

Exhibit 6

1 Michael W. Sobol (State Bar No. 194857)
msobol@lchb.com
2 Melissa Gardner (State Bar No. 289096)
mgardner@lchb.com
3 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
4 San Francisco, CA 94111-3339
Telephone: 415.956.1000
5 Facsimile: 415.956.1008

6 Rachel Geman
rgeman@lchb.com
7 Nicholas Diamand
ndiamand@lchb.com
8 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
9 New York, NY 10013-1413
Telephone: 212.355.9500
10 Facsimile: 212.355.9592

11 Hank Bates (State Bar No. 167688)
hbates@cbplaw.com
12 Allen Carney
acarney@cbplaw.com
13 David Slade
dslade@cbplaw.com
14 CARNEY BATES & PULLIAM, PLLC
11311 Arcade Drive
15 Little Rock, AR 72212
Telephone: 501.312.8500
16 Facsimile: 501.312.8505

17 *Attorneys for Plaintiffs and the Proposed Class*

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA

21 MATTHEW CAMPBELL, MICHAEL
HURLEY, and DAVID SHADPOUR, on
22 behalf of themselves and all others
similarly situated,

23 Plaintiffs,

24 v.

25 FACEBOOK, INC.,

26 Defendant.

Jeremy A. Lieberman
Lesley F. Portnoy
info@pomlaw.com
POMERANTZ, LLP
600 Third Avenue, 20th Floor
New York, New York 10016
Telephone: 212.661.1100
Facsimile: 212.661.8665

Patrick V. Dahlstrom
pdahlstrom@pomlaw.com
POMERANTZ, LLP
10 S. La Salle Street, Suite 3505
Chicago, Illinois 60603
Telephone: 312.377.1181
Facsimile: 312.377.1184

Case No. 4:13-cv-05996-PJH

**PLAINTIFFS' SUPPLEMENTAL INITIAL
DISCLOSURES PURSUANT TO FED. R.
CIV. P. 26(a)(1)**

1 Plaintiffs Matthew Campbell, Michael Hurley, and David Shadpour hereby submit the
2 following supplemental initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1).
3 Plaintiffs make these initial disclosures based on information presently available to them.
4 Plaintiffs reserve the right to further supplement or amend these disclosures as appropriate upon
5 further discovery and investigation. Additionally, Plaintiffs make these initial disclosures subject
6 to and without waiving the attorney-client privilege, the attorney work-product privilege or any
7 other applicable privilege or protection. Plaintiffs reserve the right to object to discovery
8 involving or relating to the persons or documents identified in these initial disclosures.

9 **I. WITNESSES**

10 The following individuals are likely to have discoverable information that Plaintiffs
11 may use to support their claims.

- 12 1. Plaintiff Matthew Campbell, who may only be contacted through his
13 counsel as follows: c/o Lieff, Cabraser, Heimann & Bernstein, LLP, 275
14 Battery Street, 29th Floor, San Francisco, CA, 94111-3339. Mr.
15 Campbell has knowledge of facts surrounding his own use of defendant
16 Facebook, Inc.'s ("Facebook's") private messaging product, and
17 Facebook's representations to him, as alleged in the Consolidated
18 Amended Complaint ("CAC").
- 19 2. Plaintiff Michael Hurley, who may only be contacted through his
20 counsel as follows: c/o Lieff, Cabraser, Heimann & Bernstein, LLP, 275
21 Battery Street, 29th Floor, San Francisco, CA, 94111-3339. Mr. Hurley
22 has knowledge of facts surrounding his own use of Facebook's private
23 messaging product, and Facebook's representations to him, as alleged in
24 the CAC.
- 25 3. Plaintiff David Shadpour, who may only be contacted through his
26 counsel as follows: c/o Lieff, Cabraser, Heimann & Bernstein, LLP, 275
27 Battery Street, 29th Floor, San Francisco, CA, 94111-3339. Mr.
28 Shadpour has knowledge of facts surrounding his own use of Facebook's

1 private messaging product, and Facebook's representations to him, as
2 alleged in the CAC.

3 4. Former or present employees of Facebook who may have knowledge of
4 facts supporting the material allegations of the CAC or rebutting any
5 defenses alleged by Facebook.

6 5. All persons identified in Facebook's Rule 26(a)(1) disclosures.

7 **II. DOCUMENTS**

8 Each Plaintiff has in his possession documents concerning: (a) his respective
9 Facebook.com account and his use of the Facebook messaging product as alleged in the CAC; (b)
10 documents containing Facebook's representations of the messaging product on its website; (c)
11 media containing statements from Facebook about the messaging product; and (d) Facebook's
12 Terms of Service and Privacy Policies. Plaintiffs make no representation as to the admissibility
13 or inadmissibility of any of this information.

