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6 ATTORNEYS FOR PLAINTIFF MIKE ROBERTSON  
 7 *Robertson v. Facebook, Inc.*, No. 10-cv-02408-JF

8 **UNITED STATES DISTRICT COURT**  
 9 **NORTHERN DISTRICT OF CALIFORNIA**  
 10 **SAN JOSE DIVISION**

11 DAVID GOULD, an individual, on behalf of	)	Case No. 10-cv-02389-JW
12 himself and all others similarly situated,	)	
	)	
13 <i>Plaintiff,</i>	)	<b>ADMINISTRATIVE MOTION TO</b>
	)	<b>CONSIDER WHETHER CASES</b>
14 v.	)	<b>SHOULD BE RELATED</b>
	)	
15 FACEBOOK, INC., a Delaware corporation,	)	
	)	
16 <i>Defendant.</i>	)	
	)	
	)	
	)	

18

19 Pursuant to Local Rule 3-12, Mike Robertson (“Robertson”), the plaintiff in  
 20 *Robertson v. Facebook, Inc.*, No. 10-cv-02306-JF (the “*Robertson* matter”), brings this  
 21 administrative motion to consider whether the *Robertson* matter should be related to the  
 22 above-captioned case pending before this Court. The *Robertson* matter concerns  
 23 substantially the same parties, events, and issues of law and fact as the instant case. If the  
 24 cases are not related, it is likely that there will be unduly burdensome duplication of labor  
 25 and expense or conflicting results as the cases proceed before different judges.

26 Plaintiff Robertson has supplied chambers copies of this Administrative Motion and  
 27 supporting documents to the Courts in the above-captioned case and in the *Robertson* matter.

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**FACTUAL BACKGROUND**

Plaintiff David Gould (“Gould”) filed his putative class action complaint against Defendant Facebook, Inc. (“Facebook”) on May 28, 2010. On June 1, 2010, Plaintiff Robertson filed his putative class action complaint against Facebook. The complaints seek relief on behalf of nationwide classes of individuals whose personal information Facebook transmitted to third-party marketers without authorization.

Both complaints present substantially the same factual allegations. According to each complaint, Facebook is the self-described largest social networking site in the world, with millions of users who share an ever-increasing amount of personal information with their friends and family through the site. To share that information, Facebook users create what are known as “profiles” and post information to their profile pages such as their birth dates, current and past addresses, present and past employment, their relationship status, personal pictures, videos and the like. Users are given the ability to restrict other users’ access to their information and limit the specific information viewable. For its part, Facebook expressly represents to its users that it will not share their personal information with any person or entity without their authorization.

Given its massive user base, Facebook also represents a unique opportunity for marketers to reach millions of potential consumers. One way marketers take advantage of that potential is by placing advertisements throughout Facebook’s website, including on individual profile pages. By clicking on those ads, users are able to navigate to the advertised sites. However, in direct contravention of its own Privacy Policy and its users’ privacy rights, each time a user clicks on an ad, Facebook transmits that user’s specific identity to the relevant advertiser, giving them the ability to navigate back to a user’s specific profile page where any information made publicly available is viewable. The complaints

1 further allege that despite acknowledging this problem, Facebook failed to take any action to  
2 protect its users' information for several months.

### 3 DISCUSSION

4 Under Local Rule 3-12 cases may be related if:

- 5 (1) The actions concern substantially the same parties, property, transaction or  
6 event; and
- 7 (2) It appears likely that there will be an unduly burdensome duplication of labor  
8 and expense or conflicting results if the cases are conducted before different  
9 judges.
- 10 **A. Both matters seek relief from Facebook on behalf of substantially the  
11 same group of individuals.**

12 The *Gould* and *Robertson* matters involve substantially the same parties. Each case  
13 alleges claims against a single defendant—Facebook. Likewise, each case was filed on  
14 behalf of a nationwide class of individuals injured as a result of Facebook's alleged wrongful  
15 conduct. The Gould Plaintiffs seek to represent a nationwide class of:

16 All Facebook users in the United States who clicked on a third-party  
17 advertisement displayed on Facebook.com between February 4, 2004 and  
18 May 21, 2010.

