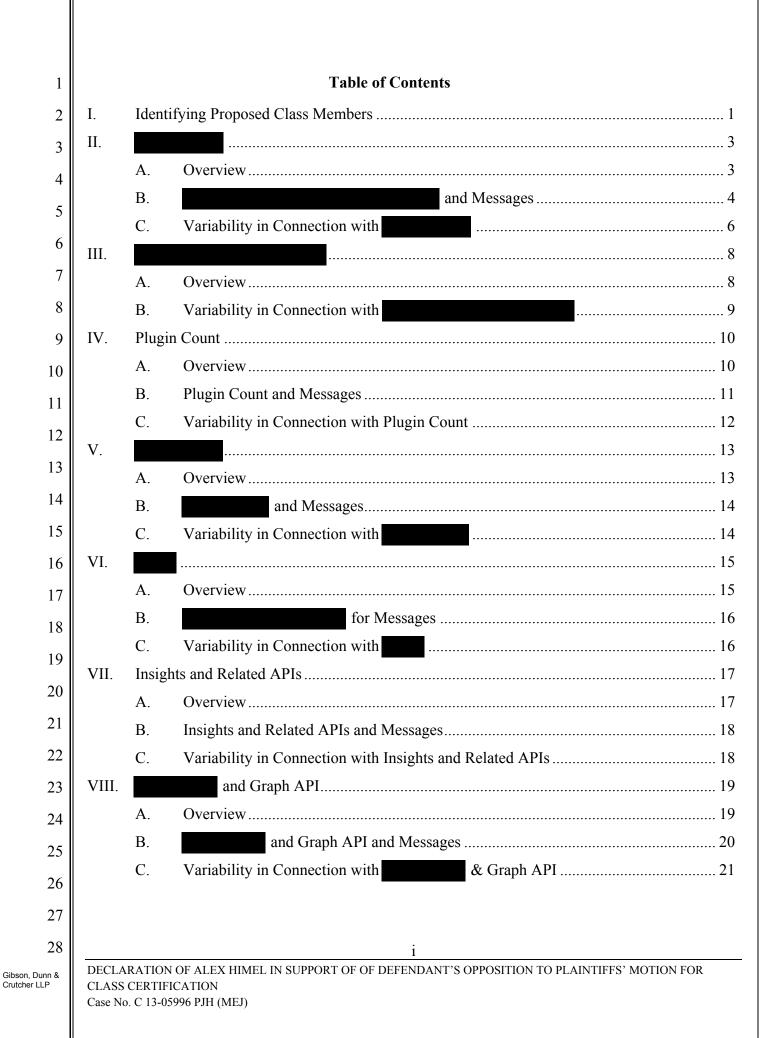1 | GIBSON, DUNN & CRUTCHER LLP
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14 | UNITED STATES DISTRICT COURT

15 | NORTHERN DISTRICT OF CALIFORNIA

16 | OAKLAND DIVISON

17 | MATTHEW CAMPBELL and MICHAEL HURLEY,

Case No. C 13-05996 PJH (MEJ)

18 | Plaintiffs,

PUTATIVE CLASS ACTION

19 | v.

DECLARATION OF ALEX HIMEL IN SUPPORT OF DEFENDANT FACEBOOK, INC.'S OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

20 | FACEBOOK, INC.,

21 | Defendant.

22

23

24 | REDACTED VERSION OF DOCUMENT(S) SOUGHT TO BE SEALED

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Crutcher LLP

DECLARATION OF ALEX HIMEL IN SUPPORT OF OF DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION FOR
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i

I, Alex Himel, declare as follows:

1. I have been employed as a software engineer at Facebook since April 2009, and my current title is Engineering Director. I am over the age of 18. From 2009-2014, I worked on Facebook's Developer Platform, and my work encompassed Facebook's Social Plugins and Insights features. I have personal knowledge of the matters stated herein and, if called as a witness, could and would testify competently thereto.

2. I provide this Declaration in support of Facebook's Opposition to Plaintiffs' Motion for Class Certification, and to explain certain facts regarding ███████████████████████

██

█████ Insights (including the user interface ("UI"), application program interface ("API"), and dashboard, also referred to below as "Insights and Related APIs"), and other public APIs including ████████ and Graph API. This Declaration also describes certain Facebook services related to these functions, particularly as they relate to uniform resource locators ("URLs") in messages sent and received through the Facebook platform.