14 **III. DAMAGES**

15 Plaintiffs, on behalf of themselves and the putative Class in this matter, seek all relief
16 available in connection with their claims regarding Facebook's unlawful interception of
17 Plaintiffs' private messages.

18 Relief available under the Electronic Communications Privacy Act (ECPA), 18 U.S.C. §
19 2520, includes equitable relief, actual damages, statutory damages, disgorgement of profits made
20 as a result of the violation, punitive damages if appropriate, attorney's fees and litigation costs.
21 Statutory damages available to each Plaintiff and to each putative Class member, exclusive of any
22 recoverable interest, costs, or attorneys' fees, are the greater of \$100 per day of violation or
23 \$10,000.

24 Relief available under the California Invasion of Privacy Act (CIPA), Cal. Penal Code §
25 631, includes injunctive relief, three times the amount of actual damages, statutory damages, and,
26 by operation of the California Code of Civil Procedure, attorneys' fees and costs. Statutory
27 damages available to each Plaintiff and to each putative Class member, exclusive of any
28 recoverable interest, costs, or attorneys' fees, are the greater of \$5,000 or three times the amount

1 of actual damages.

2 As alleged in the CAC, on information and belief, there are more than 166 million
3 Facebook account holders in the United States. CAC ¶ 62. Plaintiffs estimate that the number of
4 separate individuals who sent private messages via Facebook during the relevant time period,
5 where such message included at least one URL in the content, is likely in the millions, and is
6 identifiable and ascertainable based on Facebook's records.

7 As discussed above, there are multiple potential mechanisms for calculating and awarding
8 damages under both ECPA and CIPA. At this stage of discovery, and absent the assistance of
9 expert opinion, Plaintiffs have not determined the most appropriate mechanism for calculation of
10 damages in this action.

11 Under the statutory damages approach, recoverable statutory damages would be calculated
12 using the following formula: For ECPA, \$10,000 multiplied by the number of Class members
13 whose rights under ECPA were violated by Facebook, except, for any Class member whose rights
14 were violated on more than 100 days, the statutory damages calculation is \$100 multiplied by the
15 number of days of violation. Under this approach, Mr. Shadpour and Mr. Hurley would seek
16 statutory damages in the amount of \$10,000. At present, Plaintiffs estimate that Mr. Campbell
17 would also seek \$10,000, but given the volume of his private messages containing URLs, there is
18 the potential that his statutory damages may exceed \$10,000.¹ Under this approach, for CIPA, the
19 applicable calculation would be: \$5,000 multiplied by the number of Class members whose rights
20 under CIPA were violated by Facebook. Plaintiffs Campbell, Hurley, and Shadpour each would
21 seek \$5,000 in statutory damages under CIPA, as well as \$5,000 for each member of the Class.
22 At this early stage in the litigation, Plaintiffs cannot calculate the amount of class-wide statutory
23 damages sought under ECPA or CIPA to any more precise degree.

24 In addition, Plaintiffs and members of the putative Class have suffered actual damages in
25 that Facebook's ECPA and CIPA violations have deprived Plaintiffs of the fundamental right to
26 exclude others, including Facebook, from accessing and using the content of their private

27 ¹ Based on current information, Plaintiffs have calculated that Mr. Campbell sent or received a
28 private message containing a URL on 2 days in 2007, 71 days in 2008, 117 days in 2009, 45 days
in 2010, 119 days in 2011, 14 days in 2012, and 47 days in 2013.

1 correspondence.² Plaintiffs intend to establish the monetary value of this right, of which
2 Plaintiffs have been deprived, through expert testimony at the appropriate time. Moreover,
3 Facebook’s business model is predicated on harvesting and monetizing user data. Through
4 discovery, Plaintiffs intend to determine the amount of profits Facebook has made as a result of
5 its violation of ECPA and CIPA. At this early stage in the litigation, without the benefit of
6 discovery, Plaintiffs cannot calculate the class-wide actual damages or wrongful profits sought
7 under ECPA or CIPA to any more precise degree.

