

EXHIBIT 1

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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 OAKLAND DIVISION

18 MATTHEW CAMPBELL, MICHAEL
19 HURLEY, and DAVID SHADPOUR,

20 Plaintiffs,

21 v.

22 FACEBOOK, INC.,

23 Defendant.

Case No. C 13-05996 PJH (MEJ)

PUTATIVE CLASS ACTION

**DEFENDANT FACEBOOK, INC.'S
SUPPLEMENTAL RESPONSES AND
OBJECTIONS TO PLAINTIFFS'
REQUEST FOR PRODUCTION NOS. 54,
55, AND 57**

1 Defendant Facebook, Inc. (“Defendant” or “Facebook”), by and through its attorneys, and
2 pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, the Local Civil Rules of the U.S.
3 District Court for the Northern District of California, the Court orders in this action, and the parties’
4 agreements and conferences among counsel, provides the following supplemental responses and
5 objections to Plaintiffs’ Request for Production Nos. 54, 55, and 57 (the “Requests”).

6 **PRELIMINARY STATEMENT**

7 1. Facebook’s document production in this matter will be made pursuant to the
8 provisions of the Amended Stipulated Protective Order entered by the Court on July 1, 2015.

9 2. Facebook’s responses to the Requests are made to the best of Facebook’s current
10 knowledge, information, and belief. Facebook reserves the right to supplement or amend any
11 responses should future investigation indicate that such supplementation or amendment is necessary.

12 3. Facebook’s responses to the Requests are made solely for the purpose of and in
13 relation to this action. Each response is given subject to all appropriate objections (including, but not
14 limited to, objections concerning privilege, competency, relevancy, materiality, propriety, and
15 admissibility). All objections are reserved and may be interposed at any time.

16 4. Facebook’s responses are premised on its understanding that Plaintiffs seek only that
17 information that is within Facebook’s possession, custody, and control.

18 5. Facebook incorporates by reference each and every general objection set forth below
19 into each and every specific response. From time to time, a specific response may repeat a general
20 objection for emphasis or some other reason. The failure to include any general objection in any
21 specific response shall not be interpreted as a waiver of any general objection to that response.

22 6. Nothing contained in these Responses and Objections or provided in response to the
23 Requests consists of, or should be construed as, an admission relating to the accuracy, relevance,
24 existence, or nonexistence of any alleged facts or information referenced in any Request.

25 **GENERAL OBJECTIONS**

26 1. Facebook objects to each Request, including the Definitions and Instructions, to the
27 extent that it purports to impose obligations beyond those imposed by the Federal Rules of Civil
28

1 Procedure, the Federal Rules of Evidence, the Local Civil Rules of the U.S. District Court for the
2 Northern District of California, and any agreements between the parties.

3 2. Facebook objects to each Request to the extent that it is not limited to the relevant
4 time period, thus making the Request overly broad, unduly burdensome, and not relevant to the
5 claims or defenses in this action. Unless otherwise specified in its responses, and pursuant to the
6 agreement of the parties, Facebook's responses will be limited to information generated between
7 April 1, 2010 and December 30, 2013.

8 3. Facebook objects to each Request to the extent that it seeks information unrelated and
9 irrelevant to the claims or defenses in this litigation and not reasonably calculated to lead to the
10 discovery of admissible evidence.

11 4. Facebook objects to each Request as overly broad and unduly burdensome,
12 particularly in view of Facebook's disproportionate cost necessary to investigate as weighed against
13 Plaintiffs' need for the information. For example, many of the Requests seek broad and vaguely
14 defined categories of materials that are not reasonably tailored to the subject matter of this action.

15 5. Facebook objects to each Request to the extent that it purports to request the
16 identification and disclosure of information or documents that were prepared in anticipation of
17 litigation, constitute attorney work product, reveal privileged attorney-client communications, or are
18 otherwise protected from disclosure under any applicable privileges, laws, or rules. Facebook hereby
19 asserts all such applicable privileges and protections, and excludes privileged and protected
20 information from its responses to each Request. *See generally* Fed. R. Evid. 502; Cal. Code Evid.
21 § 954. Inadvertent production of any information or documents that are privileged or otherwise
22 immune from discovery shall not constitute a waiver of any privilege or of any other ground for
23 objecting to the discovery with respect to such information or documents or the subject matter
24 thereof, or the right of Facebook to object to the use of any such information or documents or the
25 subject matter thereof during these or any other proceedings. In the event of inadvertent disclosure
26 of any information or inadvertent production or identification of documents or communications that
27 are privileged or otherwise immune from discovery, Plaintiffs will return the information and
28

1 documents to Facebook and will be precluded from disclosing or relying upon such information or
2 documents in any way.

