or don’t consent to. *We immediately banned Kogan’s app.*” Mr. Zuckerberg also said: “But, what I think what we learned over the years after launching that was that it also led the way to a lot of *scammy* developers. So, that’s why as early as 2014, um, we had already taken the step of locking down the platform and making it so developers of apps *like Kogan’s*, ah, couldn’t get access to anywhere near the amount of data that they could before. . . Yeah I think that we, we, ah, need to make sure, go back and make sure that of all the apps that people were using, any of them that were *scammy like, ah, what we have seen here with Kogan* who shared the data with Cambridge Analytica that we go back and make sure that they get rid of all the data that they had and that they’re not doing anything improper.” (emphasis added).
- f. Yet on the same day, March 21, 2018, Mr. Zuckerberg stated on his Facebook page: “In 2013, a Cambridge University researcher named Aleksandr Kogan created a personality quiz app. It was installed by around 300,000 people who shared their data as well as some of their friends’ data. Given the way our platform worked at the time this meant Kogan was able to access tens of millions of their friends’ data.”
<https://www.Facebook.com/zuck/posts/10104712037900071>.
- g. Mr. Zuckerberg further wrote, on his own Facebook page, on March 21, 2018: “In 2015, we learned from journalists at The Guardian that Kogan had shared data from his app with Cambridge Analytica. It is against our policies for developers to share data without people’s consent, so we immediately banned Kogan’s app from our platform.”
- h. Mr. Zuckerberg further provides that Facebook allegedly took actions to protect against “*bad actors*” and “*suspicious activity*” and suggested that prior activity was *not “safe.”* (emphasis added).
- i. Mr. Zuckerberg stated, in an interview with Recode, published on March 22, 2018: “Then there’s going backwards, which is before 2014, what are all the apps that got access to more data than people would be comfortable with? And which of them were good actors, like legitimate companies, good intent developers, and which one of them were scams, right? *Like, what Aleksandr Kogan was doing*, basically using the platform to gather a bunch of information, sell it or share it in *some sketchy way.*” (emphasis added).

100. These and other similar statements by Facebook employees were made when the news of Cambridge Analytica's practices were publicized in the media and so garnered great attention and then were re-broadcast and re-published across America and throughout the world.

101. Defendants, acting individually and in concert with others, disseminated false and defamatory remarks with respect to Dr. Kogan and his App.

102. Upon information and belief, millions of people read Facebook and the individual defendants' accusations against Dr. Kogan, and now view Dr. Kogan as a "liar," "scam[mer]" and a "fraud" whose activities were "scammy," "sketchy," and "not safe."

103. Indeed, Mr. Zuckerberg's posts alone receive hundreds of thousands of views, comments, shares, and engagement. Defendant Zuckerberg has a global platform on which to speak, which he used to intentionally defame Dr. Kogan.

104. Defendants in making these malicious statements knew or should have known that they were false or probably false.

105. Defendants knew and allowed hundreds of thousands of developers unfettered access to its users' data through the Facebook API, of which Dr. Kogan was just one developer.

106. Defendants knew that Dr. Kogan, like hundreds of thousands of other developers, did not obtain access to Facebook user data through lies, scams, or fraud, but obtained such access directly and with permission from Facebook through its API.

107. Facebook and the individual defendants also knew that it had never enforced its written policies which it now purports limited developer access to users' data, and in fact had an active practice of allowing hundreds of thousands of developers access to user data.

108. Additionally, upon information and belief, at the same time it was publicly defaming Dr. Kogan and scapegoating him as the only person who was able to obtain Facebook user data through lies, scam, and fraud, Facebook and the individual defendants were negotiating

a settlement with the United States' Federal Trade Commission ("FTC") regarding Facebook's privacy settings and statements made to its users.

109. Specifically, the FTC Complaint⁶ against Facebook, filed on July 24, 2019, which was filed with the Stipulated Order for the \$5,000,000,000 Civil Penalty, found that:

"Beginning at least as early as 2010, every Facebook user who installed an app ("App User") agreed to Facebook sharing with the third-party developer of the installed app both information about the App User and the App User's Facebook Friends. Facebook's default settings were set so that Facebook would share with the third-party developer of an App User's app not only the App User's data, but also data of the App User's Facebook Friends ("Affected Friends"), even if those Affected Friends had not themselves installed the app."

