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14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 OAKLAND DIVISON

17 MATTHEW CAMPBELL and MICHAEL
 18 HURLEY,

19 Plaintiffs,

20 v.

21 FACEBOOK, INC.,

22 Defendant.

Case No. C 13-05996 PJH (MEJ)

PUTATIVE CLASS ACTION

**FACEBOOK, INC.'S REQUEST TO
 RESPOND IN SUPPORT OF ITS
 ADMINISTRATIVE MOTION TO
 ENLARGE THE PAGE LIMITS**

The Honorable Phyllis J. Hamilton

1 Although a reply is not contemplated by the Rules governing Administrative Motions,
2 Facebook requests leave to submit the following brief response to Plaintiffs’ Opposition (Dkt. 144).

3 Facebook is well aware of the standards governing class certification, and—contrary to
4 Plaintiffs’ speculation—it did not request additional pages “to proffer summary judgment arguments”
5 or to “end-run around this Court’s scheduling order.” (*Id.* at 2.) Indeed, the argument makes no
6 sense: How can Facebook seek summary judgment by way of an Opposition to Plaintiffs’ Motion for
7 Class Certification? But this does not mean that the “merits” are off limits to the class certification
8 inquiry, as Plaintiffs erroneously suggest. (*Id.* at 2-3.) As the Supreme Court has explained,
9 “[f]requently that ‘rigorous analysis’ will entail some overlap with the merits of the plaintiff’s
10 underlying claim. That cannot be helped.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551
11 (2011); *id.* at 2552 n.6 (disapproving of language “sometimes mistakenly cited to the contrary in”
12 *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177 (1974)).

13 Plaintiffs assert that it is “false” that their Motion for Class Certification discusses “new
14 practices and functionalities that were not mentioned anywhere in the operative complaint.”
15 (Dkt. 144 at 1.) But Plaintiffs point to no place in their operative complaint—and there is none—
16 where the practices they challenge for the first time in their Motion (including “Recommendations
17 Plugin,” “Activity Plugin,” “Insights API,” and “Graph API”) are referenced. Instead, Plaintiffs seek
18 to mislead the Court by claiming these newly-challenged practices are part of an already-pled
19 “targeted advertising scheme.” (*Id.* at 2.) This illustrates precisely why Facebook needs additional
20 pages to respond to Plaintiffs’ Motion: these newly-challenged practices have nothing to do with
21 “targeted advertising,” and it falls to Facebook to explain to the Court—in a clear and comprehensive
22 manner—the nature of these newly-challenged practices (something Plaintiffs most assuredly have
23 not done in their Motion). Equally important, Facebook also requires additional pages to address the
24 variability—which is extensive—surrounding these newly-challenged functionalities (as well as the
25 practices already framed by the operative complaint).

26 As for moving to strike the report submitted by Plaintiffs’ proposed damages expert,
27 Fernando Torres, Facebook is not doing so because it is “standard fare in class certification briefing”
28 (*id.*); rather, it is doing so because Mr. Torres completely failed to undertake the analysis that an

1 expert witness is required to undertake (and his opinions have been excluded on this ground before).
2 These arguments require more than one or two paragraphs.

3 Facebook appreciates Plaintiffs’ concern that if it files an “overly long brief,” it “may actually
4 hurt [Facebook’s] case, making it far more likely that meritorious arguments will be lost amid the
5 mass of detail.” (*Id.* at 3.) But Facebook has no intention of filing an “overly long brief,” or of
6 burying its arguments in a “mass of detail.” It does, however, seek to file a brief that provides the
7 Court with clear and complete information to describe the practices Plaintiffs now challenge and their
8 variability, something Plaintiffs’ Motion has not done. It is telling that Plaintiffs oppose this request.

9 Facebook respectfully requests that the Court enlarge the page limit for its Opposition to the
10 Motion for Class Certification from 25 to 40 pages. Facebook does not oppose a corresponding
11 enlargement of Plaintiffs’ reply brief, which eliminates any possible prejudice to Plaintiffs.

12 Dated: January 7, 2016

Respectfully submitted,

13 GIBSON, DUNN & CRUTCHER LLP

14 By: /s/ Joshua A. Jessen
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15 Attorneys for Defendant FACEBOOK, INC.