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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MATTHEW CAMPBELL, et al.,  
Plaintiffs,  
v.  
FACEBOOK, INC.,  
Defendant.

Case No. 13-cv-5996-PJH

**ORDER DENYING MOTION FOR  
RELIEF FROM NONDISPOSITIVE  
PRETRIAL ORDER OF MAGISTRATE  
JUDGE; DENYING RENEWED  
MOTION TO CONTINUE**

United States District Court  
Northern District of California

Before the court are two motions: (1) defendant Facebook's motion for relief from nondispositive pretrial order of Magistrate Judge James, and (2) plaintiffs' renewed motion to continue deadlines. Having read the papers filed in conjunction with the motions and carefully considered the arguments and relevant legal authority, and good cause appearing, the court hereby rules as follows.

Facebook's motion challenges two aspects of Magistrate Judge James' discovery order (referred to as "the Order"). First, Facebook challenges the Order to the extent it granted plaintiffs' motion to compel a response to Request for Production ("RFP") No. 53, which seeks documents related to assigning a monetary value to Facebook users or related to revenue and profits generated from users' data and content. Second, Facebook challenges the Order to the extent it granted plaintiffs' motion to compel a response to RFP No. 60, which seeks documents related to Facebook's efforts to increase or maximize the presence of its "Like" social plugin.

Facebook argues that the Order is contrary to law for two primary reasons: (1) it addressed RFPs 53 through 60 "en masse, rather than conducting an individualized

1 relevance analysis of each request,” and (2) it “improperly expanded the scope of  
2 discovery on the basis that no discovery supports or proves plaintiffs’ underlying theory.”

3 Starting with (1), the court finds no basis in Facebook’s objection that the Order  
4 improperly treated the RFP’s “en masse.” The Order grouped together eight RFPs  
5 because they sought related categories of information, namely, “how Facebook  
6 generates profits in order to analyze the role played by private messages, social plugins,  
7 and Likes, and, specifically, the interception of private messages, generation of passive  
8 Likes, and derivative activities, in Facebook’s income stream.” Order at 11. Indeed,  
9 even the first case cited by Facebook addressed “each category of RFPs in turn,” not  
10 each individual RFP in turn. See Alcala v. Monsanto Co., 2014 WL 1266204, at \*2 (N.D.  
11 Cal. Mar. 24, 2014). In fact, Alcala grouped together as many as four RFPs, and the  
12 court finds no reason to conclude that the Order’s grouping together of eight RFPs  
13 related to damages was “contrary to law.”

14 Moving to (2), the court finds that the Order properly discussed the discoverability  
15 of damages-related documents. The Order first established that, under the relevant  
16 statutes, “profits made as a result of the violation may be recoverable.” The Order then  
17 noted that Facebook maintains that it has no documents directly attributing any profits to  
18 the alleged violations. As a result, the Order found that plaintiffs are entitled to the more  
19 generalized financial documents that Facebook does have, because “even though  
20 Facebook itself may not have determined the independent value or profits it obtained  
21 from scanning private messages, expert analysis of the information plaintiffs seek may  
22 assist them in making that determination.” Order at 13. In other words, the parties first  
23 explored damages-related discovery that was narrowly tailored to plaintiffs’ claims, but in  
24 the absence of any such documents, a broader scope of discovery is required. Such  
25 discovery is still well within the boundaries of Rule 26, and the court rejects any  
26 contention that the Order “improperly expanded the scope of discovery.” The Order  
27 properly concluded that plaintiffs are entitled to discovery related to “the scanning of  
28 putative class members’ private messages and the potential benefit Facebook receives

1 as a result of obtaining information from those messages.” Order at 13. If Facebook kept  
2 records of revenues and profits that were directly attributable to the challenged practice,  
3 then the scope of discovery could be properly limited to those records; but in their  
4 absence, Facebook must provide more general financial records, so that plaintiffs may  
5 conduct the analysis required to attribute revenues and profits to the challenged practice.

6 Because the court finds that the reasoning set forth in the Order is not “contrary to  
7 law,” Facebook’s motion is DENIED. However, the court does note that, in certain  
8 respects, the two RFPs in question go beyond the rationale set forth in the Order.  
9 Specifically, RFP No.53 does not seek merely “all documents and ESI relating to the  
10 assignment of monetary value to Facebook Users or to the revenue and profits made  
11 from data received or content collected by Facebook from Facebook Users,” it seeks “all  
12 documents and ESI relating to your efforts, or efforts by third parties on your behalf –  
13 whether undertaken or contemplated but not undertaken – to assign a monetary value to  
14 Facebook Users (and/or any additional information derived therefrom), or to determine  
15 the revenue or profits made from data received or content collected by you from  
16 Facebook users (and/or any additional information derived therefrom).” The court fails to  
17 see how expansive language such as “whether undertaken or contemplated but not  
18 undertaken” or “any additional information derived therefrom” serves either party’s  
19 interests. The Order correctly holds that plaintiffs are entitled to “discover how Facebook  
20 generates profits,” but it did not hold that plaintiffs are entitled to information about  
21 hypothetical methods of generating profits that Facebook may have contemplated but not  
22 undertaken. Thus, the court will enforce plaintiffs’ RFP No. 53 only to the extent that they  
23 seek “all documents and ESI relating to the assignment of monetary value to Facebook  
24 Users or to the revenue and profits made from data received or content collected by  
25 Facebook from Facebook Users.” Similarly, as to RFP No. 60, the court will enforce it  
26 only to the extent that plaintiffs seek “all documents and ESI relating to efforts to increase  
27 and/or maximize the presence of the “Like” social plugin on third party websites.”

28 Turning to plaintiffs’ renewed motion to continue the briefing and hearing dates for

1 their anticipated motion for class certification and Facebook's anticipated motion for  
2 summary judgment, the court DENIES the motion. However, given the upcoming  
3 deadline for plaintiffs to file their class certification motion, the court orders Facebook to  
4 produce discovery responsive to RFP No. 53 and No. 60 no later than **November 6,**  
5 **2015.**

6 **IT IS SO ORDERED.**

7 Dated: November 3, 2015



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9 PHYLLIS J. HAMILTON  
United States District Judge

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