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14
15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 OAKLAND DIVISION
18

19 MATTHEW CAMPBELL and MICHAEL
HURLEY, on behalf of themselves and all
20 others similarly situated,

21 Plaintiffs,

22 v.

23 FACEBOOK, INC.,

24 Defendant.

Case No. C 13-05996 PJH (MEJ)

**PLAINTIFFS' OPPOSITION TO
FACEBOOK INC.'S ADMINISTRATIVE
MOTION TO ENLARGE THE PAGE
LIMIT FOR ITS OPPOSITION TO
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION DUE ON
JANUARY 15, 2016**

Judge: Hon. Phyllis J. Hamilton

1 Facebook's request for a 60 percent increase in the length of its opposition to Plaintiffs'
2 motion for class certification (Dkt. No. 143) should be denied. The pleadings and previous
3 Orders in this case have long put Facebook on notice of the breadth of Plaintiffs' claims, and
4 therefore Facebook's feigned surprise at the scope of the requested class certification is simply
5 not believable. Facebook's motion evinces the intent to engage, improperly on class certification,
6 in extensive merits briefing of the common issues. As such, Facebook's request is revealed as an
7 attempted end-run around this Court's scheduling order, which required Facebook to submit any
8 summary judgment briefing at the same time Plaintiffs filed their class certification motion. *See*
9 Dkt. No. 62 (approving filing of early motion for summary judgment concurrently with
10 Plaintiffs' motion for class certification).

11 Courts within this district routinely deny motions for excess pages where the parties failed
12 to "articulate specific reasons why the parties cannot file briefs in compliance with the local
13 rules." *Elec. Frontier Found. v. C.I.A.*, No. C 09-03351 SBA, 2012 WL 1123529, at *1 (N.D.
14 Cal. Apr. 3, 2012) (Armstrong, J.) (denying request for 10-page extension where the party "failed
15 to sufficiently explain how this case is 'complex' such that additional pages beyond the page
16 limits set forth in Civil Local Rule 7-4(b) are needed to adequately brief the legal issues before
17 the Court."). Facebook fails to make this showing.

18 Facebook's assertion that Plaintiffs' motion addresses "new practices and functionalities
19 that were not mentioned anywhere in the operative complaint" is false. Dkt. No. 143 at 1:14-15.
20 As Facebook has had to be reminded by this Court and the Magistrate Judge several times,
21 Plaintiffs' allegations go beyond scanning private messages to improperly increment the "Like"
22 counter, but also extends to "us[ing] the data it collects during a scan of a private message for
23 other purposes including, among others, enhancing its targeted advertising efforts." *See* October
24 14, 2015 Discovery Order (Dkt. No. 130) at 2:14-15.¹ Not surprisingly, Plaintiffs' motion sets

25 ¹ Facebook's repeated argument that Plaintiffs have strayed from the controversy articulated in
26 the operative complaint has been rejected on multiple occasions. *See* Dkt. No. 43 at 10-11
27 (rejecting Facebook's argument that the current complaint does not contain operational
28 allegations of targeted advertising); No. 83 at 6 (rejecting Facebook's argument that Plaintiffs'
allegations were a "moving target"); No. 130 at 5-7 (rejecting Facebook's contention that the
scope of Plaintiffs' claims is limited to the scanning and use of URLs to increment the "Like"
counter).

1 forth extensive evidence, consisting mostly of discovery obtained in the litigation, including
2 review of Facebook’s source code. Facebook mischaracterizes this evidence as “new
3 allegations,” but this evidence simply comprises aspects of the common proof showing how
4 Facebook has enhanced its targeted advertising by harvesting private message content—as
5 already alleged in the complaint. That “new functionalities,” as Facebook puts it, of the targeted
6 advertising scheme are described in the motion, cannot be any surprise to Facebook because it has
7 been the subject of extensive discovery and discovery disputes for over a year (and of course it is
8 part of Facebook’s own practices).

