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13  
 14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA  
 16 OAKLAND DIVISION

17 MATTHEW CAMPBELL, MICHAEL  
 HURLEY, and DAVID SHADPOUR,

18 Plaintiffs,

19 v.

20 FACEBOOK, INC.,

21 Defendant.

Case No. C 13-05996 PJH (MEJ)

**DECLARATION OF CHRISTOPHER  
 CHORBA IN SUPPORT OF DEFENDANT  
 FACEBOOK, INC.'S MOTION FOR  
 RELIEF FROM NONDISPOSITIVE  
 PRETRIAL ORDER OF MAGISTRATE  
 JUDGE REGARDING CERTAIN OF  
 PLAINTIFFS' REQUESTS FOR  
 PRODUCTION OF DOCUMENTS (DKT.  
 130)**

1 I, Christopher Chorba, declare as follows:

2 1. I am an attorney admitted to practice law before this Court. I am a partner in the law  
3 firm of Gibson, Dunn & Crutcher LLP, and I am one of the attorneys responsible for representing  
4 Defendant Facebook, Inc. (“Facebook”) in the above-captioned action. I submit this declaration in  
5 support of Facebook’s Motion for Relief from Nondispositive Pretrial Order of Magistrate Judge  
6 Regarding Certain of Plaintiffs’ Requests for Production of Documents (Dkt. 130). Unless otherwise  
7 stated, the following facts are within my personal knowledge and, if called and sworn as a witness, I  
8 could and would testify competently to these facts.

9 2. On March 12, 2015, this Court held a Case Management Conference. (Dkt. 62.) In  
10 advance of that Conference, the parties filed a Joint Case Management Statement. (Dkt. 60.) In their  
11 portion of the Statement, Plaintiffs asserted that “discovery is open for all purposes,” while Facebook  
12 “submit[ted] that the parties should focus their discovery on class certification issues and the issues  
13 identified in this Court’s ruling on the Motion to Dismiss.” (*Id.* at 9.) At the conference, which I  
14 attended, the Court stated that it “agree[d]” with Facebook and that the parties should focus their  
15 discovery efforts on class certification and the open issues from the Motion to Dismiss order.

16 3. On October 14, 2015, Magistrate Judge James issued an order that addressed three  
17 separate discovery letter briefs, including the above-referenced joint letter brief regarding Request for  
18 Production Nos. 53-60. (Dkt. 130.) Relevant to the accompanying Motion, the order granted  
19 Plaintiffs’ Motion to Compel Facebook’s responses to Request for Production Nos. 53-60 and  
20 required Facebook to respond to these and other discovery requests by October 28, 2015. (*Id.* at 13,  
21 18.) Magistrate Judge James also instructed the parties that “given the impending motions  
22 deadlines,” they may stipulate regarding the timeline for production. (*Id.* at 18.)

23 4. On Monday, October 19, 2015, I received a call from Michael Sobol, counsel for  
24 Plaintiffs. Mr. Sobol inquired as to whether Facebook intended to appeal Magistrate Judge James’  
25 order. I explained that Facebook was still analyzing the order, but that we already identified a few  
26 areas of concern. During this discussion, I identified Request for Production No. 53, which seeks “all  
27 documents and ESI” concerning efforts to assign a “monetary value” to “Facebook Users” generally,  
28

1 and Request for Production No. 60, which seeks “all documents and ESI” relating to Facebook’s  
2 efforts to “increase and/or maximize the presence of the Like Social Plugin on Third Party websites.”  
3 I explained to Mr. Sobol that these requests, in particular the demand for “all documents and ESI”  
4 were overbroad, and that these particular requests were unrelated to Plaintiffs’ claims. Mr. Sobol  
5 cautioned that he was unable to commit to any compromises on the call, but he pledged to discuss  
6 with his colleagues and respond to my request.<sup>1</sup>

7 5. On Tuesday, October 20, Mr. Sobol wrote to me to respond to my request that  
8 Plaintiffs consider a potential compromise surrounding Request Nos. 53 and 60. He wrote, in  
9 relevant part: “This will also confirm Plaintiffs have considered the idea of a schedule prioritizing  
10 compliance with the different discovery compelled by the order. Plaintiffs’ view is that the discovery  
11 compelled fits well within the proper scope of discovery and should be fully produced forthwith.”