3. I also understand that, on November 13, 2015, Plaintiffs filed a Motion seeking to certify the following proposed class:

> All natural-person Facebook users located within the United States who have sent, or received from a Facebook user, private messages that included URLs in their content (and from which Facebook generated a URL attachment), from within two years before the filing of this action up through the date of the certification of the class.

I understand that Plaintiffs filed their action on December 30, 2013, and that therefore the relevant period for Plaintiffs' new purported class is December 30, 2011 to the present (the "Class Period").

I. Identifying Proposed Class Members

4. To my knowledge, neither Facebook nor any other entity possesses the data that would be required to identify all persons meeting Plaintiffs' class definition. Facebook does not █████

██

███████████████████████████████. For example, people who included a URL in their message, ██

1

putative class members.

5.   Additionally, as discussed below, determining whether any given person was subjected to the challenged practices would require a message-by-message inquiry. To my knowledge, neither Facebook nor any other entity possesses the data that would be required to determine whether any given person meeting this criteria was subjected to all the challenged practices.

6.   In her report, Dr. Golbeck says that "to retrieve a list of class members, the Code process should be relatively straightforward," and that "a database query could be used to select the Facebook user IDs of everyone whose actions had ████████████████ a private message." (Golbeck Report ¶ 103.) In the next two paragraphs of her report, she provides "sample" code that she contends would return a list of "Facebook user IDs of everyone ████████████████ ████████████████ and, in her deposition, she said that such a list would identify the class members. (Golbeck Deposition Transcript at 331:2-8.)

7.   That is incorrect. This query would return a list of users that is both under- and over-inclusive of the proposed class. For example, a ████████████████████████ ████████████████████████████. Therefore a ██████████████████ ████ recipient class members. Also, Dr. Golbeck uses the ████████████████ ████████████████████████████████████ ████████████████████████████████ ████████████████████████. Thus, this ████████████████ ██ ████████████████████████████.

8.   In addition, Facebook's systems ████████████████████████ in other words, ████████████████████████████████ ████████████████. Instead, in order to accommodate her query, Facebook ████████████

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7   9.   Further, the results of this query will ████████████████████████

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11 **II.** ████████████

12   **A.**   **Overview**

13   10.   All information that users share through the Facebook platform, including messages and all other information, is received by Facebook and stored on Facebook servers. Facebook must receive and host all information shared on the site in order to provide its social-networking service. Facebook also anonymizes and aggregates certain data in order to help facilitate users' discovery of potentially relevant and interesting information on the web at large. For example, Facebook offers a "Like" button social plugin, which has been integrated into websites all over the world; if a user clicks on the "Like" button, Facebook displays a "story" of that action on the users' Timeline, and Facebook keeps a count of the number of times that webpage has been "Liked" and provides some of that data publicly in the aggregate.

       11.   Another way that users interact with webpages is by "sharing" the URL to that webpage, for example by copying and pasting the URL into a post or a message. Under certain circumstances ████████████████████████████████████

██ As explained in Facebook's Second Supplemental Responses and Objections to Plaintiffs' Narrowed Interrogatory No. 8, attached as Exhibit MM, Facebook stores ████████████████████████

3

"objects." Generally, in computer science, "object" refers to data and software code grouped together to make the process of writing and running source code efficient and effective. The concept of an "object" is a basic element of what is widely referred to as "object-oriented code." When certain types of data are configured into a limited number of classes in this way, the code that actually processes that data can be written more efficiently, which can improve speed and reduce errors. Facebook's "objects" group together data in order to make the operation of its software more efficient.

12.   Facebook's ███

███

███

There is nothing unusual or nefarious about the use of "objects"—which are merely a name for a certain way of storing data—in software programming.

    B.   ███████████████████████████████████████ **and Messages**

13.   As explained in Facebook's Supplemental Responses and Objections to Plaintiffs' First Set of Interrogatories (attached as Exhibit NN), during the relevant period in this case, if a user typed a URL into the text field in the Facebook Messages product, ███████████████████

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███████████████████████████

14.   Or, ███

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███   When Facebook

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12   15.   Where available, URL previews ███████████████████████

13 ██

14 ██

15 ██

16 ██

17 ██

18 ██

19 ██████████████████████████████████

20   16.   If ███████████████████████████████████████

21 ██

22 ██

23 ██

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[1] In Facebook's storage system, ████████████████████████
██

[2] In Facebook's storage system, ████████████████████████
████████████████████████████

DECLARATION OF ALEX HIMEL IN SUPPORT OF OF DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION
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6   17.   Another way to share a URL in a Facebook message was to click on the "Share"

7 button on a third-party website, and choose (from the options presented to the user) to share the URL

8 for that page in a Facebook message.

