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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: FACEBOOK INTERNET TRACKING
LITIGATION

No. 5:12-md-02314-EJD

**MOTION TO CONSOLIDATE
RELATED ACTIONS PURSUANT
TO RULE 42(a); APPOINT
INTERIM CLASS COUNSEL
PURSUANT TO RULE 23(g)**

Date: March 30, 2012

Time: 1:30 p.m.

Judge: Hon. Edward J. Davila

MOTION TO CONSOLIDATE RELATED ACTIONS
PURSUANT TO RULE 42(A); APPOINT INTERIM
CLASS COUNSEL PURSUANT TO RULE 23(G)

PERRIN AIKENS DAVIS, PETERSEN
GROSS, DR. BRIAN K. LENTZ,
TOMMASINA IANNUZZI, TRACY SAURO,
JENNIFER SAURO, and LISA SABATO,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

FACEBOOK, INC.,
a Delaware Corporation

Defendant.

LANA BRKIC,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiff,

v.

FACEBOOK, INC., a Delaware Corporation,
and DOES 1-10,

Defendants.

JULIAN CARROLL, On Behalf of Himself and
All Others Similarly Situated,

Plaintiff,

v.

FACEBOOK, INC., a Delaware Corporation,

Defendant.

LAURA MAGUIRE, ET AL., On Behalf of
Himself and All Others Similarly Situated,

Plaintiff,

v.

FACEBOOK, INC.,

Defendant.

Case No. 5:11-cv-04834-EJD

Related Case Nos.: 5:11-cv-04935-EJD;
5:12-cv-00370-EJD; and 5:12-cv-00807-
EJD

In Re Facebook Internet Tracking
Litigation, No. 5:12-md-02314-EJD

Action Filed: September 30, 2011

Case No. 5:11-04935-EJD

Related Case Nos.: 5:11-cv-04834-EJD;
5:12-cv-00370-EJD; and 5:12-cv-00807-
EJD

In Re Facebook Internet Tracking
Litigation, Case No. 5:12-md-02314-EJD

Action Filed: October 5, 2011

Case No. 5:12-cv-00370-EJD

Related Case Nos.: 5:11-cv-04834-
EJD; 5:11-cv-04935-EJD; and 5:12-cv-
00807-EJD

Action Filed: January 24, 2012

Case No. 5:12-cv-00807-EJD

Related Case Nos.: 5:11-cv-04834-
EJD; 5:11-cv-04935-EJD; and
5:12-cv-00370-EJD

Action Filed: February 17, 2012

1 ALEXANDRIA PARRISH, Individually and on
2 Behalf of All Others Similarly Situated,

3 Plaintiff,

4 v.

5 FACEBOOK, INC., and DOES 1 Through 10,

6 Defendants.

7 SHARON BEATTY, Individually and on
8 Behalf of All Others Similarly Situated,

9 Plaintiff,

10 v.

11 FACEBOOK, INC., and DOES 1 Through 10,

12 Defendants.

13 BROOKE RUTLEDGE, Individually and on
14 Behalf of All Others Similarly Situated,

15 Plaintiff,

16 v.

17 FACEBOOK, INC. and DOES 1 through 10,

18 Defendants.

19 MICHAEL SINGLEY, Individually and on
20 Behalf of All Others Similarly Situated,

21 Plaintiffs,

22 v.

23 FACEBOOK, INC.,
24 DOES 1 THROUGH 10,

25 Defendants.

26 DANA HOWARD, individually and on Behalf
27 of All Others Similarly Situated,

28 Plaintiffs,

v.

FACEBOOK, INC. and DOES 1 through 10,

Defendants.

Case No. 5:12-cv-00667-EJD

In Re Facebook Internet Tracking
Litigation, Case No. 5:12-md-02314-EJD

Action Filed: October 7, 2011
Transferred February 8, 2012

Case No. 5:12-cv-00668-EJD

In Re Facebook Internet Tracking
Litigation, No. 5:12-md-02314-EJD

Action Filed: October 7, 2011
Transferred February 8, 2012

Case No. 5:12-cv-00669-EJD

In Re Facebook Internet Tracking
Litigation, No. 5:12-md-02314-EJD

Action Filed: October 12, 2011
Transferred February 8, 2012

Case No. 5:12-cv-00670-EJD

In Re Facebook Internet Tracking
Litigation, No. 5:12-md-02314-EJD

Action Filed: October 5, 2011
Transferred February 08, 2012

Case No. 5:12-cv-00671-EJD

In Re Facebook Internet Tracking
Litigation, No. 5:12-md-02314-EJD

Action Filed: October 4, 2011 and
Transferred on February 8, 2012

1 JOHN GRAHAM, Individually and on
2 Behalf of All Others Similarly Situated,

3 Plaintiff,

4 v.

