EXHIBIT 12

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June 19, 2015

VIA ELECTRONIC MAIL

Hank Bates, Esq.
Carney Bates & Pulliam, PLLC
11311 Arcade Drive
Little Rock, AR 72212

Re: *Campbell v. Facebook, Inc.*, N.D. Cal. Case No. 13-cv-05996-PJH

Dear Hank:

I write in response to your second letter dated June 17, which is a self-serving attempt to posture and misstate the history regarding Plaintiffs' discovery requests and the parties' extensive discussions regarding those requests.

Although it is true that Plaintiffs propounded their First Set of Document Requests on January 26, 2015, you know that we reached out to you and your colleagues proactively (and immediately) to meet and confer over several concerns that Facebook had regarding the breadth and proposed time period for these requests, which purported to reach back to the date that Plaintiffs believed Facebook was launched to the public in 2006. On February 11, we had a lengthy telephone conference to discuss our concerns, and you invited us to serve written responses that proposed compromises on these requests. Facebook then served its written responses on March 9. Within days, we started discussing these responses—first, during a brief, in-person conversation before the Case Management Conference on March 12, and then later during a lengthy, approximately four-hour telephonic call on March 17. As you know, the call did not resolve our differences, because we were unable to receive answers to several very straightforward questions—including, for example, whether the class definition alleged in the Complaint accurately reflected the purported class that Plaintiffs seek to represent in this lawsuit.

Nevertheless, our conversations continued over the next month, including in Magistrate Judge James' courtroom after the discovery conference on April 13. (You will undoubtedly recall these discussions, particularly the concerns that we reiterated regarding the breadth of Plaintiffs' requests, which you attempted to dismiss with a cavalier response that we should know that this is "how the game is played.") Following that conference, and at Plaintiffs' insistence to prioritize immediate production of "source code," Facebook was required to divert its ongoing efforts and prioritize "source code"-related materials by June 1. Of course, Facebook's ongoing efforts to collect and produce responsive documents related to Plaintiffs' other requests were not put on hold, as we wrote to you on May 13 with a list of proposed custodians and search terms, and we also suggested another compromise regarding

the time period for Plaintiffs' requests. You responded two weeks later, on May 27, and noted that Plaintiffs had no further suggestions to the proposed search terms.

Last week, on June 12, we identified additional custodians and accepted Plaintiffs' proposed compromise on the relevant time period for the document requests (April 1, 2010 to December 30, 2013). We also cited our concerns with Plaintiffs' apparent position that any individual identified on any email would need to be added to the list of custodians: "If we were to include as a custodian any person copied on a potentially relevant e-mail (no matter their actual involvement in the issue), the number of custodians would increase exponentially. This approach is inconsistent with the proportionality requirement in Rule 26(b)(2)(C) and (g)(1)(B), the Stipulated Order re Discovery of Electronically Stored Information in this case (Dkt. 74), as well as the District Court's ESI Guideline 1.03." We also offered to discuss this issue with you.

As the foregoing summary reflects, it is only in the *last few weeks* that we have been able to reach agreement on the custodians, search terms, and date range for Plaintiffs' document requests. Accordingly, your complaints about the volume of the production to date, and your assertion that there has been "five months" of delay, plainly misstates the record. Over the last several weeks, we have worked diligently and at great expense to our client to continue to collect responsive materials from the custodians identified in our May 13 and June 12 correspondence. Those efforts continue, and we anticipate having another tranche of documents ready shortly.

As we continue our efforts, it has become apparent that the broad search terms that we initially proposed in our letter of May 13, when applied to the agreed custodians, are overbroad. Specifically, these terms have resulted in a potential review population of approximately 600,000 unique documents. Two particular terms had exceptionally high hit counts, together adding over 330,000 unique documents to the review set.[1] After a review of several thousand documents, we believe that this search term set is extremely overbroad, and we are currently utilizing a predictive coding tool to further cull this set. As you may know "predictive coding" applies advanced machine learning techniques to the text of documents to automatically classify unreviewed documents as responsive or nonresponsive. Although relatively new, this procedure is an accepted method of narrowing the review population pursuant to the Federal Rules. *See, e.g.*, *Moore v. Publicis Groupe SA*, No. 11 Civ. 1279(ALC)(AJP), 2012 WL 1446534, at *1, *3 (S.D.N.Y. Apr. 26, 2012) (overruling plaintiff's objections "that the predictive coding method contemplated in the ESI protocol

[1] The following two terms, ((message* or messenger or titan) and (spam* or filter or "junk" or "unsolicited")" and ((message* or messenger or titan) w/25 (process*)), added 146,901 and 183,497 unique documents, respectively, to the review set.

lacks generally accepted reliability standards [and] that the use of such method violates Fed. R. Civ. P. 26," and instead affirming the magistrate judge's decision, saying that "under the circumstances of this particular case, the use of the predictive coding software as specified in the ESI protocol is more appropriate than keyword searching"); *Rio Tinto PLC v. Vale S.A.*, No. 14-3042, 2015 WL 872294, at *1 (S.D.N.Y. Mar. 2, 2015) ("In the three years since *Da Silva Moore*, the case law has developed to the point that it is now black letter law that where the producing party wants to utilize TAR [technology assisted review] for document review, courts will permit it.").

The model is trained from a subset of documents that we manually reviewed and can be iteratively strengthened to improve accuracy.[2] Our goal is to continue iterating the model until we achieve a recall rate that returns a statistically significant and industry-accepted percentage of relevant documents, when applied to a subset that was manually reviewed for relevance. We are utilizing these methods in order to identify the most relevant documents from an enormous set, in order to permit them to be reviewed and produced as fast as possible. We would welcome the opportunity to confer with you regarding these methods and your thoughts on a fair, reasonable, and proportionate review process. *See* N.D. Cal. ESI Guideline 2.02 (recommending conferring regarding "[o]pportunities to reduce costs and increase efficiency and speed, such as by conferring about the methods and technology used for searching ESI to help identify the relevant information and sampling methods to validate the search for relevant information").

To the extent Plaintiffs have any objections to this approach, we should discuss them as soon as possible. We would remind you that Judge Hamilton noted at the Case Management Conference that she "agreed" with Facebook's position that the parties should focus their discovery efforts on the open factual issues identified in her Motion to Dismiss ruling, as well as issues related to class certification. When we discuss a resolution of any open disputes, it will be most constructive for you to identify the priority items that Plaintiffs require for these issues, and consider "tabling" any unrelated requests. In addition, the chart of requests attached to your letter includes several items to which Facebook objected and/or to which no responsive documents exist.

[2] Certain documents are excluded from the predictive coding process because they do not have quality text for the model to analyze, including multimedia files, picture files, system files and documents with very little text.

We look forward to a constructive dialogue on how to resolve these issues. Rather than continuing to send self-serving (and misleading) letters, you should let us know when you are available for a call next week, or confirm that you are available for an in-person meeting on June 24.

Sincerely,

Christopher Chorba

cc: All Counsel of Record