3 6. Facebook objects to each and every Request, Definition, and Instruction to the extent
4 that it seeks information outside of Facebook’s possession, custody, and control.

5 7. Facebook objects to each Request to the extent that it requests information protected
6 by the right of privacy of Facebook and/or third parties, or information that is confidential,
7 proprietary, or competitively sensitive.

8 8. Facebook objects to each Request to the extent that it seeks documents or information
9 already in Plaintiffs’ possession or available in the public domain. Such information is equally
10 available to Plaintiffs.

11 9. Facebook objects to each Request to the extent that it calls for the production of
12 “each,” “every,” “any,” or “all” documents in cases where such a demand is overly broad and/or
13 causes undue burden and expense.

14 10. Facebook objects to the production of Documents within thirty (30) days of service
15 and will produce Documents at a mutually agreed upon time.

16 **OBJECTIONS TO DEFINITIONS**

17 1. Facebook generally objects to Plaintiffs’ definitions of “Communication,”
18 “Document(s),” “Electronic Media,” “ESI,” “Electronically Stored Information,” “Identify,” and
19 “Metadata” to the extent that Plaintiffs purport to use these defined terms to request the identification
20 and disclosure of documents that: (a) were prepared in anticipation of litigation; (b) constitute
21 attorney work product; (c) reveal privileged attorney-client communications; or (d) are otherwise
22 protected from disclosure under any applicable privileges, laws, and/or rules. Facebook further
23 objects to the extent that these definitions purport to impose obligations that go beyond the
24 requirements of the Federal and Local Rules.

25 2. Facebook objects to Plaintiffs’ definition of “Passive Likes” as vague, ambiguous,
26 overly broad, and unduly burdensome. Facebook further objects to the definition to the extent that
27 Plaintiffs purport to use this defined term to seek materials that are not relevant to the claims and
28 defenses in this action. Facebook construes the term “Passive Lives” as it relates to the practice

1 challenged in this action (the alleged increase in the Facebook “Like” count on a website when the
2 URL for that website was contained in a message transmitted through Facebook’s Messages product
3 during the class period).

4 3. Facebook objects to Plaintiffs’ definition and use of the term “Person” as vague,
5 ambiguous, overly broad, and unduly burdensome to the extent that Plaintiffs intend to use this term
6 to include “any natural person or any business, legal or governmental entity or association” over
7 which Facebook exercises no control.

8 4. Facebook objects to Plaintiffs’ definition of “Private Message(s)” to the extent that it
9 is vague, ambiguous, overly broad, and unduly burdensome. Facebook further objects to the
10 definition to the extent that Plaintiffs purport to use this defined term to seek materials that are not
11 relevant to the claims and defenses in this action.

12 5. Facebook objects to Plaintiffs’ definitions of “Relate(s) to,” “Related to” and
13 “Relating to” on the ground that the definitions make the Requests overly broad and unduly
14 burdensome and impose obligations that go beyond the requirements of the Federal and Local Rules.
15 Facebook shall construe these terms as commonly and ordinarily understood.

16 6. Facebook objects to Plaintiffs’ definition and use of the terms “You,” “Your,” or
17 “Facebook” as vague, ambiguous, overly broad, and unduly burdensome to the extent the terms are
18 meant to include “directors, officers, employees, partners, members, representatives, agents
19 (including attorneys, accountants, consultants, investment advisors or bankers), and any other person
20 purporting to act on [Facebook, Inc.’s] behalf. . . . parents, subsidiaries, affiliates, predecessor
21 entities, successor entities, divisions, departments, groups, acquired entities and/or related entities or
22 any other entity acting or purporting to act on its behalf” over which Facebook exercises no control,
23 and to the extent that Plaintiffs purport to use these terms to impose obligations that go beyond the
24 requirements of the Federal and Local Rules.

