

1 GIBSON, DUNN & CRUTCHER LLP  
 JOSHUA A. JESSEN, SBN 222831  
 2 JJessen@gibsondunn.com  
 JEANA BISNAR MAUTE, SBN 290573  
 3 JBisnarMaute@gibsondunn.com  
 PRIYANKA RAJAGOPALAN, SBN 278504  
 4 PRajagopalan@gibsondunn.com  
 ASHLEY M. ROGERS, SBN 286252  
 5 ARogers@gibsondunn.com  
 1881 Page Mill Road  
 6 Palo Alto, California 94304  
 Telephone: (650) 849-5300  
 7 Facsimile: (650) 849-5333

8 GIBSON, DUNN & CRUTCHER LLP  
 CHRISTOPHER CHORBA, SBN 216692  
 9 CChorba@gibsondunn.com  
 333 South Grand Avenue  
 10 Los Angeles, California 90071  
 Telephone: (213) 229-7000  
 11 Facsimile: (213) 229-7520

12 Attorneys for Defendant  
 FACEBOOK, INC.

13  
 14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA  
 16 OAKLAND DIVISON

17 MATTHEW CAMPBELL and MICHAEL  
 HURLEY,

18 Plaintiffs,

19 v.

20 FACEBOOK, INC.,

21 Defendant.

Case No. C 13-05996 PJH

**DECLARATION OF CHRISTOPHER  
 CHORBA IN SUPPORT OF DEFENDANT  
 FACEBOOK, INC.'S OPPOSITION TO  
 PLAINTIFFS' MOTION FOR CLASS  
 CERTIFICATION**

1 I, Christopher Chorba, declare as follows:

2 1. I am an attorney admitted to practice law before this Court. I am a partner in the law  
3 firm of Gibson, Dunn & Crutcher LLP, and I am one of the attorneys responsible for representing  
4 Defendant Facebook, Inc. (“Facebook”) in the above-captioned action. I submit this declaration in  
5 support of Facebook’s Opposition to Plaintiffs’ Motion for Class Certification (Dkt. 138). Unless  
6 otherwise stated, the following facts are within my personal knowledge and, if called and sworn as a  
7 witness, I could and would testify competently to these facts.

8 **I. Demonstratives**

9 2. Attached as **Exhibits A–D** are demonstrative graphics regarding the named plaintiffs  
10 and challenged practices.\*

11 a. Attached as **Exhibit A** is a chart summarizing a number of individualized issues  
12 concerning the named Plaintiffs and some putative class members.

13 b. Attached as **Exhibit B** is a graphical representation of the steps required to send  
14 and receive a Facebook message with a URL preview attachment.

15 c. Attached as **Exhibit C** are graphical representations of the individualized inquiries  
16 related to ascertainability.

17 d. Attached as **Exhibit D** are charts summarizing the variability for the challenged  
18 practices.

19 3. Facebook and its messaging service have often been the subject of public news  
20 reports, blog posts, and other publications. Attached as **Exhibit E** is a chart summarizing seventy-  
21 seven publicly available online publications, including, *inter alia*, news reports, articles, editorials,  
22 and Facebook developer documentation, published between May 6, 2009 and August 7, 2013.  
23 Attached as **Exhibits F, G, H, I, J, and K** are the corresponding seventy-seven publications, arranged  
24 by Bates numbers FB000000066 to FB000000424 and produced by Facebook during this litigation.  
25

26 \_\_\_\_\_  
27 \* For the Court’s convenience, and to avoid duplication in the numbering of the exhibits submitted  
28 by Plaintiffs, Facebook has used letters rather than numbers to designate its exhibits.

1 **II. Discovery Requests And Responses From Plaintiffs**

2 **A. Plaintiffs' Deposition Testimony**

3 4. Attached as **Exhibit L** is a true and correct copy of relevant excerpts of the deposition  
4 transcript of Plaintiff Matthew Campbell on May 19, 2015.

5 5. Attached as **Exhibit M** is a true and correct copy of relevant excerpts of the deposition  
6 transcript of Plaintiff Michael Hurley on July 9, 2015.

7 6. Attached as **Exhibit N** is a true and correct copy of relevant excerpts of the deposition  
8 transcript of Mr. David Shadpour on October 1, 2015.