5 FACEBOOK, INC., and DOES 1 Through 10,

6 Defendants.

7 DAVID M. HOFFMAN, Individually and on
8 Behalf of All Others Similarly Situated,

9 Plaintiff,

10 v.

11 FACEBOOK, INC. and DOES 1 through 10,
12 Defendants.

13 JANET SEAMON, Individually and on Behalf
14 of All Others Similarly Situated,

15 Plaintiff,

16 v.

17 FACEBOOK, INC. and DOES 1 through 10,

18 Defendants.

19 CHANDRA L. THOMPSON, Individually and
20 on Behalf of All Others Similarly Situated,

21 Plaintiff,

22 v.

23 FACEBOOK, INC. and DOES 1 through 10,

24 Defendants.

25 STEPHANIE CAMPBELL, Individually and on
26 Behalf of All Others Similarly Situated,

27 Plaintiff,

28 v.

FACEBOOK, INC. and DOES 1 through 10,

Defendants.

Case No. 5:12-cv-00673-EJD

In Re Facebook Internet Tracking
Litigation, No. 5:12-md-02314-EJD

Action Filed: October 5, 2011
Transferred February 8, 2012

Case No. 5:12-cv-00674-EJD

In Re Facebook Internet Tracking
Litigation, No. 5:12-md-02314-EJD

Action Filed: October 7, 2011
Transferred February 8, 2012

Case No. 5:12-cv-00675-EJD

In Re Facebook Internet Tracking
Litigation, No. 5:12-md-02314-EJD

Action Filed: October 10, 2011
Transferred February 8, 2012

Case No. 5:12-cv-00676-EJD

In Re Facebook Internet Tracking
Litigation, No. 5:12-md-02314-EJD

Action Filed: September 30, 2011
Transferred February 8, 2012

Case No. 5:12-cv-00796-EJD

In Re Facebook Internet Tracking
Litigation, No. 5:12-md-02314-EJD

Action Filed: November 21, 2011
Transferred February 17, 2012

CYNTHIA D. QUINN, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

FACEBOOK, INC. and DOES 1 through 10,

Defendants.

Case No. 5:12-cv-00797-EJD

In Re Facebook Internet Tracking
Litigation, No. 5:12-md-02314-EJD

Action Filed: October 18, 2011
Transferred February 17, 2012

JEANNE M. WALKER, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

FACEBOOK, INC. and DOES 1 through 10,

Defendants.

Case No. 5:12-cv-00798-EJD

In Re Facebook Internet Tracking
Litigation, No. 5:12-md-02314-EJD

Action Filed: October 20, 2011
Transferred February 17, 2012

JACQUELINE BURDICK, Individually and
on Behalf of All Others Similarly Situated,

Plaintiff,

v.

FACEBOOK, INC. and DOES 1 through 10,

Defendants.

Case No. 5:12-cv-00799-EJD

In Re Facebook Internet Tracking
Litigation, No. 5:12-md-02314-EJD

Action Filed: October 25, 2011
Transferred February 17, 2012

EDWARD STRAVATO,

Plaintiff,

v.

FACEBOOK, INC.; JOHN DOE 1-10,

Defendants.

Case No. 5:12-cv-00800-EJD

In Re Facebook Internet Tracking
Litigation, No. 5:12-md-02314-EJD

Action Filed: December 14, 2011
Transferred February 17, 2012

MATTHEW J. VICKERY, and Other Persons
Similarly Situated,

Plaintiff,

v.

FACEBOOK, INC., DOES 1 thru 10,

Defendants.

Case No. 5:12-cv-00801-EJD

In Re Facebook Internet Tracking
Litigation, No. 5:12-md-02314-EJD

Action Filed: November 14, 2011
Transferred February 17, 2012

PATRICK K. MALONEY, Individually and on
Behalf of All Others Similarly Situated

Plaintiff,

v.

FACEBOOK, INC., DOES 1 THROUGH 10,

Defendants.

JOON KHANG, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

FACEBOOK, INC.,

Defendant.

