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8 Attorneys for Defendant  
 FACEBOOK, Inc., a Delaware corporation

9  
 10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 12 SAN JOSE DIVISION

13 IN RE:  
 14 FACEBOOK PRIVACY LITIGATION.

Case No. 10-cv-02389-JW

**DEFENDANT'S ADMINISTRATIVE  
 MOTION TO EXTEND DEADLINE TO  
 RESPOND TO PLAINTIFFS'  
 CONSOLIDATED CLASS ACTION  
 COMPLAINT**

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1 Pursuant to Civil Local Rule 6-3, Facebook, Inc. (“Facebook”) files this administrative  
2 motion to extend its deadline to respond to Plaintiffs’ Consolidated Class Action Complaint  
3 (“Consolidated Complaint”).<sup>1</sup> Facebook requests that the Court enter an order providing that  
4 Facebook shall have until December 10, 2010 to answer, move to dismiss, or otherwise respond  
5 to the Consolidated Complaint.

6 **I. PROCEDURAL BACKGROUND**

7 On May 28, 2010 and June 1, 2010, Plaintiffs filed separate class action complaints—  
8 *Gould v. Facebook, Inc.*, Case No. 10-cv-02389-JW (“*Gould*”) and *Robertson v. Facebook, Inc.*,  
9 Case No. 10-cv-02408-JW (“*Robertson*”)—against Facebook asserting claims based on  
10 allegations that “referrer headers” within some users’ web browsers caused user information to be  
11 leaked to third parties when users took certain actions on Facebook’s online social networking  
12 website. While efforts were undertaken to get the actions related and then consolidated, the  
13 parties stipulated to extensions of Facebook’s deadline to respond to the complaints.<sup>2</sup>

14 On July 26, 2010, the Court entered an order, pursuant to stipulation of the parties,  
15 relating the two cases. On August, 20, 2010, again pursuant to stipulation of the parties, the  
16 Court consolidated the actions under the caption “*In re: Facebook Privacy Litigation.*” On  
17 September 30, 2010, the Court entered an Order setting October 11, 2010 as the date Plaintiffs  
18 were required to file their Consolidated Complaint and setting Facebook’s deadline to respond.  
19 On October 11, 2010, Plaintiffs filed their Consolidated Complaint. Facebook’s response to the  
20 Consolidated Complaint is currently due on November 10, 2010.

21 **II. STATEMENT OF FACTS**

22 Since Plaintiffs’ Consolidated Complaint was filed, seven related actions have been filed  
23 in the Northern District of California that contain allegations against Facebook, Zynga Game  
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26 <sup>1</sup> Pursuant to Civil Local Rule 6-3, Facebook files herewith the Declaration of James M. Penning  
in support of this motion (“Penning Decl.”) and a proposed order.

27 <sup>2</sup> Orders granting extensions pursuant to these stipulations were entered on June 14, July 27, and  
28 August 11 in *Robertson*, and on June 24, July 27, and August 11 in *Gould*. (Penning Decl. ¶ 7.)

1 Network Inc. (“Zynga”), or some combination thereof, that are substantially similar to those in *In*  
2 *Re: Facebook Privacy Litigation*. (Penning Decl. ¶ 2.) Those matters are:

- 3 • *Graf v. Zynga*, No. 3:10-cv-04680-WHA (“*Graf*”);
- 4 • *Albini v. Zynga; Facebook Inc.*, No. 3:10-cv-04723-JL (“*Albini*”);
- 5 • *Gudac v. Zynga*, No. 3:10-cv-04793-EMC;
- 6 • *Schreiber v. Zynga*, No. 3:10-cv-04794-JCS;
- 7 • *Swanson v. Zynga*, No. 5:10-cv-4902-HRL;
- 8 • *Carmel-Jessup v. Facebook; Zynga*, No. 3:10-cv-4930-MEJ; and
- 9 • *Phee v. Facebook; Zynga*, No. 3:10-cv-4935-SC.

10 (*Id.*) Additionally, on November 1, 2010, an order was entered in another related action  
11 captioned *Marfeo v. Facebook, Inc.*, No. 10-cv-00262-S-LDA (D.R.I.) (“*Marfeo*”), transferring  
12 the action from the District of Rhode Island to this Court. (*Id.* ¶ 9.)

13 All of the claims in these actions arise from allegations that “referrer headers” within  
14 some Facebook users’ web browsers caused user information to be leaked to third parties when  
15 users took certain actions on Facebook or on applications developed on Facebook’s online social  
16 networking platform. (*Id.* ¶ 5.) The action also involve overlapping legal claims. (*Id.*) In  
17 addition, the actions have overlapping parties on both the plaintiff and defense sides, and  
18 overlapping legal counsel on both sides too. (*Id.*)

19 In August 2010, the parties in this case began discussing procedural logistics related to  
20 *Marfeo*, which was then pending in the District of Rhode Island but had yet to be served on  
21 Facebook. (Penning Decl. ¶ 8.) On October 13, Facebook was served with the *Marfeo*  
22 complaint. (*Id.*) On October 22, Facebook’s counsel initiated meet-and-confer discussions with  
23 Plaintiffs’ counsel regarding procedural issues pertaining to the anticipated transfer of *Marfeo* to  
24 this Court and the additional actions being filed in this Court—the first two of which were filed  
25 on October 18 and 19.<sup>3</sup> (*Id.* ¶ 10.) Facebook’s counsel advised Plaintiffs’ counsel that a