25 **OBJECTIONS TO “RULES OF CONSTRUCTION” AND INSTRUCTIONS**

26 1. Facebook objects to Plaintiffs’ “Rules of Construction” and “Instructions” to the
27 extent that they impose obligations that go beyond the requirements of the Federal and Local Rules.

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1 2. Facebook objects to Plaintiffs’ Instruction No. 2 to the extent that it is not limited to
2 the relevant time period, thus making the Instruction overly broad, unduly burdensome, and not
3 relevant to the claims or defenses in this action. Unless otherwise specified in its responses, and
4 pursuant to the agreement of the parties, Facebook’s response will be limited to information
5 generated between April 1, 2010 and December 30, 2013.

6 3. Facebook objects to Plaintiffs’ Instruction No. 6 as ambiguous and unduly
7 burdensome. Facebook further objects to the Instruction to the extent it seeks the production of
8 irrelevant documents and exceeds the requirements of the Federal and Local Rules.

9 **OBJECTION TO PURPORTED “RELEVANT TIME PERIOD”**

10 Facebook objects to Plaintiffs’ proposed “Relevant Time Period” (September 26, 2006, to the
11 present) because it substantially exceeds the proposed class period identified in Plaintiffs’
12 Consolidated Amended Complaint, does not reflect the time period that is relevant to Plaintiffs’
13 claims in this action, and renders the Requests overly broad, unduly burdensome, and irrelevant.
14 Unless otherwise specified, and pursuant to the agreement of the parties, Facebook’s Responses to
15 these Requests will be limited to information generated between April 1, 2010 and December 30,
16 2013. Facebook otherwise objects to the remainder of Plaintiffs’ statement regarding the “Relevant
17 Time Period” to the extent that it purports to impose obligations beyond those imposed by the Federal
18 and Local Rules.

19 **SPECIFIC RESPONSES AND OBJECTIONS**

20 **REQUEST FOR PRODUCTION NO. 54:**

21 All Documents and ESI relating to Your efforts, or efforts by Third Parties on Your behalf—
22 whether undertaken or contemplated but not undertaken—to assign a monetary value to the data
23 contained within, or data received or content collected from, Private Messages, and/or any additional
24 information derived therefrom.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 54:**

26 Facebook restates and incorporates its Preliminary Statement, General Objections, Objections
27 to “Rules of Construction,” Instructions, and Purported “Relevant Time Period” as though fully set
28 forth in this Response. Facebook further objects to this Request on the following additional grounds:

1 (A) Facebook objects to this Request to the extent that it seeks documents protected from
2 disclosure by the attorney-client privilege, the attorney work-product doctrine, and/or any other
3 applicable privilege, doctrine, or protection. Facebook interprets this Request as though it excludes
4 documents protected by these privileges and protections.

5 (B) The Request is vague and ambiguous in its use of the terms and phrases “efforts by
6 Third Parties on Your behalf,” “undertaken or contemplated but not undertaken,” “data contained
7 within, or data received or content collected from,” “Private Messages,” and “any additional
8 information derived therefrom.”

9 (C) The Request is overly broad and unduly burdensome as to the time period and to the
10 extent it seeks “All Documents and ESI.”

11 (D) The Request seeks documents that reflect trade secrets, confidential, and/or
12 proprietary company information.

13 (E) The Request is overly broad, unduly burdensome, and harassing in view of
14 Facebook’s cost necessary to investigate as weighed against Plaintiffs’ need for the information. This
15 Request purports to seek all documents related to Facebook’s “or efforts by Third Parties on
16 [Facebook’s] behalf—whether undertaken or contemplated but not undertaken—to assign a monetary
17 value to the data contained within, or data received or content collected from, Private Messages,
18 and/or any additional information derived therefrom,” regardless of the relevance of those documents
19 to the claims or defenses in this action.

20 (F) The Request seeks documents that are not relevant to the claims or defenses in this
21 action and are not reasonably calculated to lead to the discovery of admissible evidence.

