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13 *Attorneys for Plaintiffs and the Proposed Class*

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16

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

20 Plaintiff,

21 v.

22 FACEBOOK, INC.,

23 Defendant.
24

Case No. C 13-05996 PJH (MEJ)

**SUPPLEMENTAL DECLARATION OF
MELISSA GARDNER IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION**

Hearing: March 16, 2016, 9:00 a.m.

Location: Courtroom 3, 3rd Floor

Judge: Honorable Phyllis J. Hamilton

1 I, Melissa Gardner, declare:

2 1. I am an attorney in the law firm of Lief, Cabraser, Heimann & Bernstein, LLP,
3 and a member of the State Bar of California. I am admitted to practice before this Court. I am
4 one of the counsel for Plaintiffs in this action. I make this declaration based upon my own
5 personal knowledge. If called upon to testify, I could and would testify competently to the truth
6 of the matters stated herein.

7 2. I submit this declaration regarding David Shadpour's representation by Lief
8 Cabraser Heimann & Bernstein (LCHB), and Carney Bates and Pulliam (CBP).

9 3. LCHB and CBP had no relationship with Mr. Shadpour at the time he filed his
10 original complaint in this action.

11 4. After Mr. Shadpour and his counsel, Pomerantz LLP, became involved in this
12 action, LCHB and CBP sent copies of major pleadings to Pomerantz prior to filing, including the
13 Consolidated Amended Complaint, and Plaintiffs' Opposition to Facebook's Motion to Dismiss.

14 5. On February 5, I emailed counsel at Pomerantz to coordinate the process of
15 responding to discovery that had been served on January 26.

16 6. On March 2, LCHB and CBP learned for the first time that Mr. Shadpour wished
17 to withdraw as a plaintiff.

18 7. On March 17 during a meet and confer, David Rudolph of LCHB informed
19 defense counsel that Mr. Shadpour intended to withdraw, and asked if Facebook would stipulate
20 to his withdrawal. Facebook's counsel responded that they needed to confer with their client, but
21 that Facebook could not stipulate to Mr. Shadpour's withdrawal until he responded to outstanding
22 discovery requests and sat for a deposition. Discovery responses were secured from Mr.
23 Shadpour and provided to Facebook on April 1.

24 8. On April 16, Facebook sent LCHB and CBP a notice of deposition for Mr.
25 Shadpour, which LCHB forwarded to Mr. Portnoy. However, Mr. Shadpour was not willing to
26 be deposed. (Shadpour Dep. 68:20-69:8).

27 9. In the interest of avoiding unnecessary delay, LCHB drafted a stipulation to effect
28 Mr. Shadpour's dismissal. Mr. Rudolph emailed the stipulation to defense counsel on April 30.

1 On May 5, defense counsel responded that they would not stipulate to Mr. Shadpour's dismissal
2 until he sat for a deposition.

3 10. Following that refusal, LCHB promptly drafted a motion to dismiss Mr.
4 Shadpour's claims without discovery conditions.

5 11. Subsequently on May 28, I, along with Nick Diamand of LCHB and Hank Bates
6 of CBP, spoke directly with Mr. Shadpour. On May 31, Mr. Shadpour informed me that he
7 intended to seek new representation.

8 12. From late May until Mr. Shadpour retained separate counsel around August 12, I
9 sent copies of all pertinent pleadings directly to Mr. Shadpour's personal email address, and kept
10 him apprised of upcoming deadlines and the status of his withdrawal from the case. Mr.
11 Shadpour had my personal cell phone number and occasionally contacted me.

12 13. Also until Mr. Shadpour retained separate counsel, LCHB and CBP continued to
13 litigate Mr. Shadpour's right to dismiss his claims without providing additional discovery or a
14 deposition. For example, on June 3, 2015, when Facebook initiated a joint discovery letter brief
15 seeking to compel Mr. Shadpour's discovery and deposition testimony, interim class counsel
16 challenged Facebook's assumption that it was entitled to impose discovery conditions on a
17 plaintiff under these circumstances. (*See* Dkt. 89). I emailed drafts of the letter brief to Mr.
18 Shadpour as the parties exchanged their positions. The introduction in *Facebook's* initial draft
19 stated, "Plaintiffs' counsel has been unable to reach Mr. Shadpour and oppose the requested
20 relief." I believe that this is why, at his deposition, Mr. Shadpour responded affirmatively when
21 defense counsel asked "Were you aware that plaintiffs' counsel told counsel for Facebook that
22 they had lost contact with you?" (Shadpour Dep. 59:14-17). Because it was erroneous, LCHB
23 deleted that statement by Facebook in the draft of the joint letter brief sent to Facebook's counsel
24 on June 9. It did not appear in the letter brief filed with the Court. (Dkt. 89).

25 I declare under penalty of perjury under the laws of the United States that the foregoing is
26 true and correct.

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Executed this 19th day of February, 2016, in New York, New York.

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

By: /s/Melissa Gardner
 Melissa Gardner