Exhibit A

REDACTED VERSION SOUGHT TO BE SEALED

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

MATTHEW CAMPBELL, MICHAEL HURLEY, and DAVID SHADPOUR,

Plaintiffs,

v.

FACEBOOK, INC.,

Defendant.

Case No. C 13-05996 PJH (MEJ)

ATTESTATION IN SUPPORT OF JOINT LETTER REGARDING FACEBOOK'S RESPONSES TO PLAINTIFFS' INTERROGATORY NO. 8 AND REQUEST FOR PRODUCTION NO. 41

Date: TBD
Time: TBD
Location: San Francisco Courthouse
Courtroom B – 15th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

REDACTED VERSION OF DOCUMENT(S) SOUGHT TO BE SEALED

Pursuant to the Discovery Standing Order for Magistrate Judge Maria-Elena James, undersigned counsel hereby attest that they met and conferred in person in a good faith attempt to resolve their disputes prior to filing the below joint letter.

Dated: September 18, 2015

Respectfully submitted,

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

By: */s/ Michael W. Sobol*
MICHAEL W. SOBOL

Attorneys for Plaintiffs

GIBSON, DUNN & CRUTCHER LLP

By: */s/ Joshua A. Jessen*
JOSHUA A. JESSEN

Attorneys for Defendant Facebook, Inc.

VIA ECF

The Honorable Maria-Elena James, Chief Magistrate Judge
United States District Court, Northern District of California
San Francisco Courthouse, Courtroom B - 15th Floor
450 Golden Gate Avenue, San Francisco, CA 94102

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

To The Hon. Maria-Elena James:

Plaintiffs and Defendant Facebook, Inc. jointly submit this letter brief pursuant to the Court's Discovery Standing Order.

I. Background

A dispute has arisen in this action over Plaintiffs' Interrogatory No. 8 and Request for Production No. 41. Interrogatory No. 8 asks Facebook to:

> Identify all facts relating to the Processing of each Private Message sent or received by Plaintiffs containing a URL, including, for each Private Message:
>
> (A) all Objects that were created during the Processing of the Private Message, including the (id) and the Object Type for each Object, as well as any Key -> Value Pair(s) contained in each Object;
>
> (B) all Objects that were created specifically when the embedded URL was shared, including the (id) and the Object Type for each Object, as well as any Key -> Value Pair(s) contained in each Object;
>
> (C) all Associations related to each Private Message, identified by the Source Object, Association Type, and Destination Object, as well as any Key -> Value Pair(s) contained in each Association;
>
> (D) the database names and table names in which each Association and Object is stored;
>
> (E) each application or feature in Facebook that uses the Objects or Associations created for each Private Message; and
>
> (F) how each Object associated with the Private Message was used by Facebook.

(Ex. A.) Request for Production No. 41, in turn, seeks the production of "[a]ll Documents and ESI relied upon, reviewed, or referenced by [Facebook] in answering Interrogatory No. 8." (Ex. B.)

In its responses, Facebook offered to meet and confer with Plaintiffs on these requests (Exs. C & D), and the parties met and conferred several times thereafter. During that

process, Plaintiffs narrowed the requests to 19 of Plaintiffs' messages. Facebook then searched for these 19 messages, located 16 of them, and produced to Plaintiffs the objects and associations (if any) related to the URLs included in those 16 messages on September 1, 2015. (Ex. E) Plaintiffs consider this a partial production. Having conferred in person, the parties are now at an impasse and submit this joint letter pursuant to the Court's Discovery Standing Order.

II. Plaintiffs' Position

These discovery requests seek information directly related to the essential issues in this case: *what* content Facebook acquires when it intercepts private messages, *where* Facebook stores that content, and *how* Facebook uses that content. Information relating to the Objects and Associations[1] created from Plaintiffs' messages is not only critical to Plaintiffs' claims, but also to Facebook's defenses.

Facebook's principal argument is *not* that this information should not be produced—rather, it argues this brief is premature. However, the brief is the culmination of three-and-a-half month process that included four in-person meet and confers and seven letters exchanged between the parties, after which time Facebook provided only partial, inadequate responses.[2] The deadline for both class certification and summary judgment motions is October 14, less than one month from the date of this filing. Facebook's position that it will provide fulsome responses at an unspecified time in the future unduly prejudices Plaintiffs in their efforts to prepare for these impending, critical deadlines.[3]

Despite stating that it will, eventually, produce the information sought, Facebook simultaneously—and contradictorily—challenges the relevance of Plaintiffs' discovery requests, claiming that only Objects and Associations directly related to URLs should be produced. Facebook knows this position is untenable, as it already has agreed to provide "all source code related to the private message function from creation through end storage, including *any scanning or acquisition of private message content and any data structures that connect or associate users to messages or message content*, and messages to attachments or URLs."[4] The source code enables Plaintiffs to understand the processes Facebook employs for its messaging functionality, thereby giving Plaintiffs an overview of how and when messages are scanned. The information sought in these requests is a *corollary* to that source code; here, Plaintiffs wish to learn what *specific* data were generated by Facebook, from only nineteen of their own messages, and how that data was used and stored.