22 (G) The Request seeks to impose obligations that go beyond the requirements of the
23 Federal and Local Rules.

24 Subject to and without waiving the foregoing objections, and subject to the ongoing nature of
25 discovery in this action, Facebook responds as follows: Facebook will meet and confer with
26 Plaintiffs’ counsel to determine the proper scope of this overly broad and ambiguous Request.
27
28

1 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 54:**

2 Facebook restates and incorporates its Preliminary Statement, General Objections, Objections
3 to “Rules of Construction,” Instructions, and Purported “Relevant Time Period” as though fully set
4 forth in this Response. Facebook further objects to this Request on the following additional grounds:

5 (A) Facebook objects to this Request to the extent that it seeks documents protected from
6 disclosure by the attorney-client privilege, the attorney work-product doctrine, and/or any other
7 applicable privilege, doctrine, or protection. Facebook interprets this Request as though it excludes
8 documents protected by these privileges and protections.

9 (B) The Request is vague and ambiguous in its use of the terms and phrases “efforts by
10 Third Parties on Your behalf,” “undertaken or contemplated but not undertaken,” “data contained
11 within, or data received or content collected from,” “Private Messages,” and “any additional
12 information derived therefrom.”

13 (C) The Request is overly broad and unduly burdensome as to the time period and to the
14 extent it seeks “All Documents and ESI.”

15 (D) The Request seeks documents that reflect trade secrets, confidential, and/or
16 proprietary company information.

17 (E) The Request is overly broad, unduly burdensome, and harassing in view of
18 Facebook’s cost necessary to investigate as weighed against Plaintiffs’ need for the information. This
19 Request purports to seek all documents related to Facebook’s “or efforts by Third Parties on
20 [Facebook’s] behalf—whether undertaken or contemplated but not undertaken—to assign a monetary
21 value to the data contained within, or data received or content collected from, Private Messages,
22 and/or any additional information derived therefrom,” regardless of the relevance of those documents
23 to the claims or defenses in this action.

24 (F) The Request seeks documents that are not relevant to the claims or defenses in this
25 action and are not reasonably calculated to lead to the discovery of admissible evidence.

26 (G) The Request seeks to impose obligations that go beyond the requirements of the
27 Federal and Local Rules.

28

1 Subject to and without waiving the foregoing objections, and subject to the ongoing nature of
2 discovery in this action, Facebook responds as follows: Facebook has conducted a reasonable search
3 and diligent inquiry, and it has not located any non-privileged documents during the relevant time
4 period that reflect efforts to assign a monetary value to the data contained within, or data received or
5 content collected from, messages transmitted through Facebook’s Messages product.

6 **REQUEST FOR PRODUCTION NO. 55:**

7 All Documents and ESI sufficient to identify the number of web pages with “Like” Social
8 Plugins embedded, by month, during the Relevant Time Period.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 55:**

10 Facebook restates and incorporates its Preliminary Statement, General Objections, Objections
11 to “Rules of Construction,” Instructions, and Purported “Relevant Time Period” as though fully set
12 forth in this Response. Facebook further objects to this Request on the following additional grounds:

13 (A) Facebook objects to this Request to the extent that it seeks documents protected from
14 disclosure by the attorney-client privilege, the attorney work-product doctrine, and/or any other
15 applicable privilege, doctrine, or protection. Facebook interprets this Request as though it excludes
16 documents protected by these privileges and protections.

17 (B) The Request is overly broad and unduly burdensome as to the time period and to the
18 extent it seeks “All Documents and ESI.”

19 (C) The Request seeks documents that reflect trade secrets, confidential, and/or
20 proprietary company information.

21 (D) The Request is overly broad, unduly burdensome, and harassing in view of
22 Facebook’s cost necessary to investigate as weighed against Plaintiffs’ need for the information. This
23 Request purports to seek all documents sufficient to identify “the number of web pages with ‘Like’
24 Social Plugins embedded, by month,” regardless of the relevance of those documents to the claims or
25 defenses in this action.

26 (E) The Request seeks documents that are not relevant to the claims or defenses in this
27 action and are not reasonably calculated to lead to the discovery of admissible evidence.

