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

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13 IN RE:
 14 FACEBOOK PRIVACY LITIGATION

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NANCY WALTHER GRAF,
 Plaintiff,
 v.
 ZYNGA GAME NETWORK, INC.,
 Defendant.

Case No. 10-cv-02389-JW

**DEFENDANT FACEBOOK, INC.’S NOTICE
 OF MOTION AND MOTION TO
 CONSOLIDATE CASES FOR ALL
 PURPOSES AND TO ADDRESS RELATED
 ISSUES IN RESPONSE TO COURT’S
 NOVEMBER 12, 2010 AND NOVEMBER 19,
 2010 ORDERS**

Date: November 22, 2010
 Dept: Courtroom 8
 Judge: Hon. James Ware

Trial Date: Not Yet Set

Case No. 10-cv-04680-JW

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SHELLEY ALBINI,
Plaintiff,

v.

ZYNGA GAME NETWORK, INC. AND
DOES 1-50, INCLUSIVE,
Defendants.

Case No. CV-10-04723-JW

VALERIE GUDAC and RICHARD BEILES,
Plaintiffs,

v.

ZYNGA GAME NETWORK, INC.,
Defendant.

Case No. 10-cv-04793-JW

HOWARD L. SCHREIBER,
Plaintiff,

v.

ZYNGA GAME NETWORK, INC.,
Defendant.

Case No. 10-cv-04794-JW

JOHN SWANSON,
Plaintiff,

v.

ZYNGA GAME NETWORK, INC.,
Defendant.

Case No. 10-cv-04902-JW

ZENA CARMEL-JESSUP,
Plaintiff,

v.

FACEBOOK, INC. and ZYNGA GAME
NETWORK, INC.,
Defendants.

Case No. 10-cv-04930-JW

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IRIS PHEE and WILLIAM J. OHARA,
Plaintiffs,

v.

FACEBOOK, INC. and ZYNGA GAME
NETWORK, INC.,
Defendants.

Case No. 10-cv-04935-JW

KAREN BRYANT and CHRISTOPHER
BROCK,
Plaintiffs,

v.

FACEBOOK, INC., AND ZYNGA GAME
NETWORK, INC.,
Defendants.

Case No. 10-CV-05192-JW

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1 **NOTICE OF MOTION AND MOTION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that, pursuant to this Court’s Orders dated November 12, 2010
4 (Case No. 10-cv-02389-JW, Dkt. No. 47) and November 19, 2010 (Case No. 10-cv-02389-JW,
5 Dkt. No. 53), requesting briefing, to be filed on or before November 22, 2010, on whether certain
6 related cases should be consolidated into *In re: Facebook Privacy Litigation* and on the
7 appointment of Lead Plaintiffs and Lead Counsel—which briefing, under the Court’s Orders, the
8 Court will take under submission without oral argument—Defendant Facebook, Inc.
9 (“Facebook”) hereby moves for an order providing the following:

- 10 1. The following ten cases shall be consolidated for all purposes:
- 11 • *In re: Facebook Privacy Litigation*, No. 10-cv-02389-JW;
 - 12 • *Marfeo v. Facebook*, No. 10-cv-_____¹;
 - 13 • *Graf v. Zynga*, No. 10-cv-04680-JW;
 - 14 • *Albini v. Zynga*, No. 10-cv-04723-JW;
 - 15 • *Gudac & Beiles v. Zynga*, No. 10-cv-04793-JW;
 - 16 • *Schreiber v. Zynga*, No. 10-cv-04794-JW;
 - 17 • *Swanson v. Zynga*, No. 10-cv-04902-JW;
 - 18 • *Carmel-Jessup v. Facebook & Zynga*, No. 10-cv-04930-JW;
 - 19 • *Phee & O’Hara v. Facebook & Zynga*, No. 10-cv-04935-JW; and
 - 20 • *Bryant & Brock v. Facebook & Zynga*, No. 10-cv-05192-JW;
- 21 2. Plaintiffs shall file and serve a single consolidated amended complaint;
- 22

