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16 *PERRIN AIKENS DAVIS, et al.*

17 UNITED STATES DISTRICT COURT
18
19 NORTHERN DISTRICT OF CALIFORNIA
20
21 SAN JOSE DIVISION

22 IN RE: FACEBOOK INTERNET TRACKING
23 LITIGATION

No. 5:12-md-02314-EJD

24 JOINT CASE MANAGEMENT
25 STATEMENT

26 Date: March 30, 2010
27 Time: 1:30 p.m.
28 Judge: Hon. Edward J. Davila
Trial Date: None Set

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

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

35 Plaintiffs,

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

36 v.

37 FACEBOOK, INC.,
38 a Delaware Corporation

Action Filed: September 30, 2011

39 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.

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

Plaintiff,

v.

FACEBOOK, INC., and DOES 1 Through 10,

Defendants.

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

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

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

Plaintiff,

v.

FACEBOOK, INC., and DOES 1 Through 10,

Defendants.

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

Plaintiff,

v.

FACEBOOK, INC. and DOES 1 through 10,

Defendants.

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

Plaintiffs,

v.

FACEBOOK, INC.,
DOES 1 THROUGH 10,

Defendants.

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

Plaintiffs,

v.

FACEBOOK, INC. and DOES 1 through 10,

Defendants.

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

Plaintiff,

v.

FACEBOOK, INC., and DOES 1 Through 10,

Defendants.

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

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

1 DAVID M. HOFFMAN, 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 JANET SEAMON, Individually and on Behalf
8 of All Others Similarly Situated,

9 Plaintiff,

10 v.

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

13 CHANDRA L. THOMPSON, Individually and
14 on Behalf of All Others Similarly Situated,

15 Plaintiff,

16 v.

17 FACEBOOK, INC. and DOES 1 through 10,
18 Defendants.

19 STEPHANIE CAMPBELL, Individually and on
20 Behalf of All Others Similarly Situated,

21 Plaintiff,

22 v.

23 FACEBOOK, INC. and DOES 1 through 10,
24 Defendants.

25 CYNTHIA D. QUINN, 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-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

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

1 JEANNE M. WALKER, 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 JACQUELINE BURDICK, Individually and
8 on Behalf of All Others Similarly Situated,

9 Plaintiff,

10 v.

11 FACEBOOK, INC. and DOES 1 through 10,

12 Defendants.

13 EDWARD STRAVATO,

14 Plaintiff,

15 v.

16 FACEBOOK, INC.; JOHN DOE 1-10,

17 Defendants.

18 MATTHEW J. VICKERY, and Other Persons
19 Similarly Situated,

20 Plaintiff,

21 v.

22 FACEBOOK, INC., DOES 1 thru 10,

23 Defendants.

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

26 Plaintiff,

27 v.

28 FACEBOOK, INC., 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

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

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

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

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

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

3 Plaintiff,

4 v.

5 FACEBOOK, INC.,

6 Defendant.

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

7
8 **JOINT CASE MANAGEMENT STATEMENT**

9 The parties in the “Related Actions” (defined below) consolidated into the above-
10 captioned MDL action jointly submit this JOINT CASE MANAGEMENT STATEMENT
11 pursuant to the Standing Order for All Judges of the Northern District of California dated July 1,
12 2011 and Civil Local Rule 16-9.

13 **1. JURISDICTION AND SERVICE**

14 This Court has subject matter jurisdiction over the federal claims asserted in the Related
15 Actions under 28 U.S.C. § 1331 and 1332. This Court has personal jurisdiction over Defendant
16 Facebook, Inc. (“Facebook”) because it is headquartered in the State of California. Venue is
17 proper by agreement under 28 U.S.C. § 1391(b) and through assignment from the Judicial Panel
18 on Multidistrict Litigation. Facebook is the only named Defendant in any of the Related Actions
19 and has been served.¹

20 **2. STATEMENT OF FACTS AND FACTUAL DISPUTES**

21 **a. Plaintiffs’ Statement of the Facts**

22 Defendant Facebook operates the world’s largest social networking web site, with more
23 than 800 million users globally, and 150 million users in the United States. Although Facebook
24 members are not required to pay a monetary subscription fee, membership is conditioned upon
25 users providing sensitive personal information to Facebook upon registration, including name,
26

27 ¹ Facebook has not yet been properly served with a summons and complaint in *Singley v.*
28 *Facebook, Inc.*, No. 5:12-cv-00670-EJD or *Maguire v. Facebook, Inc.*, No. 5:12-cv-00807-EJD,
but is willing to accept a waiver of service under Fed. R. Civ. P. 4(d) in both cases.