28

1 (F) The Request seeks to impose obligations that go beyond the requirements of the
2 Federal and Local Rules.

3 Subject to and without waiving the foregoing objections, and subject to the ongoing nature of
4 discovery in this action, Facebook responds as follows: Facebook will conduct a reasonable search
5 for non-privileged documents sufficient to identify the number of web pages with “Like” Social
6 Plugins embedded between April 1, 2010 and December 30, 2013, to the extent such documents
7 exist, are within Facebook’s custody and control, have not already been produced to Plaintiffs, and
8 can be located using a reasonable search.

9 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 55:**

10 Facebook restates and incorporates its Preliminary Statement, General Objections, Objections
11 to “Rules of Construction,” Instructions, and Purported “Relevant Time Period” as though fully set
12 forth in this Response. Facebook further objects to this Request on the following additional grounds:

13 (A) Facebook objects to this Request to the extent that it seeks documents protected from
14 disclosure by the attorney-client privilege, the attorney work-product doctrine, and/or any other
15 applicable privilege, doctrine, or protection. Facebook interprets this Request as though it excludes
16 documents protected by these privileges and protections.

17 (B) The Request is overly broad and unduly burdensome as to the time period and to the
18 extent it seeks “All Documents and ESI.”

19 (C) The Request seeks documents that reflect trade secrets, confidential, and/or
20 proprietary company information.

21 (D) The Request is overly broad, unduly burdensome, and harassing in view of
22 Facebook’s cost necessary to investigate as weighed against Plaintiffs’ need for the information. This
23 Request purports to seek all documents sufficient to identify “the number of web pages with ‘Like’
24 Social Plugins embedded, by month,” regardless of the relevance of those documents to the claims or
25 defenses in this action.

26 (E) The Request seeks documents that are not relevant to the claims or defenses in this
27 action and are not reasonably calculated to lead to the discovery of admissible evidence.

28

1 (F) The Request seeks to impose obligations that go beyond the requirements of the
2 Federal and Local Rules.

3 Subject to and without waiving the foregoing objections, and subject to the ongoing nature of
4 discovery in this action, Facebook responds as follows: Facebook has conducted a reasonable search
5 and diligent inquiry, and it has not located any non-privileged documents that are sufficient to
6 identify the number of web pages with “Like” Social Plugins during the relevant time period .

7 **REQUEST FOR PRODUCTION NO. 57:**

8 All Documents and ESI sufficient to identify the number of Passive Likes generated, by
9 month, during the Relevant Time Period

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 57:**

11 Facebook restates and incorporates its Preliminary Statement, General Objections, Objections
12 to “Rules of Construction,” Instructions, and Purported “Relevant Time Period” as though fully set
13 forth in this Response. Facebook further objects to this Request on the following additional grounds:

14 (A) Facebook objects to this Request to the extent that it seeks documents protected from
15 disclosure by the attorney-client privilege, the attorney work-product doctrine, and/or any other
16 applicable privilege, doctrine, or protection. Facebook interprets this Request as though it excludes
17 documents protected by these privileges and protections.

18 (B) The Request is vague and ambiguous in its use of the term “Passive Likes.”

19 (C) The Request is overly broad and unduly burdensome as to the time period and to the
20 extent it seeks “All Documents and ESI.”

21 (D) The Request seeks documents that reflect trade secrets, confidential, and/or
22 proprietary company information.

23 (E) The Request is overly broad, unduly burdensome, and harassing in view of
24 Facebook’s cost necessary to investigate as weighed against Plaintiffs’ need for the information. This
25 Request purports to seek all documents sufficient to identify “the number of Passive Likes generated,
26 by month,” regardless of the relevance of those documents to the claims or defenses in this action.

27 (F) The Request seeks documents that are not relevant to the claims or defenses in this
28 action and are not reasonably calculated to lead to the discovery of admissible evidence.

1 (G) The Request seeks to impose obligations that go beyond the requirements of the
2 Federal and Local Rules.