8 Plaintiffs seek all equitable relief to which they and putative Class members are entitled,
9 including restitution and/or disgorgement for Facebook’s unjust enrichment resulting from
10 Facebook’s violation of Class members’ statutorily-protected privacy rights. With respect to the
11 computation or measure of appropriate restitution or disgorgement to the proposed Class,
12 Plaintiffs intend to rely upon expert analysis and documents to be obtained from Facebook in
13 discovery regarding Facebook’s scanning and interceptions of class members’ correspondence,
14 use of information appropriated therefrom, and Facebook’s revenues attributable to Facebook’s
15 ECPA and CIPA violations. At this early stage in the litigation, Plaintiffs cannot calculate the
16 class-wide restitution or disgorgement sought under ECPA or CIPA to any more precise degree.

17 Plaintiffs reserve the right to seek a different amount of damages for themselves and to
18 revise this response upon further discovery and investigation.

19 **IV. INSURANCE**

20 Plaintiffs are unaware of any insurance agreement relevant to this matter.
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26 ² The Court dismissed Plaintiffs’ claim under California Business & Professions Code §§ 17200
27 *et seq.*, holding that Plaintiffs did not allege lost “money or property” as required to have standing
28 under that statute. ECF No. 43. This argument has been preserved for appeal. Under ECPA and
CIPA, Plaintiffs continue to seek actual damages, to be proved at trial, in an amount adequate to
compensate Plaintiffs and putative Class members for the loss caused by Facebook of their right
to control access to their private correspondence and the information contained therein.

1 Dated: April 27, 2015

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

2
3 By: /s/ Michael W. Sobol
4 Michael W. Sobol

5 Michael W. Sobol (State Bar No. 194857)
msobol@lchb.com
6 Melissa Gardner (State Bar No. 289096)
mgardner@lchb.com
7 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
8 San Francisco, CA 94111-3339
Telephone: 415.956.1000
9 Facsimile: 415.956.1008

10 Rachel Geman
rgeman@lchb.com
11 Nicholas Diamand
ndiamand@lchb.com
12 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
13 New York, NY 10013-1413
Telephone: 212.355.9500
14 Facsimile: 212.355.9592

15 Hank Bates (State Bar No. 167688)
hbates@cbplaw.com
16 Allen Carney
acarney@cbplaw.com
17 David Slade
dslade@cbplaw.com
18 CARNEY BATES & PULLIAM, PLLC
11311 Arcade Drive
19 Little Rock, AR 72212
Telephone: 501.312.8500
20 Facsimile: 501.312.8505

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25
26
27
28

Jeremy A. Lieberman
Lesley F. Portnoy
info@pomlaw.com
POMERANTZ, LLP
600 Third Avenue, 20th Floor
New York, NY 10016
Telephone: 212.661.1100
Facsimile: 212.661.8665

Patrick V. Dahlstrom
pdahlstrom@pomlaw.com
POMERANTZ, LLP
10 S. La Salle Street, Suite 3505
Chicago, IL 60603
Telephone: 312.377.1181
Facsimile: 312.377.1184

Jon Tostrud (State Bar No. 199502)
jtostrud@tostrudlaw.com
TOSTRUD LAW GROUP, PC
1925 Century Park East, Suite 2125
Los Angeles, CA 90067
Telephone: 310.278.2600
Facsimile: 310.278.2640

Attorneys for Plaintiffs and the Proposed Class

1 **PROOF OF SERVICE**

2
3 I am a citizen of the United States and employed in San Francisco County, California. I
4 am over the age of eighteen years and not a party to the within-entitled action. My business
5 address is 275 Battery Street, 29th Floor, San Francisco, California 94111-3339.

6 I am readily familiar with Lieff, Cabraser, Heimann & Bernstein, LLP’s practice for
7 collection and processing of documents for service via email, and that practice is that the
8 documents are attached to an email and sent to the recipient’s email account.

9 On April 27, 2015, I caused to be served copies of the following documents:

- 10 **1. PLAINTIFFS’ SUPPLEMENTAL INITIAL DISCLOSURES;**
11 and this
12 **2. PROOF OF SERVICE BY EMAIL**

13 on Defendant in this action through their counsel:

14 Christopher Chorba
15 Gibson, Dunn & Crutcher LLP
16 cchorba@gibsondunn.com

17 Joshua Aaron Jessen
18 Gibson Dunn & Crutcher LLP
19 jjessen@gibsondunn.com

20 Jeana Marie Bisnar Maute
21 Gibson Dunn & Crutcher LLP
22 jbisnarmaute@gibsondunn.com

23 Ashley Marie Rogers
24 Gibson Dunn and Crutcher LLP
25 arogers@gibsondunn.com

26 Executed on April 27, 2015, at San Francisco, California.

27 /s/ Melissa A. Gardner
28 Melissa A. Gardner