

1 COOLEY LLP  
 2 MICHAEL G. RHODES (116127) (rhodesmg@cooley.com)  
 3 MATTHEW D. BROWN (196972) (brownmd@cooley.com)  
 4 JAMES M. PENNING (229727) (jpenning@cooley.com)  
 5 101 California Street  
 6 5th Floor  
 7 San Francisco, CA 94111-5800  
 8 Telephone: (415) 693-2000  
 9 Facsimile: (415) 693-2222

10 Attorneys for Defendant FACEBOOK, INC.

11  
 12 UNITED STATES DISTRICT COURT  
 13 NORTHERN DISTRICT OF CALIFORNIA  
 14 SAN JOSE DIVISION

15 IN RE:  
 16 FACEBOOK PRIVACY LITIGATION

17 Case No. 10-CV-02389-JW

18 **DEFENDANT FACEBOOK, INC.'S**  
 19 **ADMINISTRATIVE MOTION TO RELATE**  
 20 **AND CONSOLIDATE CASES**

21 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

22 **PLEASE TAKE NOTICE**, pursuant to Civil Local Rules 3-12 and 7-11, Federal Rule of  
 23 Civil Procedure 42(a), and this Court's Order dated December 21, 2010, that Defendant  
 24 Facebook, Inc., by and through its undersigned counsel, hereby submits this administrative  
 25 motion seeking an order as follows:

26 1. *Noble v. Facebook, Inc.*, No. 10-cv-05781-HRL, is related to *In re Facebook*  
 27 *Privacy Litigation*, No. 10-cv-02389-JW, the lower numbered case, pursuant to Civil Local Rule  
 28 3-12 and, accordingly, should be reassigned to the Honorable James Ware.

29 2. *Noble v. Facebook, Inc.*, No. 10-cv-05781-HRL, and *In re Facebook Privacy*  
 30 *Litigation*, No. 10-cv-02389-JW, are consolidated for all purposes into one action, and the *Noble*  
 31 action shall be administratively closed.

32 ///



1 users and their activities online.” (*Id.*) The Order provided that “[a]ll future related cases shall be  
2 automatically consolidated and administratively closed.” (*Id.*)<sup>1</sup>

3 Like *In re Facebook Privacy Litigation*, *Noble* also alleges that Facebook disclosed  
4 Facebook user identification numbers (“UID”) via “referrer headers,” allegedly allowing third  
5 parties to obtain private information about those users. Under the Court’s December 21, 2010  
6 Order and applicable legal standards, *Noble* should be related to and consolidated into *In re*  
7 *Facebook Privacy Litigation*, and the *Noble* action should be administratively closed. As  
8 reflected in the Stipulation filed herewith, Plaintiffs in all actions support this motion.

## 9 **II. ARGUMENT**

### 10 **A. *Noble* Should be Related to *In re Facebook Privacy Litigation***

11 Under Civil Local Rule 3-12, actions are related when: “(1) [t]he actions concern  
12 substantially the same parties, property, transaction or event; and (2) [i]t appears likely that there  
13 will be an unduly burdensome duplication of labor and expense or conflicting results if the cases  
14 are conducted before different Judges.” Here, as in *Gould*, *Robertson*, and *Marfeo*, these criteria  
15 are met.

16 *First*, in *Noble* and *In re Facebook Privacy Litigation*, Facebook is the sole defendant.

17 *Second*, the cases allege virtually identical facts. The claims in *Noble* and *In re Facebook*  
18 *Privacy Litigation* arise from allegations that Facebook users’ information was shared with third  
19 parties via “referrer headers.” Plaintiffs in both cases allege that when Facebook users clicked on  
20 third-party advertising links on facebook.com, their browsers sent referrer headers to those third-  
21 party advertisers. Plaintiffs allege these referrer headers contained the address of the web page  
22 the user had been viewing when he clicked on the ad, which sometimes contained the user’s  
23 unique Facebook User ID (“UID”). Allegedly this allowed third parties to obtain information  
24 from users’ profile pages.

