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April 11, 2017

VIA ECF and OVERNIGHT DELIVERY

District Judge Edward J. Davila
United States District Court
for the Northern District of California
San Jose Courthouse
280 South 1st Street
San Jose, CA 95113

Re: *In re Facebook, Inc. Internet Tracking Litig.*, No. 5:12-md-02314-EJD-NC

Dear Judge Davila,

On behalf of the plaintiffs, we write to request a Case Management Conference to address the parties' discovery impasse. Alternatively, we ask that the Court refer the outstanding discovery motions to Magistrate Judge Nathanael Cousins. Plaintiffs' counsel contacted counsel for defendant via email on April 7, 2017 to ask whether they would support or oppose our request, but never received a response.

The Court has never stayed discovery. At the June 29, 2012 case management conference at the beginning of this case, Your Honor noted that "if there is a request to stay discovery pending whatever, I would respectfully decline that invitation, and I think discovery should go forward as in any other case." Tr. at 8:3-7 (ECF No. 48). Despite the Court's clear statement, defendant Facebook, Inc. has unilaterally granted itself a discovery stay.

Defendant has only produced documents from three employees. Simply based on a review of the documents produced, some of which were used to support additional allegations in the Second Amended Complaint dated Nov. 30, 2015 (ECF No. 93), it is clear that more than two dozen senior employees authored or received discoverable documents. The records of these custodians should be searched and the responsive documents produced.

Defendant also refuses to produce documents related to entire categories of requested documents – *including any documents related to the named plaintiffs*, improperly impeding plaintiffs' ability to move for class certification. Defendant also inappropriately designated more than 99% of the current production "Highly Confidential Attorneys-Eyes-Only," making their use at deposition nearly impossible as a practical matter. For these reasons, plaintiffs moved to



compel discovery last year on March 16, 2016 (ECF No. 110). That motion remains outstanding, and discovery has not progressed since then. *See also* Local Rule 7-13 Notice dated October 17, 2016 (ECF No. 138).

Plaintiffs are unaware of any case, statute or rule supporting Facebook's unilateral grant to itself of a full discovery stay. That self-awarded discovery stay is particularly unjustified in this case. As the Court is aware, a parallel state-court action is proceeding in Santa Clara County on behalf of an overlapping proposed California class. There, the Superior Court has already denied Facebook's demurrer as to the invasion of privacy claim – a claim also asserted in this case. *See Ung v. Facebook, Inc.*, Case No. 1-12-CV-217244, Order re: Demurrer dated July 2, 2012 (Cal. Super. Ct., Santa Clara County), provided to the Court as Ex. HH to the Second Amended Complaint dated Nov. 30, 2015 (ECF No. 93-34). However, we understand that the Superior Court has stayed discovery in *Ung* in deference to the MDL. We also understand that plaintiffs in *Ung* are evaluating whether to move to lift that stay and whether to propose discovery coordination with the MDL. Facebook's continued refusal to participate in discovery in the MDL could negatively affect the *Ung* case as well as further delay progress in this one.

Plaintiffs therefore respectfully request a Case Management Conference to address outstanding discovery issues. Lead class counsel are available at the Court's convenience. In the alternative, plaintiffs respectfully request referral of the discovery motions to Magistrate Judge Cousins.

Respectfully submitted,



David A. Straite

Co-Lead Class Counsel

cc: Counsel of Record (via ECF)