23 _____
24 ¹ *Marfeo v. Facebook*, was originally filed on June 17, 2010 in the District of Rhode Island and
25 served on October 13, 2010. Marfeo filed a First Amended Complaint on October 18, 2010.
26 (Case No. 10-cv-00262-S-LDA, Dkt. No. 2.) The District of Rhode Island issued an order on
27 November 1, 2010 transferring the action to this Court (*Id.*, Dkt. No. 11), but the case has not yet
28 appeared on this Court’s docket. Inasmuch as the clerk in the District of Rhode Island emailed a
certified copy of the Order to the clerk in this Court on November 19, 2010, we expect that the
case will appear on this Court’s docket very soon, at which time the case would be related and
consolidated with the other cases in this Court.

- 1 • *Gudac & Beiles v. Zynga*, No. 10-cv-04793-JW;
- 2 • *Schreiber v. Zynga*, No. 10-cv-04794-JW;
- 3 • *Swanson v. Zynga*, No. 10-cv-04902-JW;
- 4 • *Carmel-Jessup v. Facebook & Zynga*, No. 10-cv-04930-JW;
- 5 • *Phee & O'Hara v. Facebook & Zynga*, No. 10-cv-04935-JW; and
- 6 • *Bryant & Brock v. Facebook & Zynga*, No. 10-cv-05192-JW.

7 There is good cause for consolidating all of these cases for all purposes. *First*, there is
8 commonality of parties inasmuch as the cases all name Facebook, Zynga, or both as defendants.
9 Facebook is a defendant in five of the ten cases, and Zynga is a defendant in nine of the ten cases.
10 *Second*, the cases allege substantially similar and overlapping class definitions. *Third*, all of the
11 claims in these cases arise from allegations that “referrer headers” within some users’ web
12 browsers caused user information to be sent to third parties when users took certain actions on
13 facebook.com or within applications on Facebook’s online social networking platform. *Fourth*,
14 the cases raise related and overlapping legal issues and causes of action. *Fifth*, consolidating
15 these cases and having plaintiffs file a single consolidated amended complaint will avoid the
16 significant possibility of inconsistent results, and will promote efficiency and economy by
17 streamlining discovery, vastly reducing the motions and filings that would otherwise occur, and
18 substantially reducing unnecessary and duplicative burden and expense. *Sixth*, consolidation at
19 this early stage of proceedings will neither prejudice nor inconvenience the parties or the Court.

20 Facebook emphasizes that there is only one way to consolidate these cases that will avoid
21 inconsistent results and that will maximize efficiency and economy. Specifically, as discussed
22 below, *all* cases should be consolidated into *In re Facebook Privacy Litigation*, No. 10-cv-02389-
23 JW. There should *not* be two separate sets of litigation because, as currently pled, there is no
24 principled way of segregating the cases that would not end up forcing Facebook to litigate the
25 same issues on two fronts and to face the risk of inconsistent results. If Facebook were dismissed
26 from the cases alleging transmission of User IDs in connection with the use of applications, such
27 as Zynga games, on the Facebook Platform—and instead Facebook only faced allegations
28

1 concerning transmission of User IDs when users clicked on third-party ads on facebook.com—
2 then Facebook’s position on consolidation may be different (see section III.H below).

3 **II. RELEVANT FACTS & PROCEDURAL HISTORY**

4 **A. The First Two Complaints Against Facebook Alleging the Transmission of**
5 **User IDs Via “Referrer Headers” When Individuals Click on Ads on**
6 **facebook.com.²**

