

1 COOLEY LLP
MICHAEL G. RHODES (116127)
2 (rhodesmg@cooley.com)
MATTHEW D. BROWN (196972)
3 (brownmd@cooley.com)
KYLE C. WONG (224021)
4 (kwong@cooley.com)
101 California Street, 5th Floor
5 San Francisco, CA 94111-5800
Telephone: (415) 693-2000
6 Facsimile: (415) 693-2222

7 Attorneys for Defendant
FACEBOOK, INC.

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

13 In re: Facebook Internet Tracking Litigation

Case No. 5:12-md-02314 EJD

14 **FACEBOOK, INC.'S OPPOSITION TO**
15 **PLAINTIFFS' ADMINISTRATIVE MOTION**
16 **TO SCHEDULE SUBSEQUENT CASE**
17 **MANAGEMENT CONFERENCE**

Judge: Hon. Edward J. Davila
18 Trial Date: None set

19 Plaintiffs' request for a case management conference ("CMC") appears to be nothing
20 more than a mechanism for reminding the Court about pending motions and urging the Court to
21 adopt Plaintiffs' preferred schedule for ruling on them. In reality, Plaintiffs' discussion of
22 discovery issues, motions to seal, and the status of a state-court case provide no reason to hold a
23 CMC. Contrary to Plaintiffs' suggestion, there has been no further discovery impasse beyond the
24 issues that have already been fully briefed. Nor does the status of this case interfere with
25 discovery or case management in *Ung v. Facebook*, a case pending in state court that is currently
26 stayed (and in which the plaintiffs are represented by separate counsel). A CMC would serve no
27 purpose, waste judicial and party resources, and benefit neither the Court nor the parties.

28

1 **I. PLAINTIFFS’ REHASHING OF DISCOVERY ISSUES DOES NOT SUPPORT THEIR REQUEST**
2 **FOR A CMC.**

3 Plaintiffs’ Motion merely rehashes issues addressed in the parties’ competing Motion to
4 Compel Discovery (ECF No. 110) and Motion for a Protective Order (ECF No. 108) (“Discovery
5 Motions”) and does not explain any purported need for a CMC. Contrary to Plaintiffs’ Motion,
6 Facebook has not suddenly “granted itself a full discovery stay.” (Motion at 2.) Instead,
7 Facebook has responded to Plaintiffs’ Requests for Production by producing 65,000 pages of
8 documents and asserting appropriate objections to additional categories of discovery sought by
9 Plaintiffs. As explained in detail in the Discovery Motions and related briefing, the parties
10 disagree as to whether additional documents sought by Plaintiffs are relevant and within the scope
11 of discoverable information and whether any further discovery is warranted given the pendency
12 of Facebook’s dispositive Motion to Dismiss. Specifically, Facebook’s Opposition to Plaintiffs’
13 Motion to Compel argues that (1) Plaintiffs have not demonstrated that discovery from their
14 additional 26 proposed custodians is relevant or proportional to the needs of the case; (2)
15 Plaintiffs’ request for *all documents* concerning the named Plaintiffs, unbounded in time or scope,
16 is overbroad, implicates the privacy interests of third parties, and requests documents equally
17 available to Plaintiffs; and (3) Facebook has applied confidentiality designations in good faith and
18 Plaintiffs have failed to contest those designations in accordance with the stipulated protective
19 order. Plaintiffs cite no authority for the proposition that Facebook is obligated to provide this
20 objectionable discovery prior to the Court’s determination that the discovery is relevant and
21 within the scope of Facebook’s discovery obligations.

22 Plaintiffs’ Motion fails to identify any specific dispute or scheduling issue not addressed
23 in the parties’ briefing that might be resolved at a CMC prior to the Court’s resolution of the
24 Discovery Motions. As Plaintiffs’ Motion acknowledges (Motion at 2), there has been no
25 additional correspondence between the parties regarding discovery since these motions were
26 briefed. Thus, Plaintiffs’ own conduct suggests that they too understood that the discovery issues
27 are before the Court and that any further discovery is on hold until the Court’s decision.

28

1 A further hearing would serve no purpose and would burden the Court's time
2 unnecessarily. Accordingly, Plaintiffs' Motion should be denied.¹

3 **II. A CMC IS NOT NECESSARY TO ADDRESS OUTSTANDING MOTIONS TO SEAL.**

4 Plaintiffs also contend that two administrative motions regarding the sealing of certain
5 discovery material provide reason to schedule a CMC. (Motion at 4.) These motions concern the
6 narrow redaction of non-public, confidential, proprietary Facebook information from Plaintiffs'
7 Opposition to Facebook's Motion to Dismiss and Second Amended Consolidated Complaint
8 ("SACC") and the sealing of certain exhibits attached to the SACC produced pursuant to the
9 parties' Stipulated Protective Order. Plaintiffs identify no reason for urgency regarding these
10 administrative motions, nor identify any additional issues to be addressed at a CMC that have not
11 already been explained in the briefs submitted by the parties.

12 **III. THE STATE-COURT CASE, *UNG V. FACEBOOK, INC.*, PROVIDES NO REASON FOR A CMC.**

13 Plaintiffs' contention that holding a CMC will benefit discovery in a different case in
14 California state court (in which the plaintiffs are represented by separate counsel) is both
15 speculative and irrelevant. Any CMC held in this case would be about this case—it would not be
16 attended by the plaintiffs litigating *Ung v. Facebook, Inc.* or address their interests. Further, the
17 state court stayed the *Ung* case in its entirety pending resolution of this federal MDL. Whether
18 the *Ung* plaintiffs move the California state court to lift the stay in *Ung*, and whether the state
19 court elects to do so, is entirely independent of whether discovery is appropriate in *this* case.
20 Certainly neither plaintiffs' counsel in *Ung* nor Plaintiffs' counsel here should be seeking to use
21 the discovery process in this case to do an "end run" around the stay in *Ung*.

22 * * * *

23
24
25 ¹ Plaintiffs' alternative suggestion that the Court should refer the Discovery Motions to a
26 magistrate judge simply appears to be an attempt to exert control over the Court's docket. The
27 Court already explained to Plaintiffs at the hearing on the parties' pending motions that it wanted
28 to focus oral argument on Facebook's Motion to Dismiss but had read the parties' Discovery
Motions and had taken them under submission. Moreover, the critical issue of whether discovery
should proceed while Facebook's dispositive motion is pending is more appropriately decided by
the same judge who is considering that motion.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

For the foregoing reasons, a CMC is unnecessary at this time. Plaintiffs' Motion should be denied.

Dated: April 24, 2017

COOLEY LLP

/s/ Matthew D. Brown
Matthew D. Brown
Attorneys for Defendant FACEBOOK, INC.