9 possible),

10 generally with the URL for the page on which the "Share" button was displayed.

11   18.

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20   19.

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23   **C.**   **Variability in Connection with**

24   20.

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9 ███████████ .

10   21.   Additionally, ██

11 ███

12 ██

13 ███

14 █████████████████████████████████

15   22.   Taking all of this variation together, at a minimum, determining whether a user's

16 inclusion of a URL in a Facebook message █████████████████████████████████████

17 ████████████████████████████

          █   █████████████████████████████████

          █   ███████████████████████████████

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III. ████████████████████████

    A.   **Overview**

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    24. ██

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4   26. ██

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6   **B.   Variability in Connection with** ████████████████████

7   27.   For people using Facebook who sent a message with a URL ██████████████

8 ██

9 ███

10 ██

11 ███

12 ██

13 ███

14 ██

15 ██

16 ████████████████████████

17   28.   Additionally, ████████████████████████████████

18 ██

19 ██

20 ██

21 ███

22 ███

23 ██

24 ██

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[3] Facebook's system comprises tens of millions of lines of code, █████████████████████ 1.5 billion people, and handling over ███████ requests each day. ██ ██████████████████████████████████

29.   Taking all of this variation together, at a minimum, determining whether █████ ██ ████████████████████████████████ individualized inquiries for each

message:

        a.   When was the message sent?

        █   ██████████████████████████████

            ██████████████████████████

        █   ███████████████████████████████

        █   █████████████

        █   ████████████

        █   █████████████

30.   ██ ███

█████ for putative class members.

IV.   Plugin Count

A.   Overview

31.   During the proposed Class Period, Facebook offered websites "social plugins," or units of embeddable code that allow people to share information using Facebook directly from third-party websites. For example, a third-party website may embed code for the Facebook "Like" button plugin on its website, enabling people using Facebook to directly "Like" the website and to share that action with their Facebook connections (without having to return to https://www.facebook.com or the Facebook mobile app to share the content).

32.   The "Like" button plugin also may display an anonymous and aggregate count of all "Likes" for that particular website. At different times, this aggregate count next to the plugin ("Plugin Count") may have included URLs (a) shared (in the NewsFeed), (b) commented on,

10

(c) liked, and (d) sent as an attachment to a message (and recorded as a share object). Or, depending on how it was configured by the site owner, it may have displayed the number of "fans" for that page.

33.   Instructions for how to embed the "Like" button and Plugin Count into a website, and an explanation of the components of the Plugin Count, were disclosed publicly in Facebook's developer guidance—one of the primary locations where Facebook explains the functionality of its service to the public. For a period beginning at least as early as March 7, 2011, the developer guidance included a section entitled "What makes up the number shown on my Like button?" and explains that the number is "the sum of:

- The number of likes of this URL

- The number of shares of this URL (this includes copy/pasting a link back to Facebook

- The number of likes and comments on stories on Facebook about this URL [and]

- The number of inbox messages containing this URL as an attachment."

B.   Plugin Count and Messages

34.   From the beginning of the Class Period until December 19, 2012, ███████████

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███

███

35.   During that time period, ██████████████████████████████████

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████████████████████████████

36.   I understand that Plaintiffs' expert, Dr. Jennifer Golbeck, has suggested that by

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1 ██

2 ██

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4 ██ There is nothing unusual or

5 nefarious about Facebook taking note of its users' experiences and preferences and the reaction of the

6 press. Facebook is sensitive to users' feedback and regularly incorporates that feedback into its

7 design and engineering decisions.