9 **B. Plaintiffs' Written Discovery Responses**

10 7. Attached as **Exhibit O** is a true and correct copy of Plaintiff Campbell's Corrected  
11 Objections and Responses to Defendant Facebook, Inc.'s First Set of Interrogatories, dated April 2,  
12 2015. As these responses reflect, Mr. Campbell has sent or received at least 232 Facebook messages  
13 containing URLs between the time he filed this action (December 30, 2013), and the date of his  
14 responses (April 2, 2015).

15 8. Attached as **Exhibit P** is a true and correct copy of Plaintiff Hurley's Objections and  
16 Responses to Defendant Facebook, Inc.'s First Set of Interrogatories, dated April 1, 2015. As these  
17 responses reflect, Mr. Hurley has sent or received at least 3 Facebook messages containing URLs  
18 between the time he filed this action (December 30, 2013), and the date of his responses (April 1,  
19 2015).

20 9. Attached as **Exhibit Q** is a true and correct copy of (Former) Plaintiff Shadpour's  
21 Corrected Objections and Responses to Defendant Facebook, Inc.'s First Set of Interrogatories, dated  
22 April 2, 2015. As these responses reflect, Mr. Shadpour has sent or received at least 4 Facebook  
23 messages containing URLs between the time he filed this action (January 21, 2014), and the date of  
24 his responses (April 2, 2015).

25 10. On April 10, 2015, Plaintiffs supplemented their responses to Facebook's  
26 Interrogatories through a letter from counsel (David Rudolph). In particular, Plaintiffs supplemented  
27 their responses to Facebook's Interrogatory No. 5 to describe the manner in which they learned of the  
28

1 facts supporting their claims, as follows:

- 2 • “Mr. Campbell first learned of the facts concerning Facebook’s scanning of private  
3 messages in the manner alleged in the complaint on October 30, 2013 upon receipt of  
4 a private message sent via Facebook by David Slade. Mr. Campbell was not aware of  
5 Facebook’s scanning of private messages in the manner alleged in the complaint prior  
6 to learning of these facts from Mr. Slade.”
- 7 • “Mr. Hurley first learned of the facts concerning Facebook’s scanning of private  
8 messages in the manner alleged in the complaint in or around mid-December 2013  
9 during a telephone conversation with Melissa Gardner. Mr. Hurley was not aware of  
10 Facebook’s scanning of private messages in the manner alleged in the complaint prior  
11 to learning of those facts from Ms. Gardner.”
- 12 • “Mr. Shadpour first learned of the facts concerning Facebook’s scanning of private  
13 messages in the manner alleged in the complaint in or around October or November  
14 2013 during a telephone conversation with Lesley Portnoy. Mr. Shadpour was not  
15 aware of Facebook’s scanning of private messages in the manner alleged in the  
16 complaint prior to learning of those facts from Mr. Portnoy.”

17 Attached as **Exhibit R** is a true and correct copy of Mr. Rudolph’s letter dated April 10, 2015.

### 18 C. Plaintiffs’ Document Productions

19 11. During discovery, Facebook requested that Plaintiffs produce copies of the Facebook  
20 messages that they sent or received, including but not limited to messages containing URLs.

21 12. Attached as **Exhibits S–U** are true and correct copies of the Facebook messages that  
22 Mr. Campbell produced in this action, bearing Bates numbers CAMPBELL000001–181 (messages  
23 that Mr. Campbell sent from his personal Facebook account), CAMPBELL000440–494 (messages  
24 that Mr. Campbell sent regarding his Blue Hog Report blog), and CAMPBELL000495–496  
25 (messages to/from Mr. Campbell’s personal Facebook account regarding his communications with  
26 Plaintiffs’ counsel before filing this action). In the latter category, Plaintiffs’ counsel David Slade  
27 sent the following Facebook message to Mr. Campbell on October 30, 2013:

28 “Hey Matt, quick question: do you ever send business-related communications via  
Facebook? E.g., contacting Pinnacle clients via this messaging function? Full  
disclosure: **I’m putting together a privacy case against Facebook** (looks like  
they scan these messages...most likely for data mining/profiling purposes), **and**  
**am trying to think about the best possible plaintiffs.** My bosses are all  
Luddites, so there’s no FB use in our day to day. But I’m wondering whether

1 lawyers use this as a communication mechanism professionally. Anyways, just  
2 reaching out to my various lawyer people. Hope this finds you well. –D”

3 (Ex. V, CAMPBELL000495–496 (emphases added).)