110. As evidenced by the Stipulated Order, for the relevant time period the individual defendants and Facebook knew and intended to allow developers, including Dr. Kogan, unfettered access to user data through the Facebook API. Thus, Facebook's representations to its users regarding Facebook's known data sharing practices were deceptive.

111. Defendants knew that Dr. Kogan was not a liar, a scammer, or a fraud, and knew he obtained access to Facebook user data the same way all developers did. This is evidenced by the fact that Facebook was negotiating a settlement with the FTC regarding, among other things, their practice of allowing developers this exact access, at the same time that Facebook was using Dr. Kogan as a public scapegoat for these practices and calling him a liar and a fraud.

112. Defendants knew that Dr. Kogan was not a liar, a scammer, or a fraud, as Defendants and Facebook employees knew Dr. Kogan individually, and had previously worked with, and hired, Dr. Kogan for their UX Team. They had also collaborated with him on academic research and journal papers.

⁶ *United States v. Facebook, Inc.*, 19-cv-2184 (D.D.C. July 24, 2019).

113. Defendants knew that Dr. Kogan was not a liar, a scammer, or a fraud, which is evidenced by the fact that Defendants and Facebook employees used, and discussed obtaining further, information and analysis collected from Dr. Kogan's App and work.

114. At the time Defendants made the statements above, they knew the statements were false, and recklessly disregarded the truth.

115. These statements were intentional misrepresentations made with the malicious intent to smear Dr. Kogan's reputation, including by intentionally casting Dr. Kogan as a fraud and scammer who is unfit to perform the duties of his academic and research profession, and would foreseeably harm, if not end, his professional and academic career.

116. By using the terms "fraud," "scam," "scammy," and "sketchy," Defendants attributed criminal conduct to Dr. Kogan and revolting and disease-like qualities.

117. By calling him a "liar" and accusing him of "fraud," Facebook and the individual defendants have attacked Dr. Kogan's professionalism, his personal character, and ethics, and significantly diminished his employment potential.

118. Defendants knew or should have known that their statements were false, as the activities described herein involve information in Facebook's exclusive control, including but not limited to looking at the trails of data that were being accessed by hundreds of thousands of developers on the Facebook API.

119. Instead, Defendants set out on a global campaign to ridicule and disgrace Dr. Kogan and have been successful in inducing an evil international opinion of him, including by bolstering an image of him as a Russian spy or villain (*See, e.g.*, "a *Russian*-American academic").

120. This is especially true where Facebook has never identified the nationality or ethnicity of any other individual involved in this matter.

121. Defendants knew their statements that Dr. Kogan was a liar, scam and fraud were not true and were false where they themselves had hired him as a consultant and worked on academic and other papers.

122. Defendants' actions challenged Dr. Kogan's ethics, integrity and honesty in a deliberate way that was unfair, incorrect, and knowingly false.

123. Defendants' statements were for the purpose and intent to harm Dr. Kogan.

**News and Media Outlets Adopt Facebook's Statements,
Causing Dr. Kogan Immense, and Irreparable, Reputational Harm**

124. News and media outlets around the globe recognized, and often times endorsed, Facebook's false statements regarding Dr. Kogan – *i.e.*, that Dr. Kogan is a liar who is to blame for all of Facebook's data sharing practices:

- a. "The data scientist branded a liar by Facebook . . ." <https://money.cnn.com/2018/03/20/technology/aleksandr-kogan-interview/index.html> and https://www.vice.com/en_us/article/43bexj/cambridge-analytica-researcher-says-the-facebook-data-is-still-out-there-someone-did-not-delete-it
- b. "Facebook has consistently blamed Aleksandr Kogan . . ." <https://www.forbes.com/sites/zakdoffman/2019/03/16/Facebook-accused-of-cambridge-analytica-cover-up-as-criminal-prosecutors-investigate/#41dc602f4f0d>
- c. Facebook "went into PR overdrive." <https://www.theguardian.com/uk-news/2019/mar/18/aleksandr-kogan-cambridge-analytica-scandal-sues-Facebook>

125. When Defendants made defamatory statements, Messrs. Grewal, Stamos, and Zuckerberg knew, or should have known, what they were saying about Dr. Kogan was false.