Case No. 5:12-cv-00824-EJD

In Re Facebook Internet Tracking
Litigation, No. 5:12-md-02314-EJD

Action Filed: January 25, 2012
Transferred February 21, 2012

Case No. 5:12-cv-00825-EJD

In Re Facebook Internet Tracking
Litigation, No. 5:12-md-02314-EJD

Action Filed: February 1, 2012
Transferred February 21, 2012

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND PRELIMINARY STATEMENT

Twenty-one similar purported class actions have been related and transferred to this Court by the United States Judicial Panel on Multidistrict Litigation or otherwise accepted as related by order of this Court. These Related Actions are:

Case Name	Original Court and Case Number	N.D. Cal. Case Number
Parrish v. Facebook Inc	ALN/2:11-cv-03576	5:12-cv-00667-EJD
Campbell v. Facebook, Inc. et al	ARW/5:11-cv-05266	5:12-cv-00796-EJD
Beatty v. Facebook Incorporated et al	AZ/2:11-cv-01964	5:12-cv-00668-EJD
Joon Khang v. Facebook Inc	CAC/8:12-cv-00161	5:12-cv-00825-EJD
Carroll v. Facebook, Inc	CAN/3:12-cv-00370	5:12-cv-00370-EJD
Davis et al v. Facebook, Inc.	CAN/5:11-cv-04834	5:11-cv-04834-EJD
Brkic v. Facebook, Inc	CAN/5:11-cv-04935	5:11-cv-04935-EJD
Quinn v. Facebook, Inc. et al	HI/1:11-cv-00623	5:12-cv-00797-EJD
Howard v. Facebook, Inc. et al	ILS/3:11-cv-00895	5:12-cv-00671-EJD
Graham v. Facebook, Inc. et al	KS/2:11-cv-02556	5:12-cv-00673-EJD
Hoffman v. Facebook, Inc. et al	KYW/5:11-cv-00166	5:12-cv-00674-EJD
Seamon v. Facebook, Inc.	LAM/3:11-cv-00689	5:12-cv-00675-EJD
Thompson v. Facebook, Inc.	MOW/2:11-cv-04256	5:12-cv-00676-EJD
Rutledge v. Facebook, Inc.	MSN/3:11-cv-00133	5:12-cv-00669-EJD
Walker v. Facebook	MT/1:11-cv-00118	5:12-cv-00798-EJD
Maloney v. Facebook, Inc. et al	OHS/2:12-cv-00078	5:12-cv-00824-EJD
Burdick et al v. Facebook Inc et al	OKW/5:11-cv-01214	5:12-cv-00799-EJD
Stravato v. Facebook, Inc.	RI/1:11-cv-00624	5:12-cv-00800-EJD
Maguire, et al. v. Facebook, Inc.	CAN/5:12-cv-0807	5:12-cv-00807-EJD
Vickery v. Facebook, Inc.	WAW/2:11-cv-01901	5:12-cv-00801-EJD
Singley v. Facebook, Inc.	TXW/1:11-cv-00874	5:12-cv-00670-EJD

All 21 Related Actions seek to represent substantially the same class of people for essentially the same claims, are based on similar factual allegations and are against the same defendant, Facebook, Inc. (“Defendant” or “Facebook”). The plaintiffs in 20 of these 21 Related Actions (collectively, the “Moving Plaintiffs”)¹ move this Court for an order:

- (1) Consolidating all 21 Related Actions, MDL 2314, and any future-filed “related action” pursuant to Fed. R. Civ. P. 42(a);
- (2) Appointing interim class counsel pursuant to Fed. R. Civ. P. 23(g)(2);
and

¹ Plaintiff in *Khang v. Facebook, Inc.*, 5:12-cv-00825-EJD, does not join in this Motion.

1 (3) Setting a deadline for the filing of Interim Lead Plaintiffs' Consolidated Class
2 Action Complaint and a briefing schedule on any motion to dismiss filed by
3 Defendant Facebook.

4 Moving Plaintiffs bring this motion on the following grounds: (1) the Actions are
5 substantially identical; consolidating them will promote efficiency for the court, litigants and
6 counsel; and (2) the leadership structure Moving Plaintiffs propose and the consolidation of
7 pleadings will also promote efficiency while advancing "the just, speedy and inexpensive
8 determination" of the Actions. Fed. R. Civ. P. 1. This motion is based upon the following legal
9 memorandum of points and authorities, the complete files and records in the 21 Related Actions,
10 and such other written or oral argument as the Court may consider.²

11 **II. FACTUAL BACKGROUND**

12 **a. Facebook**

13 Defendant Facebook operates the world's largest social networking web site, with more
14 than 800 million users globally. Facebook has 150 million users in the United States. Although
15 Facebook members are not required to pay a monetary subscription fee, membership is decidedly
16 not free. Facebook requires users to provide sensitive personal information to Facebook upon
17 registration, including name, birth date, gender and email address. More importantly, Facebook
18 users must accept numerous Facebook cookies on their computers. These cookies track the users'
19 browsing history. Facebook then harvests this information from the users' computers, including
20 the members' unique Facebook identifiers. Facebook uses this valuable information to generate
21 approximately \$4 billion of revenue annually, starkly illustrating that the required personal
22 information, including users' browsing history, has enormous cash value.

