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 8 *and Proposed Co-Lead Counsel for the Class*

9 [Additional Counsel Listed on Signature Page]

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

14 IN RE: FACEBOOK PRIVACY LITIGATION )  
 15 )

Case No: C 10-02389 JW

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 17 )

CLASS ACTION

18 This Document Relates to: )  
 19 ALL ACTIONS. )

PLAINTIFF MOSKOWITZ'S RESPONSE  
 TO THIS COURT'S NOVEMBER 15, 2010  
 ORDER RE: CONSOLIDATION OF  
 RELATED CASES AND APPOINTMENT  
 OF CO-LEAD PLAINTIFF AND  
 CO-LEAD COUNSEL

20 \_\_\_\_\_ )

DATE: N/A  
 TIME: N/A  
 COURTROOM: 8, 4<sup>th</sup> Floor  
 JUDGE: Hon. James Ware

1 Plaintiff Barbara Moskowitz respectfully submits this memorandum in response to this  
2 Court's Order dated November 15, 2010 ("November 15 Order") inviting the parties to brief the  
3 issue whether the cases related by that Order should be consolidated into this action, or  
4 consolidated as a separate action, *In re: Zynga Litigation*.

5 **I. INTRODUCTION AND PROCEDURAL HISTORY**

6 Plaintiff Barbara Moskowitz filed a class action against defendants Facebook, Inc.  
7 ("Facebook"), Zynga Game Network, Inc. ("Zynga") and Rapleaf, Inc. ("Rapleaf") in this  
8 District on behalf of herself and a Class of all registered Facebook members in the United States  
9 who utilized Facebook Platform Applications.<sup>1</sup> ¶11. Plaintiff's Complaint alleges that  
10 Defendants inappropriately and unlawfully transmitted sensitive personally identifiable  
11 information, including Facebook User IDs ("UIDs") and real names, to third parties, or otherwise  
12 used such information without user consent and for substantial profit. ¶12. By doing so,  
13 Defendants violated accepted industry standards, state and federal laws, the respective terms of  
14 use and privacy policies of each Defendant, as well as the agreements between Facebook and  
15 application developers and operators. *Id.* The Complaint further alleges that Defendants'  
16 conduct violates the Electronic Communications Privacy Act (18 U.S.C. § 2510, *et seq.*), the  
17 Stored Communications Act (18 U.S.C. § 2701, *et seq.*), the California Computer Crime Law  
18 (Cal. Penal Code § 502), the California Unfair Competition Law (Cal. Bus. & Prof. Code  
19 § 17200, *et seq.*), California Civil Code §§ 1572 & 1573 and constitutes breach of contract,  
20 breach of the implied covenant of good faith and fair dealing, and unjust enrichment. ¶¶3, 57-  
21 123.

22 This Court's November 15 Order related the following cases to this action:

<i>Graf v. Zynga Game Network, Inc.</i>	10-CV-04680 JW
<i>Albini v. Zynga Game Network, Inc. and Facebook, Inc.</i>	10-CV-04723 JW

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27 <sup>1</sup>Excluded from the Class are Defendants and their officers and directors, legal  
28 representatives, successors or assigns, and any person or entity related to, affiliated with, or  
controlled by any of the Defendants. *Id.* All references to "¶" refer to Plaintiff's Complaint filed  
on November 22, 2010, *Moskowitz v. Facebook, Inc., et al.*, Case No. 10-CV-05287 HRL.

<i>Gudac v. Zynga Game Network, Inc.</i>	10-CV-04793 JW
<i>Schreiber v. Zynga Game Network, Inc.</i>	10-CV-04794 JW
<i>Swanson v. Zynga Game Network, Inc.</i>	10-CV-04902 JW
<i>Carmel-Jessup v. Facebook, Inc. and Zynga Game Network, Inc.</i>	10-CV-04930 JW
<i>Phee v. Facebook, Inc. and Zynga Game Network, Inc.</i>	10-CV-04935 JW

This Court issued a further order on November 19, 2010 relating *Bryant v. Facebook, Inc. and Zynga Game Network, Inc.*, Case No. 10-CV-05192 PVT, to this action. Another class action entitled *Marfeo v. Facebook, Inc.*, Case No. 10-CV-00262, was filed in the United States District Court for the District of Rhode Island. The *Marfeo* action appears related because it is brought on behalf of similar classes, alleges a similar class period and involves substantially the same transactions, events and parties. The United States District Court for the District of Rhode Island entered an order on November 1, 2010 transferring the *Marfeo* action to this District.

For the reasons set forth below, it is the position of Plaintiff Moskowitz that all cases alleging similar claims against Facebook and/or Zynga, including her case, should be consolidated with this action. Plaintiff Moskowitz also respectfully requests that this Court appoint her as a Co-Lead Plaintiff and appoint her counsel as Plaintiff’s Co-Lead Counsel.

**II. ALL ACTIONS AGAINST FACEBOOK AND/OR ZYNGA SHOULD BE CONSOLIDATED**

As stated in this Court’s November 15 Order, each of the actions referenced therein alleges that unique Facebook user information was disclosed to third parties, which allowed those third parties to obtain additional information about the users and their online activities.