126. Defendants made defamatory statements that a number of data sharing practices were related to Dr. Kogan when they knew that was not true.

127. Moreover, these false statements were made about a private person who was thrust into the public spotlight by Defendants' defamatory statements.

128. Dr. Kogan’s resulting public statements can only be characterized as measured, defensive replies to Defendants’ attacks on his character – a single person fighting a global brand with unlimited funds, truly a David vs. Goliath situation.

129. Dr. Kogan continued to tell the truth and defend his name by responding to media inquiries, and voluntarily agreeing to answer questions by global regulators.

130. Aside from Dr. Kogan’s attempts to defend his name, he has not sought to inject himself into, or influence the outcome of, this or any other issue that may be considered of public concern.

131. Defendants’ defamatory statements caused significant harm to Dr. Kogan’s business, trade, reputation, and professional career.

132. Dr. Kogan currently has no comparable job prospects in his academic field because of Defendants’ use of him as a scapegoat on a global scale.

133. GSR discontinued doing business and is no longer in operation.

134. Defendants’ defamation thwarted Dr. Kogan’s academic career and damaged his business interests and prospects.

135. Defendants’ defamatory statements have resulted in physical threats being made against Dr. Kogan’s life and threatening his safety and livelihood.

Facebook Continues to Make Defamatory Statements and Blame Dr. Kogan for Its Own Actions

136. Yet, Facebook still does not relent.

137. On September 30, 2019, Ime Archibong, VP of Product Partnerships at Facebook publicly provided an “Update on Our App Developer Investigation” (“Update”).⁷

⁷ <https://newsroom.fb.com/news/2019/09/an-update-on-our-app-developer-investigation/>.

138. The title itself suggests a criminal-like “investigation” into the actions of one single developer: Dr. Kogan.

139. Though transparently avoiding naming Dr. Kogan by name, Facebook nonetheless includes his exact position and facts about him in the Update so that members of the public know Facebook is talking directly and only about him.

140. Specifically, Facebook purported to provide an update on its “ongoing App Developer Investigation, which we began in March of 2018 as part of our response to the episode involving Cambridge Analytica.”

141. Of course, Facebook is referring to Dr. Kogan and continuing to defame him.

142. The Update does not purport to investigate any of the other developers to whom Facebook granted unfettered access to its users’ data and friends’ data during the relevant time period, even where such data was used for political campaign purposes such as developers for Obama for America and other political campaigns.

143. Further, the Update essentially admits that Facebook did not enforce its written policies during the relevant time period. Though Facebook may have had a written policy, its practice was to allow third-party developers unfettered access to its users’ data.

144. The Update is a continuation of Facebook’s relentless effort to put the entire blame for Facebook’s data sharing practices onto the shoulders of one single developer: Dr. Kogan and no one else.

Dr. Kogan Suffers Irreparable Harm from Facebook’s and the Individual Defendants’ Malicious Acts and Statements

145. As a result of Defendants’ relentless public statements, Dr. Kogan has suffered immense and irreparable harm and special damages.

146. Dr. Kogan has lost his career that he worked his entire life for.

147. Facebook's actions have forced Dr. Kogan off and prevented him opportunities to work on research papers and opportunities.

148. Dr. Kogan has seen his name and reputation smeared in international publications.

149. He has been threatened with physical harm by strangers because of the image Defendants unfairly and inaccurately portrayed of Dr. Kogan.

150. Dr. Kogan has had to defend himself by borrowing from friends and family to cover expenses and costs incurred in responding to inquiries.

151. Dr. Kogan lost the ability to use the data and intellectual property that he for years had analyzed to make positive human nature predictions to further academia and innovation in this country.

152. Dr. Kogan has been impaired in his ability to foster other business relationships for someone of his skill and expertise.

153. Most importantly, Defendants' actions impaired Dr. Kogan's public image. Prior to Defendants' smear campaign, Dr. Kogan was often referred to as a kind, generous, thoughtful and passionate teacher who loved to engage with his students. His life's work and his identity were single-handedly destroyed by Defendants, who blamed him for all of the scrutiny they received over privacy concerns by making false and defamatory statements about Dr. Kogan.