25 ///

26 ///

27 ² Counsel for Moving Plaintiffs contacted counsel for Facebook, and Facebook will support consolidation of the
28 current 21 cases in (or related to) the MDL proceeding, but takes no position on the Rule 23(g) motion. In taking no
position on the latter motion, Facebook reserves all rights with respect to the contents of that motion and expressly
reserves the right to challenge the adequacy of lead counsel and lead plaintiffs in the future.

The economic value of the information that users are required to provide to Facebook is well understood in the e-commerce industry. Personal information is now a form of currency. As Professor Paul M. Schwartz noted in the Harvard Law Review:

Personal information is an important currency in the new millennium. The monetary value of personal data is large and still growing, and corporate America is moving quickly to profit from the trend. Companies view this information as a corporate asset and have invested heavily in software that facilitates the collection of consumer information.

Paul M. Schwartz, *Property, Privacy and Personal Data*, 117 Harv. L. Rev. 2055, 2056-57 (2004). Professor Schwartz wrote those words in the same year Facebook was launched.

The cash value of users' personal information provided to Facebook can be quantified. For example, in a recent study authored by Tim Morey ("What's Your Personal Data Worth?," Jan. 18, 2011), researchers studied the value that 180 internet users placed on keeping personal data secure. The results were striking. Study participants valued contact information of the sort Facebook requires at approximately \$4.20 per year. Demographic information was valued at approximately \$3.00 per year. Web browsing histories were valued at a much higher rate: \$52.00 per year. The following chart summarizes the findings:



1 Across Facebook's membership of approximately 800 million users, these figures imply
2 aggregate annual membership fees of \$3.36 billion, \$2.4 billion, and \$41.6 billion, respectively,
3 for each category of information. Facebook is not free.

4 **b. Facebook Tracks Users' Internet Use**

5 According to "Facebook's Hotel California" (Oct. 10, 2011), a recent report by Rainey
6 Reitman at the Electronic Frontier Foundation ("EFF"), in order to track its users' internet use,
7 Facebook installs two types of cookies on members' computers: session cookies, and tracking
8 cookies:

9
10 *Session cookies are set when you log into Facebook and they include data like*
11 *your unique Facebook user ID. They are directly associated with your Facebook*
12 *account. When you log out of Facebook, the session cookies are supposed to be*
13 *deleted.*

14 *Tracking cookies - also known as persistent cookies - don't expire when you*
15 *leave your Facebook account. Facebook sets one tracking cookie known as 'datr'*
16 *when you visit Facebook.com, regardless of whether or not you actually have an*
17 *account. This cookie sends data back to Facebook every time you make a request*
18 *of Facebook.com, such as when you load a page with an embedded Facebook*
19 *'like' button. This tracking takes place regardless of whether you ever interact*
20 *with a Facebook 'like' button. In effect, Facebook is getting details of where you*
21 *go on the Internet.*

22 *When you leave Facebook without logging out and then browse the web, you have*
23 *both tracking cookies and session cookies. Under those circumstances, Facebook*
24 *knows whenever you load a page with embedded content from Facebook (like a*
25 *Facebook 'like' button) and also can easily connect that data back to your*
26 *individual Facebook profile.*

27 As the EFF noted, session cookies are supposed to be deleted upon logout. Not just a
28 vague industry expectation, this deletion is required under the governing contracts, and therefore
under federal law. Facebook's Statement of Rights and Responsibilities, in addition to a number
of other documents and policies, including a Data Use Policy and a Privacy Policy, govern
Facebook use. Although the governing documents make clear that users consent to Facebook
installing cookies on the users' computers, and although users consent to these cookies tracking
and transmitting to Facebook data regarding their web browsing, *such consent was plainly limited*
to internet usage while the user is logged on to Facebook.