19 Robertson, for his part, seeks relief on behalf of a nationwide class of:

20 All Facebook members who, at any time after June 1, 2006, clicked on an  
21 advertisement banner located on their Facebook profile page.

22 The proposed class definitions encompass substantially the same group of affected  
23 individuals and assert claims on their behalf against the same defendant. The similarity of  
24 parties in each case favors a decision to relate these matters.

- 25 **B. Both matters involve Facebook's unauthorized transmission of its users'  
26 personal information to third-party advertisers.**

27 The basis of each case at issue here is Facebook's unauthorized transmission of user  
28 data to third-party advertisers. Each complaint asserts substantially similar causes of action,  
including breach of contract, breach of the implied covenant of good faith and fair dealing,  
and unjust enrichment. (*Gould Compl.* ¶¶ 67-99, 112-17; *Robertson Compl.* ¶¶ 32-42, 62-

1 66.) Plaintiff Gould further asserts causes of action for violations of California’s Unfair  
2 Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*; California’s Computer Crime  
3 Law, Cal. Penal Code § 502; California Consumers Legal Remedies Act, Cal. Civ. Code §§  
4 1750, *et seq.*; Cal. Civ. Code §§ 1572-73; breach of implied contracts; negligence; and,  
5 negligence per se. (Gould Compl. ¶¶ 43-66, 100-11, 118-30).

6 In addition to his breach of contract and unjust enrichment claims, Plaintiff Robertson  
7 alleges causes of action for Facebook’s violations of the Electronic Communications Privacy  
8 Act, 18 U.S.C. §§ 2750 *et seq.*; and, the Stored Communications Act, 18 U.S.C. §§ 2701 *et*  
9 *seq.* (Robertson Compl. ¶¶ 43-61.)

10 Regardless of the variation amongst the specific claims asserted, both cases seek  
11 substantially the same relief for injuries suffered as a result of Facebook’s unlawful  
12 transmission of its users’ personal information. The similarity between the claims asserted in  
13 each case, and their legal and factual bases, supports a decision to relate these matters.

14 **C. If the cases are not related, it is likely that there will be an unduly**  
15 **burdensome duplication of labor and expense or conflicting results.**

16 If these cases are not related, the likelihood of duplicative labor, expense, and  
17 producing conflicting results would increase substantially. Given the complex and highly  
18 technical nature of the claims asserted in each case, litigating these matters before a single  
19 judge would reduce the parties’ expenditure of time and other resources duplicating  
20 discovery efforts and litigating the same issues on multiple occasions, while also preserving  
21 the resources of the judiciary. Furthermore, proceeding before a single judge virtually  
22 eliminates the risk that the parties will be subject to inconsistent obligations, and ultimately  
23 ensures that consistent and appropriate relief can be provided.

24 Relating these matters is in the best interest of the parties and the Court, would avoid  
25 an unduly burdensome duplication of labor or expense, and decrease the likelihood of  
26 producing conflicting results. Therefore, the matters should be related.

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**CONCLUSION**

For the foregoing reasons, Plaintiff Mike Robertson, individually and on behalf of a class of similarly situated individuals, respectfully requests that this Court issue an Order relating the *Gould* and *Robertson* matters pursuant to Local Rule 3-12.

Respectfully submitted,

Dated: July 21, 2010

NASSIRI & JUNG LLP

By:                   /s/ Kassra P. Nassiri                    
Kassra P. Nassiri  
Attorneys for Plaintiff Mike Robertson

**CERTIFICATE OF SERVICE**

I, Kassra P. Nassiri, hereby certify that on July 21, 2010, I electronically filed the foregoing *Administrative Motion to Consider Whether Cases Should be Related* with the Clerk of the Court using the CM/ECF system. Notice of this filing is sent to the following parties by operation of the Court’s electronic filing system:

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