

1 Michael W. Sobol (State Bar No. 194857)
 2 msobol@lchb.com
 3 Melissa Gardner (State Bar No. 289096)
 4 mgardner@lchb.com
 5 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
 6 275 Battery Street, 29th Floor
 7 San Francisco, CA 94111-3339
 8 Telephone: 415.956.1000
 9 Facsimile: 415.956.1008

10 Rachel Geman
 11 rgeman@lchb.com
 12 Nicholas Diamand
 13 ndiamand@lchb.com
 14 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
 15 250 Hudson Street, 8th Floor
 16 New York, NY 10013-1413
 17 Telephone: 212.355.9500
 18 Facsimile: 212.355.9592

19 Hank Bates (State Bar No. 167688)
 20 hbates@cbplaw.com
 21 Allen Carney
 22 acarney@cbplaw.com
 23 David Slade
 24 dslade@cbplaw.com
 25 CARNEY BATES & PULLIAM, PLLC
 26 11311 Arcade Drive
 27 Little Rock, AR 72212
 28 Telephone: 501.312.8500
 Facsimile: 501.312.8505

Attorneys for Plaintiffs Matthew Campbell and Michael Hurley

United States District Court

Northern District of California

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

Plaintiffs,

v.

FACEBOOK, INC.,

Defendant.

Jeremy A. Lieberman
 Lesley F. Portnoy
 info@pomlaw.com
 POMERANTZ, LLP
 600 Third Avenue, 20th Floor
 New York, New York 10016
 Telephone: 212.661.1100
 Facsimile: 212.661.8665

Patrick V. Dahlstrom
 pdahlstrom@pomlaw.com
 POMERANTZ, LLP
 10 S. La Salle Street, Suite 3505
 Chicago, Illinois 60603
 Telephone: 312.377.1181
 Facsimile: 312.377.1184

Attorneys for Plaintiff David Shadpour

Case No. C 13-5996 PJH

PLAINTIFFS' MOTION TO CONSOLIDATE RELATED ACTIONS AND APPOINT INTERIM COUNSEL

Judge: Honorable Phyllis J. Hamilton

1 Plaintiffs in the related actions *Shadpour v. Facebook*, No. 14-CV-00307 (N.D. Cal.), and
2 *Campbell et al. v. Facebook*, No. 13-CV-05996 (N.D. Cal.) (hereinafter “Plaintiffs”), through
3 their counsel of record, hereby submit this Motion to Consolidate Related Actions and Appoint
4 Interim Counsel, and request entry of the concurrently submitted [Proposed] Order No. 1
5 (“Proposed Order”).

6 **I. CONSOLIDATION OF THE ACTIONS PURSUANT TO RULE 42(a)**

7 Under Federal Rule of Civil Procedure 42(a), this Court has discretion to consolidate
8 actions if they “involve a common question of law or fact.” The *Shadpour* and *Campbell* actions,
9 which the Court has already ordered be related under Local Rule 3-12, should now be
10 consolidated. *See* 2.3.2014 Order (*Campbell* Dkt. No. 15). These actions are predicated on
11 substantially similar factual allegations, and they assert the same state law claims. Consolidation
12 will save the Court and the parties considerable time and expense.

13 **II. ORGANIZATION OF PLAINTIFFS’ COUNSEL**

14 To facilitate the efficient and ordered management of the consolidated actions, Plaintiffs
15 seek entry of an order appointing Plaintiffs’ Executive Committee, Co-Lead Counsel, and
16 Plaintiffs’ Liaison Counsel.

17 **A. Plaintiffs’ Executive Committee**

18 Plaintiffs seek to appoint an Executive Committee composed of representatives from the
19 following three law firms: Lieff, Cabraser, Heimann & Bernstein, LLP (“LCHB”); Carney, Bates,
20 & Pulliam, PLLC (“CBP”), and Pomerantz, LLP (“Pomerantz”).

21 The Plaintiffs’ Executive Committee shall:

- 22 1. Consult on all major strategic decisions in this litigation;
 - 23 2. Fund the necessary and appropriate costs of discovery and other common benefit
24 efforts;
 - 25 3. Maintain adequate time and disbursement records covering services as designated
26 counsel; and
 - 27 4. Encourage full cooperation and efficiency among all Plaintiffs’ counsel.
- 28

1 **B. Co-Lead Counsel**

2 Plaintiffs seek to appoint CBP and LCHB as Co-Lead counsel. Co-Lead Counsel shall be
3 responsible for coordinating the activities of Plaintiffs at all stages of the consolidated *Campbell*
4 and *Shadpour* actions, and any subsequently filed cases which are related (“the Litigation”). Co-
5 Lead Counsel shall also have the following responsibilities:

