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8 *Plaintiffs' Steering Committee*

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

Case No.: 5:12-MD-02314-EJD

IN RE: FACEBOOK INTERNET
TRACKING LITIGATION

**DECLARATION OF DAVID A. STRAITE IN
SUPPORT OF PLAINTIFFS' LOCAL RULE 7-13
NOTICE THAT THE PARTIES' JOINT
STIPULATED PROPOSED PROTECTIVE
ORDER FOR LITIGATION INVOLVING
CONFIDENTIAL INFORMATION AND TRADE
SECRETS HAS BEEN UNDER SUBMISSION FOR
MORE THAN 120 DAYS**

Judge: The Honorable Edward J. Davila
Court Room: 4

I, David A. Straite, hereby declare as follows:

1. I am an attorney admitted to practice *pro hac vice* in this case and Of Counsel to the firm Kaplan, Fox & Kilsheimer LLP in New York, NY. I am interim co-counsel of record for the Plaintiffs and a member of the Plaintiffs' Steering Committee. I have personal knowledge of the facts below and could and would testify competently to them if called as a witness.

2. I personally negotiated the joint "Proposed Protective Order for Litigation Involving Confidential Information and Trade Secrets" with counsel for defendant Facebook, filed with this Court on September 6, 2013 (the "Proposed Protective Order") [ECF No. 68].

DECLARATION OF DAVID A. STRAITE I/S/O PLAINTIFFS' LOCAL RULE 7-13 NOTICE
CASE NO.: 5:12-MD-02314-EJD

1 3. The lead plaintiffs and defendant in this action have commenced discovery, limited to the
2 exchange of document requests and interrogatories; responses and objections thereto; and approximately
3 360 pages of documents produced by defendant Facebook. Facebook counsel represented that these
4 documents are not confidential. Upon my information and belief, all 360 pages are publicly available.

5 4. During the negotiation of the Proposed Protective Order, it was the good faith
6 understanding of all parties that the exchange of confidential information would not begin until five
7 business days after the Court approves the Proposed Protective Order, given the sensitivity of some of
8 the information requested by both sides. No party has ever taken a position contrary to that good faith
9 understanding.

10 5. On March 13, 2014, I emailed Kyle C. Wong, counsel for Facebook, and asked to confer
11 regarding the outstanding Proposed Protective Order. I conferred telephonically the following day
12 (March 14, 2014) with Mr. Wong and his colleague Jeffrey M. Gutkin. Their position was that the
13 exchange of confidential information cannot begin until the Court approves the Proposed Protective
14 Order, consistent with the parties' good faith understanding described in Paragraph 4, above.

15 6. I invited Mr. Wong and Mr. Gutkin to consider the exchange of confidential information
16 on an attorneys'-eyes-only basis while awaiting the approval of the Proposed Protective Order. In the
17 alternative, I invited counsel to make a joint submission to the Court with Plaintiffs concerning the need
18 for Court approval of the outstanding Proposed Protective Order. Counsel asked for time to consult
19 their client.

20 7. On March 28, 2014, Mr. Wong informed me that defendant Facebook declined both
21 requests.

22 I declare under penalty of perjury under the laws of the United States of America that the
23 foregoing is true and correct.

24 Executed on April 2, 2014 at New York, NY.
25

26 /s/ David A. Straite
27 _____

David A. Straite

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on April 2, 2014, 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 April 2, 2014.

9
10 DATED: April 2, 2014

Respectfully Submitted,

11 KAPLAN, FOX & KILSHEIMER LLP

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13 By: /s/ David A. Straite

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