154. Dr. Kogan is an individual standing up for himself and others like him (businesses and researchers) who may too have been once the go-to for innovation and opportunity, but later bullied and used as a scapegoat when their work was no longer beneficial.

155. Dr. Kogan has been harmed by deliberate statements by Defendants and the following runaway train of perception about him and seeks protection under the laws afforded to all citizens like him.

156. Dr. Kogan seeks to continue to tell the truth about his involvement with Facebook and its data sharing practices, which were at all times known to the Defendants.

157. At the end of the day, Dr. Kogan is one of hundreds of thousands of developers who Facebook allowed access to its user data and so was not “scammy” or a “fraud.”

158. Dr. Kogan was at all times forthcoming to Facebook and to App users, made disclosures, and never lied or attempted to perpetrate a scam or fraud.

159. As a result of Defendants’ actions, Dr. Kogan’s reputation was unnecessarily, irreparably and internationally damaged among his colleagues, students, alumni, and academic and professional relationships, as well as the general public.

FIRST CAUSE OF ACTION
(Defamation Per Se)

160. Plaintiff repeats and realleges all paragraphs above.

161. As set out above, Defendants published false and defamatory statements of fact about Dr. Kogan and his business GSR.

162. As alleged above, Defendants acted maliciously and intentionally to defame Dr. Kogan as part of its greater scheme to divert attention away from its own acts, omissions, and internal business practices and policies and to harm Dr. Kogan.

163. At the time Defendants made the false statements listed above, they possessed information and data sufficient to know the statements were demonstrably false.

164. At a minimum, Defendants knew, or should have known, that their publications, or the gist of the publications, were false when made.

165. Defendants acted with actual malice, recklessness, or negligence, particularly where Defendants leveraged their dedicated audience of millions of users and unlimited resources for false marketing and public relations.

166. Their story was intentionally and knowingly false and made for the sole purpose of deflecting responsibility.

167. The false and defamatory publications cast doubt on Dr. Kogan's fitness as an academic and researcher and malign his competence and capacity to perform his profession.

168. It also cast his businesses in an unfair light. The Defendants' business disparagement impugns the basic integrity or creditworthiness of Dr. Kogan and his business creating software surveys; Defendants did this knowing that their publication of false matters would be derogatory to Dr. Kogan's business in a calculated way to prevent others from dealing with him and his business and business opportunities.

169. Defendants' actions of an orchestrated scheme of harmful and false statements were deliberate.

170. Dr. Kogan provided a survey and used that data he was allowed to collect for disclosed commercial and other purposes to make predictions to help better understand the human nature for himself and his clients.

171. Dr. Kogan never knowingly participated in any efforts to deceive; quite the contrary, all of his work was on full display with Facebook and was entirely consistent with many marketing and advertising practices used for years.

172. As such, the publications are defamatory *per se*.

173. Dr. Kogan has suffered, and continues to suffer, damage to his reputation and his professional and community standings, as well as mental anguish and distress as a result of Defendants' false and defamatory publications.

174. Dr. Kogan has also suffered substantial monetary damages in an amount to be determined at trial.

SECOND CAUSE OF ACTION
(Defamation Per Quod)

175. Plaintiff repeats and realleges all paragraphs above.

176. As set out above, Defendants published false and defamatory statements of fact about Dr. Kogan and his business GSR.

177. The publications, or the gist of the publications, are false.

178. As alleged above, Defendants acted maliciously and intentionally to defame Dr. Kogan as part of a scheme to deflect attention away from their acts and omissions.

179. At the time Defendants made the false statements listed above, they possessed information and data sufficient to know the statements were demonstrably false.

180. At a minimum, Defendants knew, or should have known, that the publications, or the gist of the publications, were false when made.

181. Defendants acted with actual malice, recklessness, or negligence.

182. The false and defamatory publications cast doubt on Dr. Kogan's fitness as an academic and researcher and malign his competence and capacity to perform his profession.

183. The Defendants' business disparagement impugns the basic integrity or creditworthiness of Dr. Kogan and his business of creating software surveys and Defendants did this knowing that their publication of false matters would be derogatory to Dr. Kogan's business in a calculated way to prevent others from dealing with him and his business and business opportunities.

184. Dr. Kogan has suffered, and continues to suffer, damage to his reputation and his professional and community standings, as well as mental anguish and distress as a result of Defendants' false and defamatory publications.