3 Subject to and without waiving the foregoing objections, and subject to the ongoing nature of
4 discovery in this action, Facebook responds as follows: Facebook will conduct a reasonable search
5 for non-privileged documents sufficient to identify the number Likes that were generated as a result
6 of the processes involved in the practice challenged in this action (the alleged increase in the
7 Facebook “Like” count on a website when the URL for that website was contained in a message
8 transmitted through Facebook’s Messages product) between April 1, 2010 and December 30, 2013, to
9 the extent such documents exist, are within Facebook’s custody and control, have not already been
10 produced to Plaintiffs, and can be located using a reasonable search.

11 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 57:**

12 Facebook restates and incorporates its Preliminary Statement, General Objections, Objections
13 to “Rules of Construction,” Instructions, and Purported “Relevant Time Period” as though fully set
14 forth in this Response. Facebook further objects to this Request on the following additional grounds:

15 (A) Facebook objects to this Request to the extent that it seeks documents protected from
16 disclosure by the attorney-client privilege, the attorney work-product doctrine, and/or any other
17 applicable privilege, doctrine, or protection. Facebook interprets this Request as though it excludes
18 documents protected by these privileges and protections.

19 (B) The Request is vague and ambiguous in its use of the term “Passive Likes.”

20 (C) The Request is overly broad and unduly burdensome as to the time period and to the
21 extent it seeks “All Documents and ESI.”

22 (D) The Request seeks documents that reflect trade secrets, confidential, and/or
23 proprietary company information.

24 (E) The Request is overly broad, unduly burdensome, and harassing in view of
25 Facebook’s cost necessary to investigate as weighed against Plaintiffs’ need for the information. This
26 Request purports to seek all documents sufficient to identify “the number of Passive Likes generated,
27 by month,” regardless of the relevance of those documents to the claims or defenses in this action.

28

1 (F) The Request seeks documents that are not relevant to the claims or defenses in this
2 action and are not reasonably calculated to lead to the discovery of admissible evidence.

3 (G) The Request seeks to impose obligations that go beyond the requirements of the
4 Federal and Local Rules.

5 Subject to and without waiving the foregoing objections, and subject to the ongoing nature of
6 discovery in this action, Facebook responds as follows: Facebook has conducted a reasonable search
7 and diligent inquiry, and it has not located any non-privileged documents sufficient to identify the
8 number of Likes that were generated as a result of the processes involved in the practice challenged
9 in this action (the alleged increase in the Facebook “Like” count on a website when the URL for that
10 website was contained in a message transmitted through Facebook’s Messages product) during the
11 relevant time period.

12 DATED: October 28, 2015

GIBSON, DUNN & CRUTCHER LLP

14 By: _____ /s/

15 Joshua A. Jessen

16 Attorney for Defendant FACEBOOK, INC.

1 **PROOF OF SERVICE**

2 I, Priyanka Rajagopalan, declare as follows:

3 I am employed in the County of Santa Clara, State of California, I am over the age of eighteen
4 years and am not a party to this action; my business address is 1881 Page Mill Road, Palo Alto, CA
94304-1211, in said County and State. On October 28, 2015, I served the following document(s):

5 **DEFENDANT FACEBOOK, INC.’S SUPPLEMENTAL RESPONSES AND**
6 **OBJECTIONS TO PLAINTIFFS’ REQUEST FOR PRODUCTION NOS. 54, 55,**
7 **AND 57**

8 on the parties stated below, by the following means of service:

9 David F. Slade
10 dslade@cbplaw.com
11 James Allen Carney
12 acarney@cbplaw.com
13 Joseph Henry Bates, III
14 Carney Bates & Pulliam, PLLC
15 hbates@cbplaw.com

16 Melissa Ann Gardner
17 mgardner@lchb.com
18 Nicholas Diamand
19 ndiamand@lchb.com
20 Rachel Geman
21 rgeman@lchb.com
22 Michael W. Sobol
23 Loeff Cabraser Heimann & Bernstein, LLP
24 msobol@lchb.com

- 25 **BY ELECTRONIC SERVICE:** On the above-mentioned date, based on a court order or
26 an agreement of the parties to accept service by electronic transmission, I caused the
27 documents to be sent to the persons at the electronic notification addresses as shown
28 above.
- I am employed in the office of Joshua A. Jessen and am a member of the bar of this court.
- I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 28, 2015.

/s/
Priyanka Rajagopalan