1 birth date, gender and email address. More importantly, use of Facebook is conditioned upon the
2 user accepting numerous Facebook cookies on the user's computer which track browsing history.
3 This information, including the member's unique Facebook identifier, is then harvested by
4 Facebook from the user's computer. Facebook uses the information to generate approximately \$4
5 billion of revenue annually for the company.

6 Facebook installs two types of cookies on members' computers: session cookies, and
7 tracking cookies. According to the Electronic Frontier Foundation in San Francisco:

8
9 *Session cookies* are set when you log into Facebook and they include data like
10 your unique Facebook user ID. They are directly associated with your Facebook
11 account. When you log out of Facebook, the session cookies are supposed to be
12 deleted.

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

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

26 Use of Facebook is governed by the Statement of Rights and Responsibilities and a
27 number of other documents and policies, including a Data Use Policy and a Privacy Policy.
28 Although the governing documents make clear that users consent to Facebook installing cookies
on the user's computer, and although the users consent to these cookies tracking and transmitting
to Facebook data regarding each user's web browsing, such consent was limited to internet usage
while the user is logged on to Facebook. Users do not consent to having records of their web
browsing tracked after logging out of Facebook, because the session cookies were supposed to be

1 deleted. On Facebook's online help center, Facebook clearly and unambiguously emphasized,
2 "When you log out of Facebook, we remove the cookies that identify your particular account."

3 Sometime in 2010, an Australian technology writer, Nik Cubrilovic, discovered that the
4 session cookies Facebook placed on its users' computers were still active even after users had
5 logged off of Facebook. Mr. Cubrilovic warned Facebook of this problem on at least two
6 occasions starting in November, 2010, but Facebook failed to take corrective action and
7 continued to collect data from its millions of active cookies worldwide.

8
9 Mr. Cubrilovic went public with his research on September 25, 2011. The next day, on
10 September 26, 2011, Facebook publicly admitted that its session cookies continued to remain
11 even after logoff, and agreed to fix the "bug" as the company called it. The next day, the Irish
12 Government announced an audit of Facebook under EU privacy rules (Facebook's primary
13 European data center is in Ireland). Two days later, U.S. Representatives Edward Markey and
14 Joe Barton, Co-Chairman of the Congressional Bi-Partisan Privacy Caucus, sent a letter to the
15 Federal Trade Commission demanding to know what action the FTC was taking under Section 5
16 of the FTC Act.

17
18 The following day, on September 29, 2011, the Electronic Privacy Information Center,
19 joined by the American Civil Liberties Union, the American Library Association, the Bill of
20 Rights Defense Committee, the Center for Digital Democracy, the Center for Media and
21 Democracy, Consumer Action, Consumer Watchdog, Privacy Activism, and Privacy Times also
22 recommended that the FTC investigate. In their letter to the FTC, the group added that Facebook
23 might not have actually fixed the problem as claimed.

24
25 Finally, despite Facebook's claim that it fixed the "bug," researchers are uncovering yet
26 more methods whereby Facebook is able to track its users even after logout. For example, a
27 researcher at Stanford University has discovered instances in which Facebook was setting
28

1 tracking cookies on browsers of people when they visited sites other than Facebook.com. These
2 tracking cookies were being set when individuals visited certain Facebook Connect sites. As a
3 result, people who never interacted with a Facebook.com widget, and who never visited
4 Facebook.com, were still facing tracking by Facebook cookies. The EFF notes in the October 11,
5 2011 report that Facebook now can track web browsing history without cookies:

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

13 The Plaintiffs believe that the principal factual issues in dispute include but are not limited to:

14 (a) Whether or not Defendant Facebook's Terms of Use and other governing
15 documents and policies permitted Facebook to track the internet use of its members post-logout;

16 (b) Whether or not Defendant Facebook tracked the internet use of its members post-
17 logout;

18 (c) Whether or not Facebook members consented to being tracked post-logout;

19 (d) Whether or not Facebook members sustained compensable harm under relevant
20 law as a result of Facebook's actions;

21 (e) The methods by which Facebook tracked the internet use of its members, including
22 but not limited to session cookies, tracking cookies, tracking pixels, javascript, or other;

23 (f) The extent of information tracked and gathered by Facebook from its members;

24 (g) Whether the information intercepted by Facebook was "in flight" within the
25 meaning of relevant statutes;

26 (h) Whether and to what extent Facebook remedied the problem; and

27 (i) The extent to which Facebook maintained or is still maintaining data improperly
28 tracked; and

1 (j) Whether Facebook’s post-logout tracking was done knowingly.