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27 <sup>1</sup> In an Order dated December 10, 2010, this Court consolidated into a single action, *In re Zynga*  
28 *Privacy Litigation*, No. 10-cv-04680-JW, eight actions that had been related to *In re Facebook*  
*Privacy Litigation*. (*In re Facebook Privacy Litigation*, No. 10-cv-02389-JW, Dkt. No. 69.)

1           *Third, Noble* alleges many of the same causes of action asserted in *In re Facebook*  
2 *Privacy Litigation*, including violations of the California Unfair Competition Law (California  
3 Business and Professions Code § 17200), Computer Crime Law (California Penal Code § 502),  
4 Consumers Legal Remedies Act (California Civil Code § 1750), and California Civil Code  
5 §§ 1572 and 1573, as well as bringing claims for breach of contract and unjust enrichment.

6           *Finally*, the complaints in the cases allege substantially similar and overlapping class  
7 definitions. The putative class in *In re Facebook Privacy Litigation* is:

8                     [A]ll Facebook users in the United States who, at any time after  
9                     May 28, 2006 clicked on a third-party advertisement displayed on  
                      Facebook.com.

10          The putative class in *Noble* is:

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

13          Given the similarity of parties, factual allegations, legal claims, and putative class  
14 definitions, there would be an unduly burdensome duplication of labor and expense as well as a  
15 significant danger of conflicting results if the cases are not related. Accordingly, pursuant to  
16 Civil Local Rule 3-12, *Noble* should be deemed related to *In re Facebook Privacy Litigation* and  
17 reassigned to the Honorable James Ware. Plaintiffs in both actions agree that the actions should  
18 be related and have entered a Stipulation with Facebook supporting this motion.

19          **B. *Noble* Should Be Consolidated Into *In re Facebook Privacy Litigation***

20          Under Federal Rule of Civil Procedure 42(a), a court may consolidate two or more actions  
21 if they “involve a common question of law and fact.” “The district court has broad discretion  
22 under . . . Rule [42(a)] to consolidate cases pending in the same district.” *Investors Research Co.*  
23 *v. U.S. Dist. Ct. for Central Dist. of Cal.*, 877 F.2d 777, 777 (9th Cir. 1989). This Court’s Order  
24 dated December 21, 2010 provides that “[a]ll future related cases shall be automatically  
25 consolidated and administratively closed.” (*In re Facebook Privacy Litigation*, No. 10-cv-02389-  
26 JW, Dkt. No. 72.)

27          “[T]he main question for a court in deciding whether to consolidate is whether there is a  
28 common question of law or fact.” *Indiana State Dist. Council of Laborers & HOD Carriers*

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

7 The court should consolidate *Noble* into *In re Facebook Privacy Litigation* for all  
8 purposes. As discussed above, these cases involve common questions of law and fact: *First*,  
9 Facebook is the sole defendant in both *Noble* and *In re Facebook Privacy Litigation*. *Second*, all  
10 of the claims in each case arise from allegations that users’ Facebook UIDs were transmitted to  
11 third-party advertisers via “referrer headers” when users clicked on third-party advertisements on  
12 facebook.com. *Third*, the cases raise related and overlapping legal issues and causes of action.  
13 *Finally*, the cases allege substantially similar and overlapping class definitions.

14 Consolidation will neither prejudice nor inconvenience the parties or the Court. Indeed,  
15 given the virtually identical factual allegations and legal claims in *Noble* and *In re Facebook*  
16 *Privacy Litigation*, consolidating these cases will avoid the significant possibility of inconsistent  
17 results. Consolidation will also promote efficiency and economy by streamlining discovery,  
18 reducing duplicative motions and filings related to class certification proceedings, discovery  
19 matters, and other issues, and otherwise substantially reducing unnecessary and duplicative  
20 burden and expense.

21 **III. CONCLUSION**

22 For the foregoing reasons, Facebook’s motion should be granted.

23 Dated: January 13, 2011

COOLEY LLP

24  
25 /s/ Matthew D. Brown

26 Matthew D. Brown  
27 Attorneys for Defendant FACEBOOK, INC.  
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