1 Users nowhere consent to Facebook tracking and recording their web browsing *after* they
2 log out of Facebook. Facebook agreed to delete its session cookies after the user's session ended,
3 precluding post log-out tracking. Facebook's online help center clearly and unambiguously
4 emphasized, "When you log out of Facebook, we remove the cookies that identify your particular
5 account."

6 **c. Facebook Tracking Post-Logout**

7
8 Sometime in 2010, an Australian technology writer, Nik Cubrilovic, discovered that the
9 session cookies Facebook placed on its users' computers remained active even after users had
10 logged off of Facebook. Mr. Cubrilovic warned Facebook of this problem on at least two
11 occasions starting in November, 2010. Facebook failed to take corrective action, instead willfully
12 and illegally continuing to collect data from its millions of active users worldwide.

13 Because Facebook refused to take corrective action, Mr. Cubrilovic went public with his
14 research on September 25, 2011. The result was explosive. The next day, on September 26,
15 2011, Facebook publicly admitted that its session cookies remained active even after logoff.
16 Facebook agreed to fix the "bug" as the company called it, seeking to minimize the problem. The
17 next day, the Irish Government announced an audit of Facebook under EU privacy rules
18 (Facebook's primary European data center is in Ireland). Two days later, U.S. Representatives
19 Edward Markey and Joe Barton, Co-Chairman of the Congressional Bi-Partisan Privacy Caucus,
20 sent a letter to the Federal Trade Commission demanding to know what action the FTC was
21 taking under Section 5 of the FTC Act. The letter stated:

22 *As co-chairs of the Congressional Bi-Partisan Privacy Caucus, we believe that*
23 *tracking user behavior without their consent or knowledge raises serious privacy*
24 *concerns When users log out of Facebook, they are under the expectation*
25 *that Facebook is no longer monitoring their activities. We believe this impression*
should be the reality. Facebook users should not be tracked without their
***permission** (emphasis added).*

26 On September 29, 2011, the Electronic Privacy Information Center, joined by the
27 American Civil Liberties Union, the American Library Association, the Bill of Rights Defense
28 Committee, the Center for Digital Democracy, the Center for Media and Democracy, Consumer

1 Action, Consumer Watchdog, Privacy Activism, and Privacy Times also recommended that the
2 FTC investigate. In their letter to the FTC, the group added that Facebook might not have
3 actually fixed the problem as claimed:

4 *[W]e would like to bring your attention to new privacy and security risks to*
5 *American consumers, the secret use of persistent identifiers (“cookies”) to track*
6 *the Internet activity of users even after they have logged off of Facebook, and the*
7 *company’s failure to uphold representations it has made regarding its*
commitments to protect the privacy of its users.

8 ***Facebook’s tracking of post-log-out Internet activity violates both the***
9 ***reasonable expectations of consumers and the company’s own privacy***
10 ***statements. Although Facebook has partially fixed the problem caused by its***
11 ***tracking cookies, the company still places persistent identifiers on users’***
browsers that collect post-log-out data and could be used to identify users
(emphasis added).

12 As of the date of this motion, whether the FTC will or has already begun a formal
13 investigation is unknown. However, on October 11, 2011, FTC Chairman Jon Leibowitz gave a
14 speech at the National Press Club in Washington, D.C. In that speech Chairman Leibowitz
15 sounded the alarm on privacy rights, coining the term “cyberazzi” for web sites that violate their
16 users’ digital privacy rights. Specifically, Chairman Leibowitz may have signaled coming action:

17 *Once you enter cyberspace, software placed on your computer – **usually without***
18 ***your consent or even knowledge** – turns your private information into a*
19 *commodity out of your control. And keep in mind: as my former colleague*
20 *Republican FTC Chairman Debbie Majoras used to say, your computer is your*
property. . . . At the FTC, we want you to get that control back (emphasis added).

21 Finally, despite Facebook’s claim that it fixed the “bug,” researchers are uncovering yet
22 more methods Facebook can employ to track its users, even after logout. For example, a
23 researcher at Stanford University found that Facebook was setting tracking cookies on browsers
24 of people visiting sites other than Facebook.com. Facebook was setting these tracking cookies
25 when individuals visited certain Facebook Connect sites. The result: people who never
26 interacted with a Facebook.com widget, and who never visited Facebook.com, were still
27 vulnerable to Facebook tracking cookies. The EFF notes in the October 11, 2011 report that
28 ***Facebook now can track web browsing history without cookies:***

1 *Facebook is able to collect data about your browser – including your IP address*
2 *and a range of facts about your browser – without ever installing a cookie. They*
3 *can use this data to build a record of every time you load a page with embedded*
4 *Facebook content. They keep this data for 90 days and then presumably discard*
5 *or otherwise anonymize it. That's a far cry from being able to shield one's*
6 *reading habits from Facebook.*

7 **III. PROCEDURAL BACKGROUND**

8 Following the September 25, 2011 revelations and the calls for government action, 21
9 separate class actions were filed throughout the country seeking compensation and other remedies
10 for Facebook users. These cases allege violations of various federal privacy laws, including the
11 Federal Wiretap Act and various Computer Fraud laws. Several allege violations of various
12 California state statutes and common law claims.