2
3 **b. Facebook’s Statement of the Facts**

4 As an initial matter, Facebook believes that Plaintiffs’ argumentative statement of the case
5 is neither necessary nor appropriate for this case management statement. But since Plaintiffs
6 insist on including it, Facebook is compelled to respond briefly.

7 Facebook is a social networking website that enables people to connect and share with
8 their friends, families, and communities. To join, Users need only provide their name, age,
9 gender, and a valid e-mail address; they are also informed of Facebook’s Privacy Policy (now
10 called the “Data Use Policy”), which specifically discloses that Facebook uses cookies for certain
11 purposes. Once Users register, they create a profile and may begin connecting with other Users
12 by inviting them to become Facebook “Friends.” Facebook provides a service that hundreds of
13 millions of people use every day to connect with the people they care about—for free.

14 Facebook offers Users an array of options for sharing content and communicating with
15 each other both on Facebook and third-party websites. These options include the Facebook Like
16 button, which allows Users to click a button associated with some particular content (e.g., a news
17 article, a video, a blog post, or a video) in order to share or communicate their affinity for that
18 content with their Facebook Friends.

19 The main allegations in these cases are based primarily on the September 2011 blog posts
20 of Australian technology blogger, Nik Cubrilovic and concern Facebook’s alleged use of cookies
21 to collect browsing history when Users were logged out of their Facebook account. Plaintiffs’
22 inflammatory claims notwithstanding, the use of cookies is ubiquitous throughout the Internet.
23 Most interactive websites with any level of meaningful functionality could not operate without
24 them. Facebook uses cookies for a variety of functions including, for instance, offering features
25 on other websites (e.g., the Like, Share, and Recommend buttons and other enhancements) and
26 ensuring the security of the Facebook site and Facebook Users.

27 These cases involve substantially the same parties, with Facebook named as the sole
28 defendant in the majority of these cases. Likewise, the factual allegations, issues of law,

1 defenses, and demands for relief are substantially the same across the cases and it is likely that
2 discovery and motion practice will overlap.

3 As Facebook will show, the allegations in these cases do not state any claims, and neither
4 the named Plaintiffs nor the members of the putative class have been harmed by the alleged
5 conduct in any way. Facebook reserves any and all rights, defenses and objections to the facts
6 alleged by the Plaintiffs in these actions

7 **3. LEGAL ISSUES**

8 Plaintiffs contend that the following are the main disputed points of law:

9 **a.** Whether Facebook violated state and/or federal law by tracking the internet
10 use of its members post-logout; and

11 **b.** Whether the theft of personally identifiable information (“PII”) is a
12 compensable injury sufficient to confer standing within Article III of the United States
13 Constitution; and

14 **c.** Whether the proposed class can be certified under Fed. R. Civ. P. 23.

15 Facebook denies the allegations in the complaints and denies that the requirements of Fed.
16 R. Civ. P. 23 can be met in any of the pending cases.

17 **4. MOTIONS**

18 **a.** There have been motions to appear Pro Hac Vice granted by this court. All
19 counsel wishing to appear before this Court and who not yet admitted pro hac propose to make
20 additional motions for admission pro hac as soon as practicable.

21 **b.** Defendant Facebook has filed several motions to relate cases. The Court
22 has granted all such motions but for certain *pro se* cases, which the Court has already ruled
23 unrelated. A list of all current “Related Actions” are listed below in Section 10.

24 **c.** Defendant Facebook has filed a number of motions to extend time. None
25 are currently pending.