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27 <sup>3</sup> On October 18, Plaintiffs’ counsel filed the *Graf* action naming Zynga as a defendant. (*Id.* ¶  
28 10.) Also on October 18, an amended complaint was filed in *Marfeo* adding allegations  
concerning Facebook’s actions related to Zynga’s Facebook applications, but not naming Zynga  
as a party. (*Id.* ¶ 4.) On October 19, the *Albini* action was filed naming Facebook and Zynga as

1 stipulation to transfer the *Marfeo* action to this Court<sup>4</sup> would be filed in the near future and  
2 inquired about Plaintiffs' intentions with respect to consolidation of the actions. (*Id.* ¶ 11.)  
3 Plaintiffs' counsel advised they agreed that the original complaint filed in *Marfeo* should be  
4 consolidated into this action, however, they needed additional time to consider the impact of the  
5 additional allegations *Marfeo* raised in his amended complaint. (*Id.*) In addition, the fact that  
6 they had recently filed an action asserting allegations similar to the allegations added by *Marfeo*  
7 against Zynga without naming Facebook as a defendant was something they also wanted to  
8 consider. (*Id.*) The parties agreed to re-convene the meet-and-confer the following week. (*Id.*)

9 On October 29, the parties met and conferred on the potential relation and consolidation of  
10 *Marfeo* and the additional actions which had been filed—at that time, three actions naming  
11 Facebook and Zynga as defendants and three actions naming only Zynga as a defendant. (*Id.* ¶  
12 12.) The parties discussed whether this action should be stayed pending a determination on  
13 whether the actions should be related and then consolidated but made no decisions on how to  
14 proceed and agreed they needed additional information to make a final decision. (*Id.*) The  
15 parties agreed to meet-and-confer on the issue the following week. (*Id.*)

16 On November 3, the parties met and conferred again. (*Id.* ¶ 13.) At that time, Facebook's  
17 counsel advised that its position was that the actions all should be related and then consolidated.  
18 (*Id.*) Plaintiffs' counsel advised that they had begun preliminary discussions regarding these  
19 procedural issues with counsel in the other actions and that there was no consensus on the issues.  
20 (*Id.*) Facebook's counsel requested a 30-day extension of its deadline (currently less than a week  
21 away, on November 10) to respond to the Consolidated Complaint, to allow the parties to present  
22 the relatedness and consolidation issues to the Court for a determination. Plaintiffs' counsel  
23 declined to agree to the extension. (*Id.*) Plaintiffs' counsel also advised that the Court was  
24 currently scheduling motion hearings for February 14, 2011 or later,<sup>5</sup> and that their decision was

25 defendants. (*Id.* ¶ 10.)

26 <sup>4</sup> On October 27, a stipulation to transfer the *Marfeo* action was filed. (*Id.* ¶ 9.) On November 1,  
27 the Court entered an order transferring *Marfeo* from the District of Rhode Island to this Court.  
(*Id.*)

28 <sup>5</sup> The Court's website also confirms motion hearings before the Court are being scheduled for

1 not tied to when the hearing would be held, but merely a reflection of their belief that the action  
2 should continue to move forward. (*Id.*)

3 Facebook believes that these cases should be related and consolidated, in the interest of  
4 conserving judicial and party resources and avoiding conflicting results, and understands Zynga  
5 intends to file a motion to relate all of the referenced actions by no later than November 5, 2010.

6 **III. ARGUMENT**

7 It is squarely within the district court’s discretion to “enlarge the time in which a party  
8 must perform an act required or allowed by the Federal Rules of Civil Procedure.” *Jenkins v.*  
9 *Commonwealth Land Title Ins. Co.*, 95 F.3d 791, 795 (9th Cir. 1996); *see also* Fed. R. Civ. P.  
10 6(b)(1) (the court may, for good cause, extend time if request is made before original time or  
11 extension expires).

12 In the interests of conserving judicial and party resources and resolving whether the  
13 numerous pending actions should be related and consolidated, Facebook’s deadline to respond to  
14 Plaintiffs’ Consolidated Complaint should be extended 30 days to December 10, 2010. The  
15 current procedural posture of the case has changed significantly since Plaintiffs filed their  
16 Consolidated Complaint on October 10, 2010. After the Consolidated Complaint was filed, seven  
17 additional related actions have been filed and are now pending in the Northern District. In  
18 addition, the District of Rhode Island has ordered the related *Marfeo* action transferred to this  
19 Court. These eight additional actions all arise from allegations of closely related events and  
20 conduct and involve overlapping parties, legal issues, and causes of action. A motion to relate  
21 these actions will be filed this week. In addition, Facebook expects that one or more parties will  
22 seek consolidation. Proceeding with the action prior to these questions of relatedness and  
23 consolidation would be inefficient and waste the Court’s and the parties’ valuable resources.

24 In addition, extending Facebook’s deadline to file its response will not cause undue delay  
25 or prejudice Plaintiffs in any way. The Court is currently setting motion hearings for no earlier  
26 than February 14, 2011. Assuming for argument’s sake that the actions were not consolidated

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28 February 14, 2011 or later. (Penning Decl. ¶ 14.)

1 and that Facebook will be required to respond to the current Consolidated Complaint, if  
2 Facebook's anticipated motion to dismiss was noticed to be heard on February 14, 2010, a  
3 December 10, 2010 response date allows sufficient time for opposition and reply briefing to be  
4 completed prior to the hearing.

5 **IV. CONCLUSION**

6 Facebook respectfully requests that the Court enter an order providing that Facebook shall  
7 have until December 10, 2010 to answer, move to dismiss, or otherwise respond to Plaintiffs'  
8 Consolidated Complaint.

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10 Dated: November 4 , 2010

COOLEY LLP

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/s/

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Attorneys for Defendant FACEBOOK, Inc.

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