Further, while Facebook is correct that Plaintiffs do not challenge the message scanning it conducts "for criminal conduct, illegal pornography, [and] viruses," it omits the fact that Facebook, itself, intends to rely on these scanning activities in support of its

[1] Objects and Associations are metadata structures that Facebook generates to catalog its users' online activity.
[2] *See* Declaration of David T. Rudolph in Support of Plaintiffs' Motion to Enlarge Time and Extend Dedlines at ¶¶ 29-32 (Dkt. No. 109-2).
[3] This delay has been typical of Facebook's response across the entire discovery spectrum, forcing Plaintiffs to file an opposed motion with Judge Hamilton seeking a 90-day extension to the October 14 deadlines. *See* Plaintiff's Motion to Extend Time and Enlarge Deadlines (Dkt. No. 109).
[4] E-mail from J. Jessen, Facebook Counsel, to H. Bates, Plaintiffs Counsel (Jun. 25, 2015, 11:01 PM CST).

"ordinary course of business" affirmative defense. *See* Joint Case Management Statement at 4, 6-7 (Dkt. No. 60). Facebook cannot limit production to a narrow subset of its scanning practices, while simultaneously invoking the *remainder* of its scanning practices as defenses. Accordingly, Facebook should be compelled to promptly remedy the following deficiencies:

First, Facebook has wholly ignored Plaintiffs' Interrogatory No. 8, providing instead an assortment of printouts from unidentified databases. These documents lack the necessary context and breadth to properly answer Plaintiffs' Interrogatory. **Second**, these printouts only address a subset of Plaintiffs' discovery requests; namely, Objects and Associations created from URLs present in Plaintiffs' messages.[5] **Third**, Plaintiffs sought the names of the databases and tables in which the Objects and Associations are stored, which Facebook has refused to provide. **Fourth**, none of the documents produced respond to Subparts (E) and (F) of Interrogatory No. 8, which asks Facebook to identify the uses to which Facebook puts these Objects and Associations. Facebook complains that identifying *all* these uses is unduly burdensome due to the "complicated and vast" nature of its architecture, which prevents creating a "readily identifiable list of this information." This position cuts against Facebook's argument that it does nothing with Plaintiffs' message content, is not supported by any evidence, and is counter to its position that Facebook will, in time, produce the information. **Fifth**, Facebook's production references *additional*, explanatory documents that were not provided. As just one example, FB000005827 explains that [redacted] Facebook, itself, appears to use the document [redacted] Therefore, this document and any similar reference documents should be produced.[6]

These discovery requests are narrowly tailored to provide specific examples of how Facebook's message-scanning practices work, complementing the source code already provided by Facebook. The scope of discovery has been limited further to only nineteen messages belonging to the named Plaintiffs. This information not only allows Plaintiffs to determine the extent to which their message content was acquired, stored and used, but also to measure these data points against Facebook's defenses that all message scanning and content acquisition at issue was conducted within the ordinary course of its business. This cannot happen unless Facebook is ordered to remedy the above deficiencies in its responses.

III. Facebook's Position

This is yet another unnecessary discovery letter brief, and Plaintiffs' requests are the exact opposite of "narrowly tailored." Facebook has agreed to conduct a reasonable search for relevant information in response to this interrogatory (and the accompanying Request for

[5] Even this limited subset of information is incomplete. In multiple instances [redacted]

[6] Additionally, FB000005827 contains several [redacted] If, as this document suggests, [redacted], Facebook must provide Plaintiffs with this data.

Production), as narrowed by Plaintiffs. ***Facebook has in fact already produced the information that is relevant to Plaintiffs' claims***. Moreover, Facebook is continuing to search for additional information. However, Plaintiffs' requests are vastly overbroad and much of the information is not accessible without undue burden (if it is accessible at all). The Court should therefore deny Plaintiffs' requested relief.[7]

Plaintiffs' Complaint challenges a very specific practice—namely, the alleged "scanning" ***of URLs*** sent in "private messages" to increase the "like" counter on third-party websites before the end of 2012. Plaintiffs do not challenge other processes involving Facebook messages, including other forms of what Plaintiffs characterize as "scanning," such as "scans for criminal conduct, illegal pornography, [and] viruses." (Dkt. 45 (10/1/14 Hrg. Tr.) at 41:7-17.) Indeed, Plaintiffs' proposed class includes only "Facebook users located within the United States who have sent or received private messages ***that included URLs***." (CAC ¶ 59.) Because their claims are so limited, Plaintiffs have ***redacted*** all of the content in their messages except for the URLs. ***Indeed, Plaintiffs have not produced any messages that did not include a URL.***[8] In reality, Facebook did not "intercept" URLs contained in messages. [redacted] This routine commercial conduct violates no law.