9 Moreover, Facebook fails to provide *any* explanation for why these issues are so
10 “complex” that they cannot be satisfactorily addressed in 25 pages of briefing in addition to
11 Facebook’s technical expert report, which may be of any length. Plaintiffs were effectively able
12 to describe and explain the functionality at issue within the 25-page limit, and in fact engaged in
13 significant efforts to do so. Facebook provides no meaningful reason why it cannot provide
14 reciprocally concise briefing, supplemented with expert opinion. Nor does Facebook provide *any*
15 explanation for why Plaintiffs’ minor revision to the class definition contained in the complaint
16 warrants additional pages of briefing. Likewise, Facebook provides *no* explanation for why its
17 intended objections to Mr. Torres’ expert report regarding damages (which objections are
18 standard fare in class certification briefing) necessitate any departure from the 25-page rule here.

19 Facebook’s requested page extension is really a belated attempt to proffer summary
20 judgment arguments that it had an opportunity—but declined—to bring in separate briefing,
21 concurrent with the class certification motion. Facebook’s deadline for an early motion seeking
22 to attack the factual bases and merits of Plaintiffs’ claims was November 13, 2015, and Facebook
23 should not now be allowed additional pages to make arguments that it should have made two
24 months ago in separate briefing in a separate context. Moreover, Facebook fails to provide any
25 explanation why the additional pages are necessary to address Plaintiffs’ claims *within the context*
26 *of Rule 23*, rather than to simply attack the merits of Plaintiffs alleged “misstate[ments of] the
27 operations of Facebook’s technology” to Facebook’s “satisfact[ion]” (Dkt. No. 143 at 2:7-9). *See*
28 *Garcia v. Johnson*, No. 14-CV-01775-YGR, 2014 WL 6657591, at *13 (N.D. Cal. Nov. 21, 2014)

1 (“When reviewing a motion for class certification, a court should only analyze the portions of the
2 merits of a claim that overlap with Rule 23’s requirements.”) (citing *Eisen v. Carlisle & Jacquelin*,
3 417 U.S. 156 (1974)); *Ridgeway v. Wal-Mart Stores, Inc.*, No. C 08-05221 SI, 2014 WL 4477662,
4 at *2 (N.D. Cal. Sept. 10, 2014) (“Rule 23 ‘grants courts no license to engage in free-ranging
5 merits inquiries at the certification stage.’ ...[F]actual question[s] should be addressed at trial or
6 summary judgment.”) (quoting *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 133 S. Ct. 1184,
7 1194-1195 (U.S. 2013)). Moreover, the increased page limits Facebook seeks here is hardly the
8 “bargain” to the Court that Facebook suggests in its footnote; Facebook *specifically reserves its*
9 *rights to seek additional summary judgment briefing in addition to the increased page limits it*
10 *seeks here* to attack the merits of Plaintiffs’ claims. See Dkt. No. 143, fn. 1.

11 Facebook should not be allowed to present extended, unfocused and unhelpful merits
12 briefing—based on an incomplete factual record²—to this Court at this stage. As Plaintiffs
13 explained to Facebook last week, Plaintiffs were not amenable to Facebook’s request in part
14 because Plaintiffs made significant efforts to stay within this Court’s well-considered page
15 limitations. Facebook’s requested extension, which would necessitate a concomitant extension
16 for Plaintiff’s reply brief, would simply allow Facebook to present less concise and less focused
17 arguments, which are helpful neither to the Court nor to the parties. As the court observed in
18 *Elec. Frontier Found.*, “[i]t is typically the shorter briefs that are the most helpful, perhaps
19 because the discipline of compression forces the parties to explain clearly and succinctly what has
20 happened, the precise legal issue, and just why they believe the law supports them” 2012 WL
21 1123529 at *1 (quoting *In re M.S.V., Inc.*, 892 F.2d 5, 6 (1st Cir.1989)); see also *Fleming v.*
22 *County of Kane, State of Ill.*, 855 F.2d 496, 497 (7th Cir.1988) (“Overly long briefs, however,
23 may actually hurt a party’s case, making it ‘far more likely that meritorious arguments will be lost
24 amid the mass of detail.’”) (citation omitted). Facebook has provided no reason why this standard
25 should be departed from here.

26 Accordingly, Facebook’s requested extension should be denied. However, in the event

27 ² There is currently no fact or expert discovery deadline in this case, and the parties continue to
28 dispute the adequacy of Facebook’s production. Plaintiffs anticipate this Court will need to
adjudicate multiple further discovery disputes before discovery concludes in this matter.

1 that the Court determines that an extension in the page limits is warranted, Plaintiffs respectfully
2 request a concomitant extension of 15 pages for their reply brief.

3
4 Dated: January 6, 2016

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