8 **C.** **Variability in Connection with Plugin Count**

9 37. On December 19, 2012, ████████████████████████████

10 ██

11 ██

12 ██

13 ██

14 ████████████████████████████████

15 38. As noted above, if a person using Facebook ███████████████████████

16 ██

17 ██

18 ██

19 ██

20 39. Similarly, if the destination website associated with the URL did not display a

21 Facebook Plugin Count, ███████████████████████████████

22 ██

23 ██

24 ████████████████

25 40. Additionally, in some cases, even if ████████████████████████

26 ██

27 ██

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1 ██

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3   41.   ████████████████████████████████████

4 ██

5 ██

6 █████

7   42.   At a minimum, determining whether a putative class member's inclusion of a URL in

8 a message ████████████████████████████████████

9 ██████████████████████████████████████

10   a.   When was the message sent?

11   b.   ████████████████████████████████

12   █████████████████████████████

13   █   ████████████████████████████████

14   ██████████████████████

15   █   ███████████████████████████

16   █   ████████████████████████████████████

17   █   ███████████████████████████████

18   █████████████████

19   43.   ██

20 ██

21 █████ for putative class members.

22   V.   ███████████

23   A.   **Overview**

24   44.   For a period of time, prior to the Class Period, ████████████████████

25 ██

26

27   [4] This is not the same as the █████████████ discussed in my June 1, 2015 declaration.

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among other things, Facebook's Recommendations social plugin, which I understand is addressed in the Declaration of Dan Fechete being submitted in support of Facebook's Opposition to Certification.

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███████████████████████████████.

B. ████████████ **and Messages**

45.   If a person sent a Facebook message, ████████████████████████████

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██.

C.   Variability in Connection with ████████████

46.   For people who sent a message ████████████████████████████

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47.   ██

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48. Additionally, if a message was sent ████████████████████████
██

49. Taking all of this variation together, at a minimum, determining whether a Facebook
user's inclusion of a URL in a message ████████████████████████████
██

     a.   When was the message sent?

     b.   ██
██

    █   ██
████████████████████████████

50.   ██
██

█ for putative class members.

VI. ████

A. Overview

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9   **B.**   ██████████████████████ **for Messages**

10   53.   ███

11 ███

12 ███

13 ███

14 ███████████████████████████

15   █   ███

16 ███████████████████████████████████

17   **C.**   **Variability in Connection with** ████

18   55.   Because ██

19 ███

20 ███

21 ████████ .

22   56.   At a minimum, determining whether a Facebook user's inclusion of a URL in a

23 message ██

24 ██████████████████████████████

25   █   ██████████████████████████████████

26   █   ███████████████████████████

27   █   ███████████████████████████████████

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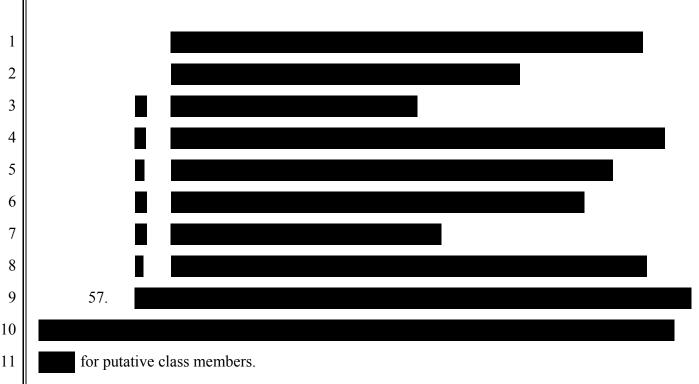CLASS CERTIFICATION
Case No. C 13-05996 PJH (MEJ)

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9   57.

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11   █████ for putative class members.

12 **VII.   Insights and Related APIs**

13   **A.   Overview**

14   58.   "Insights" is the name of a Facebook user interface (UI), accessible from a Facebook

15 website, and a related Facebook application program interface (API). Facebook Insights and Related

16 API provide the owners of particular websites (also known as URL "domain owners") with data

17 about interaction with and traffic to their websites. In order to access this information, a domain

18 owner must provide authentication demonstrating that he or she does indeed own that particular

19 website (URL domain) or webpage (URL). After authentication, the domain owner can use the

20 Insights dashboard or APIs to obtain statistics and demographics about the domains/URLs they own.

21 Specifically, Insights provides information about how effectively Facebook is generating traffic to

22 their site and demographic information about the users who make up that traffic. It also included

23 aggregate, anonymous statistics and aggregate, anonymous demographic information about the

24 people who share links to that domain owners' sites across the Facebook platform.