26 **d.** Motion Pursuant to Rule 23(g): Counsel in all Related Actions (except
27 *Khang* and *Carroll*) intend to file a joint motion for interim lead of the consolidated MDL on or
28 about Tuesday, March 27, 2012, in advance of the March 30, 2012 CMC. In the Motion for

1 Interim Lead, in addition to proposing lead plaintiffs to represent the proposed class, counsel will
2 propose the following leadership structure which recognizes the complex and high-profile nature
3 of this case:

- 4 i. An Executive Committee with 2 firms co-leading the action;
- 5 ii. A Plaintiff's Steering Committee with 7 firms to assist co-lead
6 counsel at the direction of co-lead counsel;
- 7 iii. A special advisory committee consisting of three former State
8 Attorneys General to advise co-lead counsel; and
- 9 iv. One firm with an office in California to act as Liaison Counsel.
- 10 e. Interim Lead Plaintiffs intend to file a motion for class certification at the
11 appropriate time during the litigation.
- 12 f. Facebook will file a response to the Consolidated Amended Complaint
13 within 60 days of the Complaint's filing.
- 14 g. On February 8, 2012, counsel for Singley filed a Motion to Substitute
15 Plaintiff and Motion to Amend Pleading with the Revised Caption.
16 Facebook has not yet been served with the motion.
- 17 h. Facebook may file a motion to stay discovery pending the resolution of any
18 initial motion practice that follows the filing of the Consolidated Amended
19 Complaint under Rule 12(b).
- 20 i. Plaintiffs and Defendant may also file a motion for summary judgment or
21 partial summary judgment.

22 **5. AMENDMENT OF PLEADINGS**

23 Within 60 days of interim class counsel assignment, Interim Lead Plaintiffs propose to file
24 their consolidated class action complaint. Plaintiffs intend to name Facebook as the sole
25 Defendant, but may name additional defendants who are individual directors, employees, agents,
26 or contractors of Facebook as discovery warrants.

1 If the Actions go forward after initial motion practice on the sufficiency of the pleadings,
2 Facebook believes that any further amendment to the pleadings should be completed within three
3 (3) months of a decision permitting Plaintiffs' claims to go forward.

4 **6. EVIDENCE PRESERVATION**

5 The parties are aware of and taking reasonable steps to comply with their evidence
6 preservation obligations under the Federal Rules of Civil Procedure, including the rules governing
7 electronic discovery.

8 Plaintiff Thompson sent a certified spoliation letter to Facebook on October 4, 2011
9 explaining and explicitly itemizing the potentially discoverable material under Defendant's
10 control. Plaintiffs take the position that Defendant is required to take all necessary measures to
11 ensure that all electronic records pertaining to Plaintiffs and the putative class members are being
12 preserved, as well as all relevant non-electronic records.

13 **7. DISCLOSURES**

14 Subject to Facebook's possible motion to stay discovery referenced in section 4 above, the
15 parties propose that the Rule 26 meet and confer occur within 14 days after the filing of the
16 Amended Consolidated Complaint and that initial disclosures will occur at or within 14 days of
17 the parties' meet and confer pursuant to Rule 26(a)(1)(C).

18 **8. DISCOVERY**

19 No formal discovery has yet occurred in this action. The parties propose filing a joint
20 proposed discovery schedule (to the extent the parties can reach agreement).

21 Subject to Facebook's possible motion to stay discovery referenced in section 4 above, the
22 parties propose filing the joint proposed discovery schedule promptly after the Rule 26(f)
23 conference discussed in section 7 above.

24 **9. CLASS ACTION**

25 Plaintiffs in each and every Related Action bring this action on behalf of themselves and
26 others similarly situated as a class pursuant to Fed. R. Civ. P. 23(b)(3). After this Court's
27 determination of interim lead plaintiff and counsel pursuant to Rule 23(g), Counsel will propose a
28 class definition in the consolidated class action complaint discussed above.

Facebook denies that this putative class may be certified under Rule 23.

10. RELATED CASES

There are twenty-one (21) actions related to this MDL either by the Judicial Panel on Multidistrict Litigation or by the clerk of the Northern District of California. These cases are:

<u>Case Name</u>	<u>Original Court and Case Number</u>	<u>N.D. Cal. Case Number</u>
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

On March 16, 2012, Facebook filed a Notice of Pending Action pursuant to Local Civil Rule 3-13 with the Court in the MDL Actions to inform the Court of a related case, *Ung v. Facebook, Inc.*, No. 112-cv-217244, now pending in Santa Clara Superior Court. Plaintiffs do not agree at this time that the *Ung* case is “related” to the instant action.