- 6 1. Serve as the sole spokespersons on behalf of the Plaintiffs and the class at all court
7 appearances or mediation sessions in the Litigation;
- 8 2. Serve as the sole contact persons between Plaintiffs’ counsel and Defendant’s counsel
9 regarding the prosecution, mediation, or settlement of the Litigation.
- 10 3. Serve as the sole spokespersons for Plaintiffs’ counsel appearing in any subsequently
11 filed cases which are related, coordinated, or consolidated with the Litigation;
- 12 4. Schedule and lead meetings of Plaintiffs’ Executive Committee or of other Plaintiffs’
13 counsel;
- 14 5. Enter into stipulations with opposing counsel, as necessary, for the conduct of the
15 Litigation.
- 16 6. Coordinate and assign all work among Plaintiffs’ counsel, including responsibilities
17 for:
 - 18 a. briefing and argument of motions;
 - 19 b. the initiating and obtaining discovery propounded by Plaintiffs;
 - 20 c. responding to discovery propounded to Plaintiffs;
 - 21 d. briefing and conducting mediation or settlement;
 - 22 e. pretrial preparation;
 - 23 f. trial;
 - 24 g. post-trial proceedings; and
 - 25 h. prosecuting or defending any appeal.

26 **C. Plaintiffs’ Liaison Counsel**

27 Plaintiffs seek to appoint LCHB as Plaintiffs’ Liaison Counsel, which shall:
28

- 1 1. Maintain an up-to-date, comprehensive Service List of Plaintiffs in the Litigation
2 and promptly advise the Court and Defendant’s counsel of changes to Plaintiffs’
3 Service List;
- 4 2. Receive and distribute to Plaintiffs’ counsel, as appropriate, Orders, notices, and
5 correspondence from the Court, to the extent such documents are not electronically
6 filed;
- 7 3. Receive and distribute to Plaintiffs’ counsel, as appropriate, discovery pleadings
8 and correspondence and other documents from Defendant’s counsel that are not
9 electronically filed;
- 10 4. Maintain a file-endorsed copy of the Proposed Order, if adopted by the Court, and
11 serve the same on the parties and/or their attorneys in any actions later instituted
12 in, removed to, or transferred to, these proceedings; and
- 13 5. Communicate with the Court, on behalf of the Plaintiffs’ Executive Committee,
14 concerning scheduling and other administrative matters.

15 No motion or other pleading shall be filed by any Plaintiff except through Plaintiffs’
16 Liaison Counsel.

17 **D. Interim Class Counsel**

18 Plaintiffs request that this Court appoint LCHB, CBP, and Pomerantz to serve as Interim
19 Class Counsel pursuant to Federal Rule of Civil Procedure 23(g). The appointment of Interim
20 Class Counsel will benefit the Court, Defendant and the proposed class because it will provide an
21 organized, managed structure that can only be achieved through the appointment of a unified
22 voice to advocate the interests of the several plaintiffs. As described below, these firms are more
23 than qualified to be appointed Interim Class Counsel, and have already demonstrated key
24 qualities for the position.

25 Rule 23(g)(3) provides that, “[t]he court may designate interim counsel to act on behalf of
26 the putative class before determining whether to certify the action as a class action.” *See, e.g., In*
27 *re Bank of Am. Credit Prot. Mktg. & Sales Practices Litig.*, 2011 U.S. Dist. LEXIS 135674, *17
28 (N.D. Cal. Nov. 23, 2011) (Henderson, J.) (“The members of Plaintiffs’ Executive Committee

1 shall serve as Interim Class Counsel pursuant to Fed. R. Civ. P. 23(g)(2)(A) until further order of
2 the Court.”). Rule 23(g), which was added to the Federal Rules of Civil Procedure in 2003,
3 provides that:

4 (1) In appointing class counsel, the court:

5 (A) must consider:

- 6 (i) the work counsel has done in identifying or
7 investigating potential claims in the action;
- 8 (ii) counsel’s experience in handling class actions, other
9 complex litigation, and the types of claims asserted
10 in the action;
- 11 (iii) counsel’s knowledge of the applicable law; and
- 12 (iv) the resources that counsel will commit to
representing the class.

13 Fed. R. Civ. P. 23(g)(1)(A).

14 The Advisory Committee Notes on Rule 23(g) provide context for its application: “Rule
15 23(g) is new. It responds to the reality that the selection and activity of counsel are often
16 critically important to successful handling of a class action . . . This subdivision recognizes the
17 importance of class counsel, states the obligation to represent the interest of the class, and
18 provides a framework for selection of class counsel.” Fed. R. Civ. P. 23(g) advisory committee
19 note. LCHB, CBP, and Pomerantz meet the requirements of Rule 23(g) for appointment as
20 Interim Class Counsel.

21 **1. Proposed Interim Class Counsel Identified and Investigated the**
22 **Potential Claims in this Action**

23 LCHB, CBP, and Pomerantz identified the problems at issue, have been in contact with,
24 or have been contacted by, dozens of prospective class members, and began investigating the
25 claims and law that comprise the various actions.