The cases related to this action by the November 15 Order name Zynga as a defendant. Certain of those cases name Zynga and Facebook as defendants. However, the addition of Zynga as a defendant does not require two separate groups of cases. To the contrary, as this Court stated in its November 15 Order, “in light of the substantial similarity of parties, events and causes of action, the Court finds that there is a risk of ‘an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different judges.’” The creation of two different groups of cases would indeed result in the duplication of labor and

1 conflicting results because of the similarities common to all the actions, whether they name  
2 Facebook or Zynga, or both. Given the commonalities of the parties and allegations, the same  
3 witnesses, documents and questions of fact and law would be at issue in both cases. Maintaining  
4 two separate groups of cases would result in judicial inefficiency and unnecessarily burden this  
5 Court, the parties and their counsel.

6         However, to the extent that there are any conflicts between the members of the Class  
7 whose information was leaked by Facebook to third parties and members of the Class whose  
8 UIDs were transmitted to third parties as a result of their interactions with applications  
9 authorized by Facebook, such as Zynga, the interests of the Class may be protected through the  
10 appointment of separate Co-Lead Plaintiffs and Co-Lead Counsel.

11         Plaintiff Moskowitz therefore respectfully requests that all actions alleging similar claims  
12 against Facebook and/or Zynga, including her case, should be consolidated with this action.  
13 Plaintiff Moskowitz also requests that she be appointed a Co-Lead Plaintiff and that her counsel  
14 be appointed Co-Lead Counsel in the event that this Court determines to establish a co-lead  
15 structure, as set forth below.

16 **III. THIS COURT SHOULD APPOINT PLAINTIFF MOSKOWITZ AS CO-LEAD**  
17 **PLAINTIFF AND APPOINT HER COUNSEL AS CO-LEAD COUNSEL FOR**  
18 **THE CLASS**

19         It is well established that the duty of adequate representation requires counsel to represent  
20 the class competently and vigorously, and without conflicts of interest within the class. *See, e.g.,*  
21 *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 626 n. 20 (1997). As class counsel are  
22 fiduciaries to the class, it is the duty of class counsel to avoid conflicts. *See Rodriguez v. West*  
*Publishing Corp.*, 563 F.3d 948, 968 (9<sup>th</sup> Cir. 2009).

23         Rule 23(g)(3) of the Federal Rules of Civil Procedure provides this Court with the  
24 authority to appoint co-lead counsel for the class prior to determining whether this action may  
25 proceed as a class action. The criteria for appointment of co-lead class counsel are the same as  
26 the criteria for the appointment of class counsel following the certification of a plaintiff class. To  
27 determine whether counsel is adequate to serve as co-lead counsel for the class requires that the  
28 Court consider the work counsel has done in identifying potential claims in the action; counsel's

1 experience with and handling of class actions; other complex litigation, and claims of the type  
2 asserted in the action; counsel's knowledge of the applicable law; and the resources that counsel  
3 will commit to representing the class. *See* Fed.R.Civ.P. 23(g)(1)(c). Plaintiff's counsel here  
4 satisfy the foregoing criteria. Accordingly, Plaintiff's counsel, the law firm of Weiss & Lurie,  
5 should be appointed Co-Lead Counsel for the Plaintiff Class and Plaintiff Moskowitz should be  
6 appointed a Co-Lead Plaintiff, in the event that the Court determines to establish a co-lead  
7 structure.

8 Plaintiff's counsel have extensive experience in litigating class actions, including large,  
9 complex class actions such as this matter. Weiss & Lurie has been appointed sole lead counsel,  
10 or co-lead counsel, for plaintiff classes in numerous cases, successfully prosecuted numerous  
11 class actions and have secured significant recoveries for injured consumers and investors. The  
12 firm's experience and success in class action litigation, including numerous large complex class  
13 actions litigated in this District, is described in further detail in the firm's resume attached hereto  
14 as Exhibit A. The firm recently participated in a nationwide electronic privacy class action  
15 alleging that hackers breached the security systems of retail store holding company TJX  
16 Companies, Inc., wherein consumers' personal and financial information was exposed while  
17 shopping at national retail stores such as T.J. Maxx and Marshalls. *See In re: TJX Companies*  
18 *Retail Security Breach Litigation*, MDL 1838 (D. Mass.). Weiss & Lurie also was co-counsel in  
19 *In re: Department of Veterans' Affairs Data Theft Litigation*, MDL 1796 (D.D.C.), which  
20 resulted in the settlement of the claims alleged in that case for \$20 million, the largest settlement  
21 to date against a government entity for privacy law violations. The firm also possesses the  
22 resources necessary to prosecute litigation of this scale and is committed to doing so. This Court  
23 may be assured that the Class will receive the highest caliber of legal representation available.

24 Accordingly, Plaintiff Moskowitz respectfully requests that this Court appoint her as a  
25 Co-Lead Plaintiff and appoint her counsel as Plaintiff's Co-Lead Counsel.

#### 26 **IV. CONCLUSION**

27 For all the foregoing reasons, Plaintiff Moskowitz respectfully requests that this Court  
28 consolidate all cases alleging similar claims against Facebook and/or Zynga, including her case,



1 **CERTIFICATE OF SERVICE**

2 I, Jordan L. Lurie, hereby certify that on November 22, 2010, I caused to be electronically  
3 filed the foregoing *Plaintiff Moskowitz's Response to This Court's November 15, 2010 Order Re:*  
4 *Consolidation of Related Cases and Appointment of Co-Lead Plaintiff and Co-Lead Counsel* with  
5 the Clerk of the Court using the CM/ECF System. Notice of this filing is sent to the following  
6 parties by operation of the Court's electronic filing system:

7 **Mailing Information for a Case 5:10-cv-02389-JW**

8 **Electronic Mail Notice List**

9 The following are those who are currently on the list to receive e-mail notices for this case.

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**Manual Notice List**

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing).

(No manual recipients)