7 On May 28, 2010 and June 1, 2010, two plaintiffs, David Gould and Mike Robertson,
8 filed separate class actions against Facebook making substantially the same allegations relating to
9 referrer headers and the disclosure of Facebook User IDs to third parties. The parties stipulated to
10 consolidation of the two cases, and agreed that “[a]ll subsequently filed class or individual actions
11 against the Defendant alleging the same or similar claims as alleged in the complaints in
12 Consolidated Actions shall be consolidated under the [the same case caption and case number].”
13 (Case No. 10-cv-02389-JW, Dkt. No. 23, ¶ 4.) On August, 20, 2010, this Court ordered
14 consolidation of those cases under the caption “*In re: Facebook Privacy Litigation.*” (Case No.
15 10-cv-02389-JW, Dkt. No. 23, ¶ 1.) As it was first filed, Case No. 10-cv-02389-JW was
16 designated as the lead case for consolidation purposes. The Court appointed as co-lead counsel
17 Michael Aschenbrener of Edelson McGuire LLC and Kassra Nassiri of Nassiri & Jung LLP, but
18 “reserve[d] the right to modify appointment of counsel in the event that the nature of the case
19 necessitates alteration of appointment.” (*Id.* ¶ 3.)

20 On October 11, 2010, plaintiffs filed a Consolidated Class Action Complaint (“CCAC”),
21 which primarily alleges that in certain instances, when individuals clicked on third-party
22 advertising links on facebook.com, their browsers would cause certain information to be
23 transmitted to those third parties via html code called a “referrer header.” (CCAC ¶¶ 28, 35.)
24 The referrer header contained the address of the web page the user had been viewing when he or
25 she clicked on the ad, which sometimes contained the user’s unique Facebook User ID (“UID”).

26 ² For the Court’s convenience, Facebook has attached as Exhibit A a chart identifying all of the
27 cases and the claims being made in each case. As the chart makes clear, there is substantial
28 similarity and overlap of parties, factual and legal issues, and causes of action (in some instances,
virtually identical).

1 (Id. ¶ 28.) According to the CCAC, this allowed third parties to obtain information from
2 Facebook users' profile pages without their consent. (Id. ¶¶ 29-33, 36.)

3 **B. Subsequent Complaints Against Facebook and Zynga Alleging the**
4 **Transmission of User IDs Via “Referrer Headers” When Individuals Use**
5 **Applications, Such as Games Designed by Zynga, Accessed From**
6 **facebook.com.**

7 In addition to operating the website at facebook.com, Facebook, through the operation of
8 the Facebook Platform, enables third-party developers to deploy applications for use by Facebook
9 users. Shortly after the CCAC was filed in *In re: Facebook Privacy Litigation*, an article in the
10 *Wall Street Journal* reported that developers who create applications for use on the Facebook
11 Platform, such as co-defendant Zynga, experienced a similar issue with referrer headers in their
12 applications. According to the article, when Facebook users used certain applications, including
13 games developed by Zynga,³ their browsers sent referrer headers containing Facebook UIDs to
14 third parties.

15 Facebook and Zynga were named in multiple class actions. Facebook and Zynga were the
16 two named defendants in *Albini*, No. 10-cv-04723⁴ and *Carmel-Jessup*, No. 10-cv-04930.⁵ Zynga
17 was named as a defendant in *Graf*, No. 10-cv-04680, *Gudac*, No. 10-cv-04793, *Schreiber*, No.
18 10-cv-04794, and *Swanson*, No. 10-cv-04902. The six complaints made essentially identical
19 allegations, claiming that Zynga and, where named, Facebook were liable for the transmission of
20 UIDs to third parties via referrer headers when users played Zynga games. As in the cases
21 alleging transmission of UIDs to third parties in connection with clicking on third-party ads, these
22 cases also allege that the transmission of UIDs allowed third parties to obtain information about
23 users and their activities online.

24 _____
25 ³ The Complaints often refer not only to Zynga, but to application developers generally. For the
26 sake of brevity, however, this brief discusses the allegations by referring to Zynga only.

27 ⁴ Facebook has since been dismissed as a named defendant in *Albini*.

28 ⁵ Facebook and Zynga are also named defendants in a putative class action filed in state court that
makes the same factual allegations and was filed by the same lawyers as the *Carmel-Jessup* case.
Scherek v. Facebook & Zynga, No. CGC-504986 (Cal. Superior Ct., Cty. of San Francisco).