185. Dr. Kogan has also suffered substantial monetary damages in an amount to be determined at trial.

THIRD CAUSE OF ACTION
(Negligent Hiring and Supervision against Facebook)

186. Plaintiff repeats and realleges all paragraphs above.

187. Facebook has a duty to hire, supervise, and train employees, including executives, and to ensure that they do not defame and disparage third parties.

188. Facebook repeatedly failed this duty by hiring and failing to train employees who repeatedly defamed Dr. Kogan, including in the national and international press.

189. As a result of Facebook's failure to properly hire, supervise, and retain appropriate employees, Dr. Kogan suffered monetary and non-monetary damages including loss of income, mental distress and anguish, and damage to his reputation and professional standing.

FOURTH CAUSE OF ACTION
(Respondeat Superior against Facebook)

190. Plaintiff repeats and realleges all paragraphs above.

191. As set out above, Facebook employs, or employed, the individual defendants who defamed and disparaged Dr. Kogan.

192. The employer Facebook is responsible and liable for their unlawful acts.

193. As noted above, Facebook's interests were served by using Dr. Kogan as a scapegoat and diverting attention away from its own privacy scandals, culpability, and bad acts.

194. Some or all of the individual defendants had the authority to conceive, approve of, and/or direct Facebook's strategy to defame and use Dr. Kogan as a scapegoat.

195. As such, each of the individual defendants was acting within their general authority and on behalf of Facebook when they defamed and disparaged Dr. Kogan.

196. As a result, Facebook is liable for the damages suffered by Dr. Kogan, which include monetary and non-monetary damages such as mental anguish and distress and damage to his reputation and professional standing, and threats to his safety.

FIFTH CAUSE OF ACTION
(Prima Facie Tort)

197. Plaintiff repeats and realleges all paragraphs above.

198. Defendants intentionally inflicted harm upon Dr. Kogan, targeting him in a way that was intentional and deliberate to cause harm and discriminate against him over any other application developer or business partner.

199. Defendants' actions constitute disinterested malevolence; it was aimed to be and was harmful, and done with the intent to harm Dr. Kogan because he was speaking voluntarily to regulators and media to answer questions about his personal experience with user data, as compared to Facebook's other activities.

200. Defendants' actions discriminated against Dr. Kogan as compared to other developers and business partners who were allowed and did the very same or similar collection efforts. Dr. Kogan was unfairly targeted as a fraud and scammer, even though Facebook and the individual defendants knowingly allowed and permitted Dr. Kogan and thousands of other developers to access and share the same data.

201. Removing Dr. Kogan from opportunities to finish projects, papers, and other academic works, was intentional and harmful with specific intent to ridicule him, remove professional opportunities from him, eliminate future professional opportunities, and all but ensure professional ruin.

202. Defendants' actions resulted in special damages as set forth herein, which include specific and measurable loss of his work, including but not limited to: his job, his data and analysis, and his authorship on papers, including the Publications, distress, and others.

203. Defendants have no excuse or justification for their actions.

204. As a result, Facebook is liable for the damages suffered by Dr. Kogan, which include monetary and non-monetary damages such as mental anguish and distress and damage to his reputation and professional standing and threats to his safety.

WHEREFORE, plaintiff Dr. Aleksandr Kogan is entitled to judgment as follows:

- i. awarding Dr. Kogan damages in an amount to be determined at trial, plus pre- and post-judgment interest and an award of punitive damages in an amount to be determined at trial;
- ii. directing Facebook to retract and correct its false and defamatory statements about Dr. Kogan and enjoining Defendants from defaming him in the future; and
- iii. such other and further relief as the Court may deem just, proper and equitable, including an award of reasonable attorneys' fees and the costs and disbursements of this action.

Dated: Buffalo, New York
October 12, 2019

BECKAGE PLLC

By: /s/ Jennifer A. Beckage

Jennifer A. Beckage, Esq.

Myriah V. Jaworski, Esq.

Attorneys for Plaintiff

Aleksandr Kogan

The Liberty Building

420 Main Street, Suite 1110

Buffalo, New York 14202

(716) 898-2102

jbeckage@beckage.com

mjaworski@beckage.com