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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.  
 22

Case No. C 13-05996 PJH (MEJ)

**DECLARATION OF JOSHUA JESSEN IN  
 SUPPORT OF DEFENDANT FACEBOOK,  
 INC.'S OPPOSITION TO PLAINTIFFS'  
 RENEWED MOTION TO CONTINUE  
 DEADLINES**

1 I, Joshua Jessen, 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 Opposition to Plaintiffs’ Renewed Motion to Continue Deadlines (Dkt. 134;  
6 the “Motion”). Unless otherwise stated, the following facts are within my personal knowledge and, if  
7 called and sworn as a witness, I could and would testify competently to these facts.

8 2. Between February 2015 and September 30, 2015, Facebook made approximately 12  
9 document productions totaling approximately 7,858 pages. This included a June 1 production that  
10 contained many technical documents, as well as the core e-mails relevant to Plaintiffs’ claims.  
11 Additionally, Facebook made all of the relevant source code available to Plaintiffs and their experts  
12 toward the end of July.

13 3. Facebook made its thirteenth document production on October 13, 2015, consisting of  
14 approximately 2,656 pages of documents. Approximately 866 pages of this production consisted of a  
15 single document that had been sent to approximately 866 recipients. My colleague, Jeana Maute,  
16 notified Plaintiffs’ counsel of this issue on October 7 in an e-mail that stated in pertinent part:

17 David, as I noted in my email last week, we have identified a set of documents that  
18 contain a number of very close (but not exact) duplicates. Specifically, we have  
19 identified several hundred versions of an email that is duplicative of a document we  
20 have already produced to Plaintiffs; the only difference among the versions is that they  
21 reflect approximately 900 different recipients ... Plaintiffs recently complained about  
22 receiving near-duplicate documents. Given these complaints, one alternative is that  
23 we can provide a list of all recipients of this document, along with an additional  
24 copy. We will plan to proceed in that fashion unless you want all duplicate copies.

25 In response to this e-mail, Plaintiffs’ counsel asked that Facebook “produce all copies of the  
26 document.” A true and correct copy of this e-mail exchange is attached hereto as **Exhibit 1**.

1           4.           Excluding the approximately 866 pages of duplicates, Facebook’s October 13  
2 production constitutes approximately 13% of Facebook’s production to date. This calculation does  
3 not include Facebook’s July production of what Plaintiffs have described as “over 10 million lines of  
4 [source] code” (Dkt. 109-2 ¶ 16).

5           5.           On October 14, Magistrate Judge James issued a discovery order that addressed three  
6 separate discovery letter briefs, including briefs concerning (i) Plaintiffs’ Request for Production  
7 Nos. 53-60, (ii) Plaintiffs’ Interrogatory No. 8 and Request for Production No. 41, and (iii) Topics 1  
8 and 2 of Plaintiffs’ 30(b)(6) deposition notice (both of which concerned Facebook’s source code).  
9 (Dkt. 130.) The order was in Plaintiffs’ favor and stated that “Facebook must respond to these  
10 requests in accordance with this Order no later than October 28, 2015.” (*Id.* at 18.)

11           6.           In response to that order, Facebook undertook extensive efforts to gather and review  
12 additional documents and information (much of which is not relevant to Plaintiffs’ claims), and  
13 Facebook made a further document production on October 28 pursuant to the order. That production  
14 (Facebook’s fourteenth) consisted of approximately 3,292 pages of documents. The same day,  
15 Facebook also served Supplemental Responses and Objections to Plaintiffs’ Request for Production  
16 Nos. 54, 55, and 57. (Dkt. 134-2.) Facebook’s supplemental responses reflect the fact that  
17 “Facebook has conducted a reasonable search and diligent inquiry, and it has not located any non-  
18 privileged documents” responsive to these three requests during the relevant time period. (*Id.*)  
19 Contrary to Plaintiffs’ statement in their Motion, Facebook is not “continu[ing] to withhold entire  
20 categories of documents, standing on objections overruled by Magistrate Judge Maria-Elena James,  
21 even though it does not appeal her order with respect to those categories.” (Dkt. 134 at 2.) On the  
22 contrary, Facebook searched for—but did not locate—documents responsive to these requests during  
23 the relevant time period even before Plaintiffs filed their “damages” letter brief. (Dkt. 112.) Indeed,  
24 I informed Plaintiffs of this fact for the first time two months ago (on September 2). Nonetheless,  
25 following entry of the discovery order, Facebook renewed its search for documents responsive to  
26 these requests. It again located none.