After Plaintiffs narrowed their Interrogatory No. 8 to seek information about 19 specific messages, Facebook searched for and located 16 of them. [redacted] Facebook also produced other technical information for each message. The production totaled almost ***700 pages***. Plaintiffs thus are now in possession of the "objects" and "associations" that are relevant to their claims regarding URL "scanning."[9]

Unsatisfied, Plaintiffs also have demanded the production of ***any*** "objects" and "associations" related to these messages, regardless of the fact that they have no conceivable relevance to Plaintiffs' allegations of "scanning" ***URLs*** to increase the "like" counter. Extracting the data comprising objects and associations into producible form—which Facebook's systems were never designed to do—especially for objects that are irrelevant to Plaintiffs' claims, is overbroad and unduly burdensome. Nonetheless, in an effort to avoid more wasteful motion practice, Facebook will produce those that can be identified and

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[7] Plaintiffs improperly cite their eleventh-hour "Motion to Extend Time and Enlarge Deadlines" and supporting declaration for the proposition that Facebook has "delay[ed]" its discovery responses "across the entire discovery spectrum." As Facebook will lay out in its soon-to-be filed opposition, nothing could be further from the truth. Plaintiffs have the information they need in this case; they just do not like what it shows.

[8] Plaintiffs' suggestion that they need additional information to defend against Facebook's "ordinary course of business" argument is specious. Plaintiffs do not challenge Facebook's processing of messages for these other purposes, and they already have access to all of the relevant source code for these processes, in any event.

[9] Contrary to their suggestion above, Plaintiffs also are in possession of the names of databases storing the [redacted] which were included in the produced documentation. Plaintiffs apparently expected "more context" about database names, but have not articulated what context they seek or its possible relevance.

extracted after a reasonable search. Plaintiffs have no need for this irrelevant information to prepare their motion for class certification or to oppose Facebook's future motion for summary judgment.

Plaintiffs also have demanded a variety of other pieces of information, such as (i) "each application or feature in Facebook that uses the Objects or Associations," and (ii) "how each Object associated with the Private Message was used." But Facebook is a massive social network, and processing, routing, and storing content from billions of user actions per day requires generation of an enormous amount of data that are not accessible in the way that Plaintiffs imagine. Facebook's technical architecture is complicated and vast, and there is no readily identifiable list of this information—nor can any list be assembled without significant undue burden (though it likely cannot be assembled at all). And again, Plaintiffs' request is not limited to the subject matter of their claims—***URLs*** contained in messages.[10]

Facebook already gave Plaintiffs direct access to ***all the relevant source* code—**the "black box" they told this Court they needed to understand Facebook's messages product. (Dkt. 92.) To date, Plaintiffs have had ***three different experts*** spend almost ***four weeks*** analyzing that source code (which Facebook provided, reluctantly and unusually, in this ***consumer class action*** as a compromise, not as a concession of relevance, as Plaintiffs incorrectly suggest). Yet Plaintiffs continue to demand more. This request represents an extreme burden on Facebook, whose busy and valuable technical employees must take considerable time away from their normal job duties to search for information that is not readily accessible (if it is accessible at all), and not even remotely related to Plaintiffs' claims. Plaintiffs are no longer seeking information relevant to their claims—***they are improperly fishing for a new basis for their meritless lawsuit***. *See, e.g.*, *Hughes v. LaSalle Bank, N.A.*, 2004 WL 414828, at *1-2 (S.D.N.Y. Mar. 4, 2004) (affirming order limiting discovery to the putative class alleged in the complaint); *Flores v. Bank of America*, 2012 WL 6725842, at *2-4 (S.D. Cal. Dec. 27, 2012) (denying motion to compel discovery that fell outside the class definition; such discovery "constitutes a 'fishing expedition' which would be unduly burdensome for Defendants"). Facebook respectfully requests that the Court deny Plaintiffs' request.

[10] Plaintiffs' suggestion that Facebook is obligated to either answer an overbroad and unduly burdensome interrogatory, or undertake an overbroad and unduly burdensome collection and production in order to satisfy its discovery obligations, is contrary to Rule 33. *See, e.g.*, *Kaufman v. Am. Family Mutual Ins. Co.*, 2007 WL 1430105, at *1 (D. Colo. May 11, 2007) ("[I]nterrogatories that require a party to make extensive investigations, research, or compilation or evaluation of data for the opposing party are in many circumstances improper."); *Iridex Corp. v. Synergetics, Inc.*, 2007 WL 781254, at *4 (E.D. Mo. Mar. 12, 2007) (finding that party's production of business records containing some, but not all, of the information requested was sufficient where providing such additional information would be unduly burdensome).