25   59.   In 2011, Facebook created a new specialized Insights architecture designed to reflect

26 data about activity as quickly as possible after that activity occurred ("Real Time Analytics"). The

27 data store of activity to support the new Insights feature is completely separate from the other stores

28

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discussed above; the Insights system ██

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B.   Insights and Related APIs and Messages

60.   When the Insights product was announced in April 2010, █████████████

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61.   However, on October 11, 2012, ███████████████████████████████████████

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C.   Variability in Connection with Insights and Related APIs

62.   As stated above, ███████████████████████████████████████

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63.   Further, ███████████████████████████████████████

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64.   At a minimum, determining whether a person's inclusion of a URL in a message was

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a.   When was the message sent?

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█ █████████████████████████████

█ ███████████████████████████████████

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65.   ██

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████ for putative class members.

VIII.   ████████████ **Graph API**

A.   Overview

66.   The original ██████████████ I introduced in my June 1 Declaration (attached hereto as Exhibit OO) was renamed to be called the ████████ . Facebook ████████

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6   67.   Graph API is an API that allows third-party apps to read and write to Facebook's

7 "social graph"—a general name for a store of data about users and their activity that Facebook has

8 made available to developers in certain ways to facilitate the creation of products and features that

9 interact with the Facebook platform in both directions. Developers and their users can learn about

10 other users' engagement with different information and contribute their own data to that effort, and

11 build products that incorporate that information in useful ways. Developers can use the Graph API

12 to, for instance, query data, post stories, upload photos, and perform other similar activities.

13   68.   During the proposed Class Period, the ███████████ Graph APIs ██████

14 ██

15 ███████████████████████████████ Graph API only ███████████████

16 ██

17 ██████████████

18   **B.**   ███████████ **Graph API and Messages**

19   69.   For a limited period of time between August 2010 and October 2012████████

20 ██

21 ██

22 ██

23 ██

24 ██

25 ██

26 ███

27 ███████████ the Graph API.

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70. ██

██████████████████████████████████████ or Graph API, ████████████████

███

███

████████████████████████ during certain periods of time.

71. Facebook ██

████████ Graph API after October 16, 2012.

72. I also understand that Plaintiffs ████████████████████████

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██ as

Plaintiffs allege without apparent support.

C.   Variability in Connection with ████████████ **& Graph API**

73. ████████████████ Graph API queries would have reflected ████████

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DECLARATION OF ALEX HIMEL IN SUPPORT OF OF DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

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1 Accordingly, as stated above and in my Declaration dated June 1, 2015, until August 2010, ████

2 ██

3 ████████████████████████████████████ Graph API query.

4   74.   Similarly, after October 16, 2012, ████████████████████████████

5 ██ Graph API query.

6   75.   Accordingly, ████████████████████████████████████

7 ██

8 ██

9 ████████████████ Graph API query. ████████████████████████████████

10 ████████ between December 2011 and October 16, 2012 could have been subject to these

11 practices during the Class Period.

12   76.   Further, ████████████████████████████████████

13 ██

14 ██

15 ████████████████████████████ Graph API query. ████████████████████

16 ██

17 ██

18 ██

19 ████████

20   77.   ██

21 ████████ Graph API for any given URL ████████████████████████████

22 ████████

23   78.   At a minimum, determining whether ████████████████████████

24 ██ Graph API queries would require the

25 following individualized inquiries for each message:

26   a.   When was the message sent?

27   b.   ██

28

22

1 ███████████████████████████████████████

2 █ ██████████████████████████████████

3 █ ████████████████████████████████████

4 79. ███

5 ██

6 ████ putative class members.

I declare under penalty of perjury under the laws of the United States of America that the

foregoing is true and correct and that this declaration was executed on January 14, 2016, in Menlo

Park, California.

                                                                    /s/ Alex Himel
                                                                  Alex Himel

DECLARATION OF ALEX HIMEL IN SUPPORT OF OF DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION
Case No. C 13-05996 PJH (MEJ)

ATTORNEY ATTESTATION

I, Christopher Chorba, attest that concurrence in the filing of this Declaration of Alex Himel has been obtained from the signatory. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 15th day of January, 2016, in Los Angeles, California.

Dated: January 15, 2016

/s/ Christopher Chorba
Christopher Chorba

DECLARATION OF ALEX HIMEL IN SUPPORT OF OF DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION
Case No. C 13-05996 PJH (MEJ)

Gibson, Dunn &
Crutcher LLP