While this Court previously denied Facebook’s motion to relate *Knox v. Facebook, Inc.*, No. 5:11-cv-05699-EJD, *Gayfield v. Facebook, Inc.*, No. 5:11-cv-05700-EJD, *Guyton v. Facebook, Inc.*, No. 5:11-cv-05701-EJD, *Wood v. Facebook, Inc.*, No. 5:11-cv-05763-EJD, and *Valentine v. Facebook, Inc.*, No. 5:11-cv-05764-EJD (the “*Pro Se* Cases”)² to *Davis v. Facebook*,

² Additional, nearly-identical *pro se* cases *McClinton v. Facebook, Inc.*, No. 5:11-cv-06367-EJD, *Thomas v. Facebook, Inc.*, No. 5:11-cv-06607-EJD, *Sanders v. Facebook, Inc.*, No. 5:11-cv-06645-EJD, and *Skiles v. Facebook, Inc.*, No. 5:12-cv-00468-EJD were filed after the Court

No. 5:11-cv-04834-EJD, Facebook continues to suspect that the plaintiffs in the *Pro Se* Cases are inartfully pleading the same or similar claims as those in the MDL Actions. If these cases proceed, the need for coordination of discovery and other matters will become increasingly apparent. Accordingly, Facebook believes that, even if the MDL Actions and *Pro se* Cases are not related, they should be coordinated to promote judicial efficiency and preserve party resources.

11. RELIEF SOUGHT

Plaintiffs seek monetary relief in the form of damages including but not limited to actual damages, statutory damages, punitive damages, and attorneys fees. At this time the monetary amount is unknown as both the size of the class and method for calculating the damages is not presently known to Plaintiffs. It can be said, however, that at the time of filing there were over 150 million Facebook users in the United States during the proposed Class Period (dates to be defined by interim lead counsel in the forthcoming consolidated class action complaint), and 800 million users globally, and the claims for violations of one of the relevant statutes (the Federal Wiretap Act) provides for \$100 per day for each day of violation or \$10,000, whichever is greater. Plaintiffs also seek injunctive relief.

Facebook denies that Plaintiffs are entitled to any relief whatsoever. Additionally, Facebook reserves all rights, claims, and defenses available under law.

12. SETTLEMENT AND ADR

The parties do not believe that any ADR process is appropriate at this time.

13. CONSENT TO MAGISTRATE JUDGE

The parties do not consent to have a magistrate judge conduct all further proceedings.

14. OTHER REFERENCES

The parties (except the Plaintiffs in *Maguire*) have previously appeared before the Judicial Panel on Multidistrict Litigation in this matter and appear before this transferee court as a result

denied Facebook's motion to relate and Facebook consequently did not seek to have them related to *Davis*.

1 of the order dated February 8, 2012 (MDL No. 2314). The parties do not believe this case is
2 suitable for other reference be it binding arbitration or a special master.

3 **15. NARROWING OF ISSUES**

4 At this time, the parties do not believe there are any issues that can be narrowed.

5 **16. EXPEDITED TRIAL PROCEDURE**

6 The parties do not believe this case is of the type that can be handled on an expedited
7 basis.

8 **17. SCHEDULING**

9 The parties' proposal regarding the appropriate timing for Facebook's response to the
10 Consolidated Complaint is discussed in Section 4(f) above.

11 **18. TRIAL**

12 The parties propose to meet and confer at the beginning of discovery to propose a trial
13 schedule.

14 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

15 Interim Lead Plaintiffs and Defendants shall file a Certification of Interested Entities or
16 Persons within 10 days of the date of the appointment of lead plaintiffs and lead counsel.

17 **20. OTHER MATTERS**

18 There are no additional matters to add to this joint statement.

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on March 23, 2012, I caused the foregoing to be electronically filed
3 with the Clerk of the Court using the CM/ECF system which will send notification of such filing
4 to the e-mail addresses denoted on the Electronic Mail Notice List, and I hereby certify that I
5 caused the foregoing document or paper to be mailed via the United States Postal Service to the
6 non-CM/ECF participants indicated on the Manual Notice List.

7 I certify under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct. Executed on March 23, 2012.

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10 DATED: March 23, 2012

Respectfully Submitted,

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