12 6. After conferring with Facebook, I responded to Mr. Sobol’s email a few days later.  
13 After confirming that Facebook would produce its Rule 30(b)(6) witness on October 28, I discussed a  
14 potential compromise regarding Request Nos. 53 and 60:

15 Separately, we do have some concerns about some of Plaintiffs’ damages RFPs,  
16 which we will need to raise with the District Court unless we can work out a  
17 compromise with you. In particular, certain of Plaintiffs’ RFPs seek the production  
18 of large categories of information that are not tied to Plaintiffs’ claims or the damages  
19 permitted by those claims, yet those RFPs seek the production of “all documents and  
20 ESI” relating to these broad categories.

21 For example, Request for Production No. 60, which we discussed on our call, seeks  
22 the production of “[a]ll Documents and ESI relating to Your efforts, or efforts by  
23 Third Parties on Your behalf—whether undertaken or contemplated but not  
24 undertaken—to increase and/or maximize the presence of the Like Social Plugin on  
25 Third Party websites.” This request seeks a large amount of irrelevant information  
26 and, on its face, would seem to call for the production of every document generated  
27 from April 2010 – December 2013 encouraging a third-party website to implement a  
28 Like button social plugin. Moreover, it is not disputed that Facebook made efforts  
during the relevant time period to encourage website developers to implement the  
Like button social plugin. We are willing to search for and produce representative  
documents sought by this request, or possibly to enter into a stipulation to obviate

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<sup>1</sup> During this conversation, we also discussed other issues relating to the discovery order that do not bear on this appeal, including Plaintiffs’ insistence that Facebook produce a Rule 30(b)(6) witness to testify as to its source code by no later than October 28.

1 Plaintiffs' need for this request, but responding to this overly broad request as written  
2 will necessitate an appeal.

3 We also have concerns about Request for Production No. 53, which seeks the  
4 production of "[a]ll Documents and ESI relating to Your efforts, or efforts by Third  
5 Parties on Your behalf—whether undertaken or contemplated but not undertaken—to  
6 assign a monetary value to Facebook Users, or to determine the monetary value of  
7 data received or content collected by You from Facebook Users (and/or any  
8 additional information derived therefrom), or to determine the revenue or profits  
9 made from data received or content collected by You from Facebook Users (and/or  
10 any additional information derived therefrom)." Facebook does report on average  
11 revenue per user in its SEC filings, which is a simple calculation of total revenue  
12 divided by the number of users. We assume Plaintiffs neither want nor need the  
13 underlying data and calculations that go into this figure, but the language of the  
14 request is not so limited.

15 During our conversation earlier this week, you expressed a willingness to consider  
16 reasonable compromises to avoid further motions practice. I hope you will consider  
17 this request to minimize further disputes. In addition, during the meet-and-confer that  
18 preceded Plaintiffs' damages letter brief, Hank Bates suggested to Josh Jessen that  
19 there likely were a handful of documents Plaintiffs truly needed for their damages  
20 analysis. If Plaintiffs are able to identify those documents or otherwise narrow the  
21 above requests, or to propose a stipulation on certain issues, we may be able to reach  
22 a compromise to avoid an appeal.

23 7. Mr. Sobol responded the next day (Saturday) and rejected this proposed compromise,  
24 stating "we have considered the request you made regarding Facebook producing only a portion of  
25 the documents the court has compelled Facebook to produce, and our position remains that they are  
26 well within the proper scope of discovery and that they should be produced forthwith." I responded  
27 and explained that Facebook would raise these issues with the Court. Mr. Sobol responded by  
28 requesting "a proposal that is concrete instead of talking in hypothetical conjecture," ignoring the  
specific (and detailed) proposal discussed in the previous paragraph and Plaintiffs' rejection of that  
proposed compromise. A true and correct copy of this October 20-24 email exchanged is attached to  
this Declaration as **Exhibit 1**.

I declare under penalty of perjury under the laws of the United States of America and the  
State of California that the foregoing is true and correct, and that I executed this Declaration in Los  
Angeles, California, on October 28, 2015.

/s/ Christopher Chorba  
Christopher Chorba