1 **C. Subsequent Complaints Against Facebook and Zynga Involving Both Species**
2 **of “Referrer Header” Allegations.**

3 Three of the ten cases—*Marfeo*, No. 10-cv-____⁶, *Phee*, No. 10-cv-04935, and *Bryant*,
4 No. 10-cv-05192—involve both species of the referrer header allegations discussed in sections A
5 and B above. Facebook is a named defendant in all three cases, and Zynga is a named defendant
6 in two of the three cases. The complaints in these cases contain allegations and class definitions
7 that are virtually identical to the allegations and class definitions in *all* of the other seven cases,
8 which further demonstrates why all of the cases should be consolidated into one single action, and
9 why it is impossible to segregate the cases into two sets of cases without forcing Facebook to
10 litigate the same issues on two fronts and to face the risk of inconsistent results. (*See* Exs. A & B,
11 attached hereto.)

12 **III. ARGUMENT**

13 The ten putative class actions, all alleging that Facebook user information was improperly
14 disclosed via the referrer headers that web browsers send when users navigate the Internet, should
15 be consolidated for all purposes. The cases present common questions of law and fact, and
16 consolidation will promote the interests of efficiency and economy, will eliminate the significant
17 risk of inconsistent results, and will not cause prejudice or inconvenience to the parties or this
18 Court.

19 **A. Legal Standard**

20 “If actions before the court involve a common question of law or fact, the court may . . .
21 consolidate the actions” Fed. R. Civ. P. 42(a)(2). “[T]he main question for a court in
22 deciding whether to consolidate is whether there is a common question of law or fact.” *Indiana*

23 _____
24 ⁶ *Marfeo v. Facebook*, was originally filed on June 17, 2010 in the District of Rhode Island and
25 served on October 13, 2010. Marfeo filed a First Amended Complaint on October 18, 2010.
26 (Case No. 10-cv-00262-S-LDA, Dkt No. 2.) The District of Rhode Island issued an order on
27 November 1, 2010 transferring the action to this Court (*Id.*, Dkt No. 11), but the case has not yet
28 appeared on this Court’s docket. Inasmuch as the clerk in the District of Rhode Island emailed a
certified copy of the Order to the clerk in this Court on November 19, 2010, we expect that the
case will appear on this Court’s docket very soon, at which time the case would be related and
consolidated with the other cases in this Court.

1 *State Dist. Council of Laborers and HOD Carriers Pension Fund v. Gecht*, No. C-06-7274 EMC,
2 2007 WL 902554, at *1 (N.D. Cal. Mar. 22, 2007). “The purpose of consolidation is to avoid the
3 unnecessary costs or delays that would ensue from proceeding separately with claims or issues
4 sharing common aspects of law or fact.” *Siegall v. Tibco Software, Inc.*, No. C 05-2146 SBA,
5 2006 WL 1050173, at *2 (N.D. Cal. Feb. 24, 2006). Further, consolidation serves “to avoid
6 inconsistent adjudications.” *Team Enters., LLC v. W. Inv. Real Estate Trust*, No. 1:08-cv-00872
7 LJO-SMS, 2008 WL 4712759, at *1 (E.D. Cal. Oct. 23, 2008).

8 “The district court has broad discretion under . . . Rule [42(a)] to consolidate cases
9 pending in the same district.” *Investors Research Co. v. U.S. Dist. Ct. for Central Dist. of Cal.*,
10 877 F.2d 777 (9th Cir. 1989). While “exercising its broad discretion to order consolidation of
11 actions,” a district court also “weighs the saving of time and effort consolidation would produce
12 against any inconvenience, delay, or expense that it would cause.” *Huene v. U.S.*, 743 F.2d 703,
13 704 (9th Cir. 1984).