13 On October 17, 2011, the Plaintiffs in *Davis, et al. v. Facebook, Inc.*, 5:11-cv-04834-EJD,
14 moved in the JPML for consolidation and transfer to the Northern District of California of all
15 related actions filed to date. None of the plaintiffs in any of the Related Actions opposed the
16 Motion. Defendant Facebook submitted a Brief in Support of the Motion. On February 8, 2012,
17 the JPML ordered that all “Related Actions” be centralized in the Northern District of California,
18 and created MDL 2314. Additional cases filed after the October 17, 2011 motion for
19 consolidation were also transferred to this Court pursuant to two Conditional Transfer Orders
20 dated February 17, 2012 and February 21, 2012. Finally, three additional actions filed in this
21 District have all been deemed “related” by the Court (*Brkic, Carroll, and Maguire*).

22 **IV. ARGUMENT**

23 **a. The Related Actions and the MDL Should be Consolidated for All** 24 **Purposes Pursuant to Rule 42(a).**

25 Consolidation pursuant to Rule 42(a) is proper when actions involve common questions of
26 law and fact. *See Manual For Complex Litigation, Fourth*, § 11.631, at pp.121-22 (2004)
27 (“MCL”); *Owen v. Labor Ready Inc.*, 146 Fed. Appx. 139, 141 (9th Cir. 2005); *In re Cendant*
28 *Corp. Litig.*, 182 F.R.D. 476,478 (D.N.J. 1998); *In re Equity Funding Corp. of Am. Sec. Litig.*,
416 F. Supp. 161, 175 (C.D. Cal. 1976). Subdivision (a) of this rule relating to consolidations of
actions for trial was designed to encourage consolidations where possible. *See U.S. v. Knauer*,

1 149 F.2d 519, 520 (7th Cir. 1945), *certiorari granted*, 326 U.S. 714, *aff'd*, 328 U.S. 654, *reh'g*
2 *denied*, 329 U.S. 818, *petition denied*, 322 U.S. 834. This Court has broad discretion under this
3 rule to consolidate cases within this district. *Investors Research Co. v. U.S. District Court for*
4 *Cent. Dist.*, 877 F.2d 777 (9th Cir. 1989); *Perez-Funez v. Dist. Director, Immigration &*
5 *Naturalization Serv.*, 611 F. Supp. 990, 994 (C.D. Cal. 1984) ["A court has broad discretion in
6 deciding whether or not to grant a motion for consolidation, although, typically, consolidation is
7 favored."] (citations omitted).

8 Courts have recognized that putative class actions are particularly well-suited for Rule
9 42(a) consolidation. Such consolidation expedites pretrial proceedings, reduces case duplication,
10 avoids the need to contact parties and witnesses for multiple proceedings, and minimizes the
11 expenditure of time and money for all parties involved. *Vincent v. Hughes Air West, Inc.*, 557
12 F.2d 759, 773 (9th Cir. 1977); *Owen v. Labor Ready Inc.*, 146 Fed. Appx. at 141 (citing *Huene v.*
13 *United States*, 743 F.2d 703, 704 (9th Cir. 1984)). Consolidating class action suits simplifies
14 pretrial and discovery motions, class action issues, and clerical and administrative management
15 duties. Consolidation also reduces the confusion and delay that may result from prosecuting
16 related putative class actions separately. *Id.*

17 The Related Actions all allege claims on behalf of Facebook Users. The Related Actions
18 name the same defendant, Facebook, Inc., and involve substantially similar factual and legal
19 issues. Consolidation is appropriate where – as here – there are actions involving common
20 questions of law or fact. Fed. R. Civ. P. 42(a). *See also Johnson v. Celotex Corp.*, 899 F.2d
21 1281, 1284 (2d Cir. 1990). The substantial overlap of the factual and legal issues in the Related
22 Actions satisfies that “common questions” test. The Related Actions should be consolidated.

