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 13 FACEBOOK, INC.

14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 SAN JOSE DIVISION

17 In re: Facebook Internet Tracking Litigation

18 Case No. 5:12-md-02314 EJD

19 **DECLARATION OF MATTHEW D. BROWN**
 20 **IN SUPPORT OF DEFENDANT FACEBOOK,**
 21 **INC.'S MOTION TO DISMISS PLAINTIFFS'**
 22 **THIRD AMENDED CONSOLIDATED CLASS**
 23 **ACTION COMPLAINT**

24 **DATE:** November 16, 2017
 25 **TIME:** 9:00 a.m.
 26 **COURTROOM:** 4
 27 **JUDGE:** Edward J. Davila
 28 **TRIAL DATE:** None Set

I, Matthew D. Brown, hereby declare as follows:

1. I am an attorney licensed to practice law in the state of California and Partner at the law firm of Cooley LLP, counsel of record for defendant Facebook, Inc. I have personal knowledge of the facts below and could and would testify competently to them if called as a witness.

2. During the Rule 26(f) conference between counsel for the parties, held on July 13, 2012, the parties agreed that Facebook would collect and preserve data up until 90 days after the end of the alleged class period, or until December 25, 2011. Attached as **Exhibit 1** is a true and

1 correct copy of an email memorializing that agreement. Facebook subsequently collected,
2 reviewed, and produced approximately 65,000 pages of documents to Plaintiffs on April 16,
3 2014.

4 3. The parties attended a Case Management Conference before the Court on July 28,
5 2017. During the CMC, Plaintiffs' counsel, David Straite, requested "relevant historical Help
6 Center pages from the Class Period." (Tr. at 4:12-13.) Mr. Straite stated that they had identified
7 "all of the relevant language of the historical help center pages that we think are part of the
8 contract" (Tr. at 3:20-23) and claimed that "to our knowledge every single help center page that's
9 relevant for our claim did appear during the class period." (Tr. at 3:9-11.) The Court set the
10 deadline for Plaintiffs' to file their third amended complaint on August 25, 2017, noting "if you
11 can just get and identify those pages recognizing that they might assist what you already have,
12 and it sounds like you have, what I've heard you say, we probably have enough today to go
13 forward with the complaint." (Tr. 18:9-12.) Attached as **Exhibit 2** is a true and correct copy of
14 the transcript of the Case Management Conference.

15 4. After the July 28, 2017 Case Management Conference, Plaintiffs did not contact
16 Facebook regarding any Help Center pages until August 14, 2017, when Mr. Straite sent a letter
17 following requesting historical versions of four different Facebook pages. Attached hereto as
18 **Exhibit 3** is a true and correct copy of Mr. Straite's August 14, 2017 letter.

19 5. After determining that the requested Help Center pages had already been produced
20 to Plaintiffs in April 2016, I sent an email to Mr. Straite on August 21, 2017 directing him to the
21 bates numbers of the produced documents matching his request. I informed Mr. Straite that all
22 but two of these documents post-dated the end of the class period. Attached as **Exhibit 4** is a true
23 and correct copy of my August 21, 2017 email to Mr. Straite.

24 6. On August 22, 2017, three days before Plaintiffs' third amended complaint was
25 due to be filed, Mr. Straite sent me another email requesting production of further Help Center
26 pages. On August 24, 2017, I responded to Mr. Straite via email, explaining that Facebook would
27 produce the requested pages. Attached as **Exhibit 5** is a true and correct copy of Mr. Straite's
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1 August 22, 2017 email and my August 24, 2017 response to him. The requested pages were
2 produced to Mr. Straite via secure FTP.

3 7. Attached as **Exhibit 6** is a true and correct copy of the Facebook Statement of
4 Rights and Responsibilities as it appeared at the following URL on September 8, 2017:
5 <https://www.facebook.com/legal/terms>.

6 8. I declare under penalty of perjury that the foregoing is true and correct.

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8 Executed on September 8, 2017 at San Francisco, California.

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/s/ Matthew D. Brown

Matthew D. Brown

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