14 **B. The Ten Cases Share Common Questions of Law and Fact, Common**
15 **Defendants, and Substantially Similar and Overlapping Putative Classes.**

16 As discussed above, all of the claims in these ten cases arise from allegations that referrer
17 headers within some users’ web browsers caused user information to be sent to third parties when
18 users took certain actions on facebook.com or within applications running on the Facebook
19 Platform. Additionally, there is commonality of parties inasmuch as Facebook is a defendant in
20 five of the ten cases, and Zynga is a defendant in nine of the ten cases. Further, the cases involve
21 substantially similar and overlapping putative classes. (For ease of reference, Facebook has
22 prepared two charts, which are attached hereto as Exhibits A and B. Exhibit A summarizes the
23 parties, factual allegations, and legal claims in each of the ten cases. Exhibit B summarizes the
24 class definitions alleged in each of the ten cases.) For these reasons alone, there is good cause for
25 consolidating all cases for all purposes.

26 In addition to these common factual issues, parties, and putative classes, the cases involve
27 common legal issues, with many of the cases alleging the same statutory and common-law causes
28 of action. As indicated on the chart submitted for the Court’s convenience as Exhibit A, all ten

1 cases allege that disclosure of UIDs is a violation of the Stored Communications Act, 18 U.S.C. §
2 2701 *et seq.*, as well as a breach of contract. Nine of the cases allege a violation of California
3 Business and Professions Code § 17200 *et seq.*, as well as claims for unjust enrichment.
4 Additionally, eight of the cases allege violation of the Electronic Communications Privacy Act,
5 18 U.S.C. § 2511 *et seq.*, and violation of California Business & Professions Code § 17200 *et seq.*
6 Beyond this, multiples cases allege violation of California Penal Code § 502, violation of the
7 California Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.*, and fraud under
8 California Civil Code §§ 1572 and 1573. Even if the cases did not involve so many of the same
9 causes of action, consolidation is appropriate if some common questions exist. *See Osher v. JNI*
10 *Corp.*, No. 01-CV-0557-J (NLS), 2001 WL 36176415, at *2 (S.D. Cal. July 10, 2001) (finding
11 that Rule 42 does not “require[] that the actions be identical before they may be consolidated”).

12 Where, as here, common questions of law and fact exist, consolidation is appropriate and
13 may not be overcome merely because of the existence of some differing legal claims or, in a
14 handful of cases, where only Facebook or Zynga, but not both, is named as a defendant. *See*
15 *Hutchens v. Alameda County Social Servs. Agency*, No. C 06-06870 SBA, 2008 WL 927899, at
16 *2 (N.D. Cal. Apr. 4, 2008) (consolidating cases against separate defendants where “[t]he same
17 facts are at issue in both cases,” “[t]he legal issues are the same or similar,” and “the relief sought
18 is similar in both cases”); *see also Townsley v. Hydro Intern. LLC*, 2010 WL 3070387, at *2
19 (C.D. Cal. Aug. 2, 2010) (granting consolidation of complaints filed against different defendants,
20 noting Rule 42(a) does not require representation of all defendants by the same attorneys).

21 **C. Consolidation Would Eliminate the Risk of Inconsistent Results and Serve the**
22 **Interests of Efficiency and Economy.**

23 Because the cases arise from a the same core set of factual allegations, raise similar and
24 overlapping legal issues, and involve similar and overlapping putative classes, divided
25 proceedings create a significant risk of potentially inconsistent results. *See Burnett v. Rowzee*,
26 No. SACV07-641 DOC (ANx), *et al.*, 2007 WL 4191991, at *3 (C.D. Cal. Nov. 26, 2007)
27 (finding a common factual issue and holding that “[t]he real risk of inconsistent judgments arises
28 if the parties are allowed to proceed with dispositive motions or trial in an uncoordinated

1 manner”). Consolidation will therefore serve the interests of justice by eliminating the potential
2 for inconsistent results.

3 Consolidation will also significantly streamline the discovery process and burden for both
4 parties. The similar facts alleged in the cases will give rise to substantially similar discovery
5 requests. For instance, plaintiffs in all cases will likely seek discovery regarding how referrer
6 headers are created and what information is contained therein. Streamlining this discovery would
7 create significant benefits for all parties. *See Backe v. Novatel Wireless, Inc.*, No. 08-CV-01689-
8 H (RBB), 2008 WL 5214262, at *2 (S.D. Cal. Dec. 10, 2008) (consolidating in part “[b]ecause
9 the related actions are based on the same facts and involve the same subject matter, the same
10 discovery will be relevant to both lawsuits”).

