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Crutcher LLP

Case No. C 13-05996 PJH (MEJ)

Campbell et al v. Facebook Inc.

Doc. 135 Att. 1

I, Joshua Jessen, declare as follows:

- 1. I am an attorney admitted to practice law before this Court. I am a partner in the law firm of Gibson, Dunn & Crutcher LLP, and I am one of the attorneys responsible for representing Defendant Facebook, Inc. ("Facebook") in the above-captioned action. I submit this declaration in support of Facebook's Opposition to Plaintiffs' Renewed Motion to Continue Deadlines (Dkt. 134; the "Motion"). Unless otherwise stated, the following facts are within my personal knowledge and, if called and sworn as a witness, I could and would testify competently to these facts.
- 2. Between February 2015 and September 30, 2015, Facebook made approximately 12 document productions totaling approximately 7,858 pages. This included a June 1 production that contained many technical documents, as well as the core e-mails relevant to Plaintiffs' claims. Additionally, Facebook made all of the relevant source code available to Plaintiffs and their experts toward the end of July.
- 3. Facebook made its thirteenth document production on October 13, 2015, consisting of approximately 2,656 pages of documents. Approximately 866 pages of this production consisted of a single document that had been sent to approximately 866 recipients. My colleague, Jeana Maute, notified Plaintiffs' counsel of this issue on October 7 in an e-mail that stated in pertinent part:

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

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

- 4. Excluding the approximately 866 pages of duplicates, Facebook's October 13 production constitutes approximately 13% of Facebook's production to date. This calculation does not include Facebook's July production of what Plaintiffs have described as "over 10 million lines of [source] code" (Dkt. 109-2 ¶ 16).
- 5. On October 14, Magistrate Judge James issued a discovery order that addressed three separate discovery letter briefs, including briefs concerning (i) Plaintiffs' Request for Production Nos. 53-60, (ii) Plaintiffs' Interrogatory No. 8 and Request for Production No. 41, and (iii) Topics 1 and 2 of Plaintiffs' 30(b)(6) deposition notice (both of which concerned Facebook's source code). (Dkt. 130.) The order was in Plaintiffs' favor and stated that "Facebook must respond to these requests in accordance with this Order no later than October 28, 2015." (*Id.* at 18.)
- In response to that order, Facebook undertook extensive efforts to gather and review 6. additional documents and information (much of which is not relevant to Plaintiffs' claims), and Facebook made a further document production on October 28 pursuant to the order. That production (Facebook's fourteenth) consisted of approximately 3,292 pages of documents. The same day, Facebook also served Supplemental Responses and Objections to Plaintiffs' Request for Production Nos. 54, 55, and 57. (Dkt. 134-2.) Facebook's supplemental responses reflect the fact that "Facebook has conducted a reasonable search and diligent inquiry, and it has not located any nonprivileged documents" responsive to these three requests during the relevant time period. (*Id.*) Contrary to Plaintiffs' statement in their Motion, Facebook is not "continu[ing] to withhold entire categories of documents, standing on objections overruled by Magistrate Judge Maria-Elena James, even though it does not appeal her order with respect to those categories." (Dkt. 134 at 2.) On the contrary, Facebook searched for—but did not locate—documents responsive to these requests during the relevant time period even before Plaintiffs filed their "damages" letter brief. (Dkt. 112.) Indeed, I informed Plaintiffs of this fact for the first time two months ago (on September 2). Nonetheless, following entry of the discovery order, Facebook renewed its search for documents responsive to these requests. It again located none.

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7. In response to the discovery order, Facebook also served a lengthy supplemental response to Plaintiffs' Interrogatory No. 8—which took considerable time to research and assemble—providing even more detailed technical information about Facebook's systems. The supplemental portion of that response was approximately nine pages long, which stands in sharp contrast to the terse interrogatory responses Plaintiffs generally have served in this case, which often have done little more than refer Facebook back to the Complaint.

- 8. On October 28, again in response to the discovery order, Facebook produced two experienced software engineers to provide extensive 30(b)(6) deposition testimony on the relevant portions of Facebook's source code. I represented Facebook at those depositions, which lasted from approximately 9:30 a.m. to 7:30 p.m. Neither during nor after those depositions did Plaintiffs' counsel indicate to me that Plaintiffs planned to file a second motion to continue the case deadlines the very next day. Plaintiffs made no effort to meet and confer. In fact, the first time my colleagues and I learned of Plaintiffs' "renewed" motion was when we received electronic notification that it had been filed on October 29 at approximately 9:54 p.m.
- 9. Plaintiffs and their experts have collectively spent approximately 48 days reviewing Facebook's source code.
- On October 28, Facebook also appealed two discrete portions of the discovery order concerning Plaintiffs' Request for Production Nos. 53 and 60, which seek "all documents and ESI" regarding (i) the "monetary value" of "Facebook users" generally, and (ii) Facebook's efforts during the relevant time period to encourage website developers to implement the "Like" button social plugin. (Dkt. 133.) Despite this appeal, Facebook's October 28 production included representative documents responsive to these irrelevant and overbroad requests.

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 Irvine, California, on November 2, 2015.

/s/ Joshua Jessen Joshua Jessen