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1 **b. The Proposed Leadership Structure Is In the Best Interests of the Putative**
2 **Class**

3 ***i. The Proposed Leadership Structure***

4 **The Executive Committee:** The Moving Plaintiffs propose that the consolidated action
5 be co-led by two firms: BARTIMUS, FRICKLETON, ROBERTSON & GORNY, P.C.,
6 and SIANNI & STRAITE LLP.³

7 **Plaintiffs' Steering Committee:** The Moving Plaintiffs propose the formation of a
8 steering committee to assist co-lead counsel at the direction of co-lead counsel. The PSC
9 would consist of seven attorneys: STEPHEN M. GORNY; STEPHEN G. GRYGIEL;
10 ANDREW J. LYSKOWSKI; BARRY R. EICHEN; MARK S. MANDELL; WILLIAM
11 H. MURPHY, JR.; and WILLIAM M. CUNNINGHAM, JR.

12 **Attorney General Special Advisory Committee:** The Moving Plaintiffs propose the
13 formation of a Special Advisory Committee consisting of three former state attorneys
14 general to provide legal and strategic advice to co-lead counsel: GRANT WOODS
15 (Arizona Attorney General from 1991 to 1999); MIKE MOORE (Mississippi Attorney
16 General from 1988 to 2004); and RICHARD IEYOUB (Louisiana Attorney General from
17 1992 to 2004).

18 **Liaison Counsel:** The Moving Plaintiffs propose the appointment of a single liaison
19 counsel with a California office to assist with filings and court appearances at the
20 direction of co-lead counsel: KIESEL, BOUCHER & LARSON, LLP.
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27 ³ Candor to the tribunal requires disclosure that the lawyers at Sianni & Straite LLP plan to join another firm
28 commencing May 1, 2012, and at that time would seek to substitute the successor firm as co-lead counsel for the
 putative class. Counsel is prepared to discuss the arrangement at the upcoming Case Management Conference on
 March 30, 2012. Counsel would gladly provide a supplemental brief under seal describing the successor firm's
 qualifications if the Court so requests. Public announcement of the move is currently scheduled for April 16, 2012.

ii. The Benefits of the Proposed Structure

The broad scope and inherent complexity of this matter necessitate a sound case management structure. Moving Plaintiffs assert that the Proposed Leadership Structure will best serve the interests of Plaintiffs and the proposed plaintiff class. Leading commentators and the Manual for Complex Litigation advise: “court[s] should be cognizant of the possibility that the class could benefit from the combined resources and expertise of a number of class counsel, especially in a complex case where the defendants are represented by a number of large and highly qualified law firms.” *Third Circuit Task Force Report on Selection of Class Counsel*, 208 F.R.D. 340, 417 (2002) (footnote omitted); *see also* MCL, § 10.221 (noting benefit to having multiple lead counsel in large class action cases). For these reasons, federal district courts frequently approve multi-firm leadership structures in complex class actions. *See, e.g., In Re Hydrogen Peroxide Antitrust Litig.*, 240 F.R.D. 163, 177 (E.D. Pa. 2007) (appointing four-firm structure as co-lead counsel); *In re Oxford Health Plans, Inc. Sec. Litig.*, 182 F.R.D. 42, 46, 49 (S.D.N.Y. 1998) (approving multiple counsel arrangement, finding pooling of resources and experience was advantageous given “magnitude” of the class action and to “ensure that the litigation will proceed expeditiously against Oxford and the experienced counsel it has retained to represent it”); *see also In re DRAM Antitrust Litig.*, 2006 U.S. Dist. LEXIS 39841, *53 (N.D. Cal., June 5, 2006) (appointing three-firm structure as co-lead counsel); *In re Intel Corp. Microprocessor Antitrust Litig.*, MDL No. 05-1717 (D. Del. Apr. 18, 2006), Order Appointing Co-Lead Counsel at 3 (appointing multi-firm structure that allows “drawing upon a greater pool of resources” which “could prove to be especially beneficial in a large and complex case such as this”).⁴

Not merely beneficial, the Proposed Leadership Structure here will prosper the success and efficient management of a class action potentially involving 800 million class members. Presenting many legal and factual issues, some quite new, involving application of established statutes and causes of action to evolving cyberspace commercial practices, this case offers no

⁴ Courts have also noted the “benefit of joint decision-making” afforded by multiple representation in the class action context. *See, e.g., Malasky v. IAC/Interactive Corp.*, 2004 U.S. Dist. Lexis 25832, at *14 (S.D.N.Y. Dec. 21, 2004); *Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust v. LaBranche & Co., Inc.*, 229 F.R.D. 395, 420 (S.D.N.Y. 2004).