11 Consolidation will also allow the Court to avoid unnecessary time and effort presiding
12 over duplicative motions to dismiss, class certification proceedings, discovery matters, and other
13 motions and proceedings that will arise in each case if these matters are not consolidated.

14 The parties and Court will not, however, realize these benefits if the nine subsequently
15 filed cases are consolidated separately from *In re: Facebook Privacy Litigation*. As discussed in
16 section II.C above, three of the subsequent nine cases encompass both species of referrer header
17 allegations and name Facebook as a defendant. (*See Ex. A hereto.*) Thus, a separate
18 consolidation, “*In re: Zynga Privacy Litigation*,” would be a misnomer because Facebook would
19 be a defendant in that litigation, and it would not prevent inconsistent results or create the same
20 judicial efficiencies as consolidating all of the actions with *In re Facebook Privacy Litigation*.⁷
21 For instance, if the Court were to consolidate *Marfeo*, *Phee*, or *Bryant* into a separate action,
22 along with the cases naming only Zynga as a defendant, it would still have to determine facts and
23 legal questions already at issue in *In re Facebook Privacy Litigation*. Therefore, given the way
24 the cases are currently pled, the only way to capture the benefits that consolidation offers is to
25 consolidate all of the ten cases into one action.

26
27 ⁷ The consolidated action would benefit from being renamed, since Zynga would be a defendant
28 in addition to Facebook.

1 Finally, there will be no prejudice or inconvenience to Plaintiffs or the Court, particularly
2 given that all Plaintiffs are in the same, early stage of the proceedings. *See Burnett*, 2007 WL
3 4191991, at *3 (finding no prejudice where “no case is close to trial” and all of the cases to be
4 consolidated arose within a four-month period so that “the risk of prejudice due to cases being at
5 different stages of preparation is minimal”).

6 **D. Plaintiffs Should File a Consolidated Amended Complaint.**

7 Upon consolidating these cases, the Court has the discretion to order Plaintiffs to file a
8 consolidated amended complaint. *See Fed. R. Civ. P. 42(a)(3); In re Equity Funding Co. of Am.*
9 *Sec. Litig.*, 416 F. Supp. 161, 176-77 (C.D. Cal. 1976) (court has power to order consolidated
10 pleadings where it would tend to avoid unnecessary cost or delay and would not cause serious
11 prejudice to a party’s rights). Facebook suggests that having Plaintiffs file a consolidated
12 amended complaint would be the most sensible course after consolidation. Otherwise, the Court
13 will face ten separate complaints, without any coordination between the plaintiffs, causes of
14 action, or allegations. This is a common procedure in consolidated class actions because having
15 one coherent pleading provides clarity and reduces burdens on both the Court and the parties.
16 “As a management tool for complex litigation, the consolidated complaint has been found to have
17 significant advantages.” 8-42 Moore’s Federal Practice – Civil § 42.13(5)(a) (2010) (identifying
18 advantages to pretrial proceedings such as eliminating the need for multiple answers, streamlining
19 discovery, and eliminating confusion). *See also In re Equity Funding*, 416 F. Supp. at 176
20 (finding that a consolidated complaint avoided unnecessary costs and delay, allowed the court “to
21 receive memoranda and hear argument directed to one coherent pleading,” made “consideration
22 of class action issues . . . considerably easier,” “lessened” the “burdens of discovery
23 management,” and made “clerical and administrative matters . . . much less burdensome”).