26 Before filing the initial complaint, in addition to in-depth legal research, proposed Interim
27 Class Counsel conducted extensive factual research relating to relevant technical capabilities of
28 Defendant, the Defendant’s course of conduct, as well any agreements that Defendant may claim

1 govern the transactions. This multifaceted investigation became the basis for the detailed factual
2 and legal analysis being developed among members of the Executive Committee to formulate a
3 master consolidated complaint. Through this effort, proposed counsel has developed a detailed
4 and sophisticated understanding of the factual and legal issues involved in this matter.¹

5 **2. Proposed Interim Class Counsel Bring a Wealth of Experience to This**
6 **Matter**

7 As individuals, the proposed Interim Class Counsel represent a vast depth of experience in
8 class action and complex litigation. Each firm offers the expertise of extensive experience in
9 nationwide class actions and complex multidistrict matters. As demonstrated in more detail in
10 each firm's individual declaration, proposed Interim Class Counsel have served as lead counsel or
11 in executive committee positions for some of the largest class actions in the country over the last
12 30 years. Accordingly, proposed Interim Class Counsel provide excellent experience in handling
13 class and complex litigation, as well as in-depth knowledge of the applicable law that are the
14 hallmarks of class counsel under Rule 23(g).²

15 **3. Proposed Interim Class Counsel Have Proven Knowledge of the**
16 **Applicable Law**

17 The proposed Interim Class Counsel have many years of experience litigating cases
18 involving the privacy rights of consumers. For example, attorneys from LCHB acted as co-
19 counsel for multiple cases involving the federal Wiretap Act, including *In re Google Inc. Street*
20 *View Electronic Communications Litigation*, No. 3:10-md-021784-CRB (N.D. Cal.), *Hepting v.*
21 *AT&T Corp.*, Case No. C-06-0672-VRW (N.D. Cal.), and *In re Carrier IQ Privacy Litigation*,
22 MDL No. 2330.³

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26 ¹ See Sobol Decl. ¶ 8; Bates Decl. ¶ 3; Lieberman Decl. ¶ 4.

27 ² See Sobol Decl. ¶¶ 2-4, Ex. A (LCHB Firm Resume); Bates Decl. ¶ 2, Ex. A (CBP Firm
Resume); Lieberman Decl. ¶ 2, Ex. A (Pomerantz Firm Resume).

28 ³ Sobol Decl. ¶ 3.

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4. Proposed Interim Class Counsel Will Commit The Resources Necessary To Prosecute This Matter

Once again, individually, the firms’ resources are established by past successes. As a group, there is no question that LCHB, CBP, and Pomerantz have more than adequate resources to commit to this matter. Each of the firms has a practice built around class and complex litigation, and a history of committing all resources necessary to generate a recovery for the putative Class in this matter.⁴

III. CONCLUSION

Plaintiffs respectfully request that this Court enter the concurrently submitted [Proposed] Pre-Trial Order No. 1, or such relief as the Court may deem proper.

⁴ See Sobol Decl. ¶¶ 8-10; Bates Decl. ¶¶ 5-6; Lieberman Decl. ¶ 6.

1 Dated: March 21, 2014

By: /s/ Michael W. Sobol
Michael W. Sobol

2
3 Michael W. Sobol (State Bar No. 194857)
msobol@lchb.com
4 Melissa Gardner (State Bar No. 289096)
mgardner@lchb.com
5 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
6 San Francisco, CA 94111-3339
Telephone: 415.956.1000
7 Facsimile: 415.956.1008

8 Rachel Geman
rgeman@lchb.com
9 Nicholas Diamand
ndiamand@lchb.com
10 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
250 Hudson Street, 8th Floor
11 New York, NY 10013-1413
Telephone: 212.355.9500
12 Facsimile: 212.355.9592

13 Hank Bates (State Bar No. 167688)
hbates@cbplaw.com
14 Allen Carney
acarney@cbplaw.com
15 David Slade
dslade@cbplaw.com
16 CARNEY BATES & PULLIAM, PLLC
11311 Arcade Drive
17 Little Rock, AR 72212
Telephone: 501.312.8500
18 Facsimile: 501.312.8505

19 *Attorneys for Plaintiffs Matthew Campbell and Michael*
20 *Hurley*

1 Dated: March 21, 2014

By: /s/ Jeremy A. Lieberman

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Jeremy A. Lieberman
Lesley F. Portnoy
info@pomlaw.com
POMERANTZ, LLP
600 Third Avenue, 20th Floor
New York, NY 10016
Telephone: 212.661.1100
Facsimile: 212.661.8665

Patrick V. Dahlstrom
pdahlstrom@pomlaw.com
POMERANTZ, LLP
10 S. La Salle Street, Suite 3505
Chicago, IL 60603
Telephone: 312.377.1181
Facsimile: 312.377.1184

Jon Tostrud (State Bar No. 199502)
jtostrud@tostrudlaw.com
TOSTRUD LAW GROUP, PC
1925 Century Park East, Suite 2125
Los Angeles, CA 90067
Telephone: 310.278.2600
Facsimile: 310.278.2640

Attorneys for Plaintiff David Shadpour