1 room for management inefficiency. Facebook, the world’s largest social network, is represented
2 by one of the country’s largest and most experienced defense firms, abundantly prepared to
3 defend the case. This may also be the largest class action in history, and discovery could involve
4 millions of pages of documents. Such volume requires knowledgeable and experienced persons
5 to establish review protocols and to ensure proper document analysis in a relatively short time.
6 Undoubtedly this case will be expert-intensive. Extensive motion practice is virtually certain, on
7 the pleadings, procedural and merits issues, and discovery. The path to settlement or trial is
8 unlikely to be short or simple. Needless to say, these tasks will entail substantial financial
9 commitments that the proposed co-lead counsel will share.

10 The Proposed Leadership Structure draws on the experience and expertise of a large
11 number of law firms and former state attorneys general, yet still provides the Court and Facebook
12 with the convenience of only two points of contact – Sianni & Straite LLP and Bartimus
13 Frickleton, Robertson & Gorny, P.C. The Moving Plaintiffs also propose that a single firm be
14 appointed liaison counsel with a California office to assist with filings and court appearances as
15 needed. In this way, the Proposed Leadership Structure combines a large number of attorneys
16 (and former state attorneys general) with proven commitment to responsible advocacy, and the
17 convenience of a small, two-firm Executive Committee simplifying decision-making and
18 communications with the Court and Defendant.

19 **c. Appointing Interim Lead Class Counsel is Appropriate Under Rule 23(g)**
20 **and Will Protect the Interests of the Putative Plaintiff Class**

21 Rule 23(g)(3) of the Federal Rules of Civil Procedure provides that a court “may
22 designate interim counsel to act on behalf of the putative class before determining whether to
23 certify the action as a class action.” Fed. R. Civ. P. 23(g)(3). Where, as here, multiple class
24 actions are pending, appointment of interim class counsel “is necessary to protect the interests of
25 class members” because it “clarifies responsibility for protecting the interests of the class during
26 precertification activities, such as making and responding to motions, conducting any necessary
27 discovery, moving for class certification, and negotiating settlement.” MCL, § 21.11.

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1 Proposed Interim Class Counsel Will Fairly and Adequately Represent the Interests of
2 Plaintiffs and the Putative Class

3 Attorneys appointed to serve as interim class counsel “must fairly and adequately
4 represent the interests of the class.” Fed. R. Civ. P. 23(g)(4). Although Rule 23 does not explicitly
5 state what standards apply when appointing interim class counsel, courts have applied the
6 following factors from Rule 23(g)(1)(A): (1) the work counsel has done in identifying or
7 investigating potential claims in the action; (2) counsel’s experience in handling class actions,
8 other complex litigation, and claims of the type asserted in the action; (3) counsel’s knowledge of
9 the applicable law; and (4) the resources counsel will commit to representing the class. *See*
10 *Parkinson v. Hyundai Motor Am.*, 2006 WL 2289801, No. C06-0345 AHS, slip op. at *2 (C.D.
11 Cal. Aug. 7, 2006). No single factor is determinative; all factors must be considered. Advisory
12 Committee Notes (2003 Amendments).

13 The proposed leadership structure satisfies each of these criteria. Proposed class counsel
14 have already taken considerable steps to advance the litigation. For example, plaintiffs’ counsel
15 (not counsel for Facebook) filed with the JPML the motion for consolidation and transfer to this
16 Court. Counsel also aggressively moved to protect the class in the JPML when Facebook
17 requested a change to the case caption which would have been unfair to plaintiffs. Likewise,
18 counsel for plaintiffs have already sent a document preservation demand to Facebook, have
19 retained and engaged expert advisors and have already sought admission *pro hac vice*.

20 Likewise, proposed class counsel have extensive complex litigation experience and
21 knowledge of the applicable law. Counsel also have sufficient resources to litigate this case
22 properly and protect the class. Attached to this motion as Exhibit A are the biographies of the
23 firms and lawyers that Moving Plaintiffs seek to have appointed to lead the class action.

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1 **V. CONCLUSION**

2 In the interests of judicial economy and for the reasons set forth above, Moving Plaintiffs
3 respectfully request that the Court order consolidation of the Related Actions, the MDL and all
4 future-filed “related actions”; appoint interim class counsel; and enter the attached proposed order
5 setting forth a deadline for filing a consolidated class action complaint and a briefing schedule to
6 govern any motion to dismiss.
7

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