24 **E. Lead Plaintiff and Lead Counsel**

25 Facebook takes no position at this time regarding the Court’s appointment of Lead
26 Plaintiff or Lead Counsel, and notes that the Court will be receiving briefs from Plaintiffs
27 addressing this topic.
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F. Discovery

On the same date as this Court’s Order relating eight of the ten cases, Plaintiffs in *In re: Facebook Privacy Litigation* recently served interrogatories and requests for production on Facebook. Facebook’s written responses are due on December 13, 2010, absent an extension of time. Facebook suggests that upon consolidation, it would be within the discretion of the appointed Lead Counsel to determine, in that role, whether to withdraw this discovery, in lieu of propounding other discovery. At a minimum, Facebook requests that the Court stay discovery until a consolidated amended complaint is filed and any motions to dismiss have been decided, so that discovery can be tailored to the allegations of the operative complaint.

G. Case Schedule

Upon consolidation, Facebook would ask the Court to set a deadline for Plaintiffs to file a consolidated amended complaint, with Facebook’s response due within 30 days after it is filed. Facebook believes that upon consolidation, some adjustment of the current case schedule in *In re: Facebook Privacy Litigation* would be appropriate. Facebook would suggest that Plaintiffs’ Lead Counsel, Facebook, and Zynga meet and confer and submit a joint case management statement, including a proposed case schedule, for the Court’s consideration within 30 days of the Court’s Order regarding consolidation.

H. Possible Dismissal of Facebook in Certain Cases and Impact on Consolidation

There has been some discussion as to whether Facebook is an appropriate defendant in cases alleging transmission of UIDs in connection with use of applications, such as Zynga games, on the Facebook Platform. Facebook is presently a defendant in four such cases: *Marfeo*, *Carmel-Jessup*, *Phee*, and *Bryant*. If the *Marfeo* complaint were amended to remove such allegations against Facebook, and if Facebook were dismissed from the other three cases, then Facebook may have a different position on the question of whether all ten cases should be consolidated for all purposes. Facebook’s position would more likely be that only *Marfeo* should be consolidated with *In re: Facebook Privacy Litigation*, and that the remaining cases (which,

1 after Facebook’s dismissal, would name only Zynga as a defendant) should be consolidated
2 separately as “*In re: Zynga Privacy Litigation.*”

3 Even so, Facebook would strongly urge that the Court enter an order requiring that any
4 third-party discovery propounded to Facebook by Plaintiffs in the cases against Zynga be handled
5 in a consolidated manner on behalf of all plaintiffs, so that Facebook would not end up facing
6 uncoordinated and duplicative discovery from a number of separate plaintiffs.

7 If cases naming Facebook and alleging transmission of UIDs in connection with use of
8 applications were subsequently filed, Facebook would reserve the right to be heard again on the
9 question of consolidation.

10 **IV. CONCLUSION**

11 For these reasons, Facebook respectfully requests that this Court enter an order providing
12 the following:

13 1. The following ten cases shall be consolidated for all purposes:

- 14 • *In re: Facebook Privacy Litigation*, No. 10-cv-02389-JW;
- 15 • *Marfeo v. Facebook*, No. 10-cv-_____;
- 16 • *Graf v. Zynga*, No. 10-cv-04680-JW;
- 17 • *Albini v. Zynga*, No. 10-cv-04723-JW;
- 18 • *Gudac & Beiles v. Zynga*, No. 10-cv-04793-JW;
- 19 • *Schreiber v. Zynga*, No. 10-cv-04794-JW;
- 20 • *Swanson v. Zynga*, No. 10-cv-04902-JW;
- 21 • *Carmel-Jessup v. Facebook & Zynga*, No. 10-cv-04930-JW;
- 22 • *Phee & O’Hara v. Facebook & Zynga*, No. 10-cv-04935-JW; and
- 23 • *Bryant & Brock v. Facebook & Zynga*, No. 10-cv-05192-JW;

24 2. Plaintiffs shall file and serve a single consolidated amended complaint;

25 3. Facebook is relieved of the obligation of filing responses to the individual
26 complaints currently on file in the cases, and Facebook shall instead a file a response (answer,
27 motion to dismiss, or other response) to the consolidated amended complaint within 30 days after
28 it is filed;