4 In response, Mr. Campbell, an attorney himself, states that he uses Facebook to communicate with  
5 clients, to garner business, and to communicate with other lawyers, and he replies:

6 “I’m totally willing to be a plaintiff for you if it’s helpful, by the way. It would be  
7 nice to be a plaintiff in one of these newsworthy stories and not be the attorney,  
8 too!”

9 (Ex. V, CAMPBELL000496.)

10 13. Attached as **Exhibit V** are true and correct copies of the Facebook messages that Mr.  
11 Hurley produced in this action, bearing Bates numbers HURLEY000001–003.

12 **D. Plaintiffs’ Interrogatory No. 8 To Facebook**

13 14. On May 26, 2015, Plaintiffs propounded their Second Set of Interrogatories, which  
14 consisted of Interrogatory No. 8, and which sought detailed information regarding the processing of  
15 “each [Facebook] message sent or received by Plaintiffs containing a URL.” (Dkt. 130.)

16 15. After discussions between the parties regarding the scope of Interrogatory No. 8,  
17 Plaintiffs’ counsel (Mr. Rudolph) wrote to Facebook’s counsel on July 24, 2015, to confirm  
18 Plaintiffs’ agreement to limit their Interrogatory No. 8 “to a subset of the total messages at issue,” and  
19 Mr. Rudolph provided a list of 19 messages (8 messages to/from Plaintiff Hurley, and 11 messages  
20 to/from Plaintiff Campbell). Mr. Rudolph explained that for these 19 messages, “Plaintiffs seek  
21 identification and data production of each of the Objects and Associations created when Facebook  
22 processed Plaintiffs’ Private Messages containing a URL.” Attached as **Exhibit W** is a true and  
23 correct copy of Mr. Rudolph’s letter dated July 24, 2015.

24 16. A true and correct copy of Facebook’s Second Supplemental Responses and  
25 Objections to Plaintiffs’ Narrowed Second Set of Interrogatories (dated October 28, 2015) is attached  
26 to the Declaration of Alex Himel as **Exhibit MM**. As discussed in these Responses, “[i]f the  
27 webpages at the URLs in those Subject Messages [with share objects] never displayed a Like Count,  
28 then the inclusion of URLs in those messages also could not have resulted in any increment to any  
Like Count on any third-party website.” (*Id.* at 17.) Facebook explained that it does not possess

1 records to determine *historically* “whether those webpages displayed a Like Count during the  
2 relevant period.” (*Id.*) At the time of the Responses, Facebook determined that “only one of those  
3 seven [messages with share objects and within the relevant time period] included a URL to a third-  
4 party webpage that appears to *currently* display a Count next to the Like Button.” (*Id.*) Facebook  
5 produced documents related to its responses regarding the 19 messages. (*Id.* at 18 & Ex. A)

6 17. Facebook also analyzed these messages to determine which of the messages (if any)  
7 had a possibility of incrementing a social plugin count on a third-party website. Although Facebook  
8 does not possess records to determine whether a particular third-party webpage displayed a social  
9 plugin count at the time Plaintiffs’ selected messages were either sent or received, the Internet  
10 Wayback Machine (<https://archive.org/web/>) is a “reliable” resource that Plaintiffs’ technical expert,  
11 Dr. Jennifer Golbeck, uses “pretty frequently” to view archived webpages. (Ex. EE, Golbeck Depo.  
12 Tr., at 20:7-21:3.)

13 18. For each of the remaining twelve messages selected by Plaintiffs and for which a share  
14 object was created, the Internet Wayback Machine revealed that for the 10 of 12 messages that did  
15 have a share object, there was no corresponding social plugin on the websites referenced by the URLs  
16 in Plaintiffs’ messages at or near the time the messages were sent. For example, on July 11, 2012  
17 Plaintiff Hurley sent a Facebook message to [REDACTED] with the URL,  
18 [REDACTED]. Although this message had a share object  
19 created, a corresponding social plugin did not exist on the Craigslist website at or around the time  
20 Plaintiff Hurley sent this message. Thus, 10 of the 19 messages identified by Plaintiffs had a share  
21 object but did not have a corresponding social plugin on the third-party website.

22 19. For 1 of the 12 messages that did have a share object, the Internet Wayback Machine  
23 did not have the webpage archived. That message was sent by [REDACTED] to Plaintiff Hurley  
24 on April 20, 2014, and it contained the URL, [REDACTED]  
25 [REDACTED]

26 20. The remaining message was sent from Plaintiff Hurley to Plaintiffs’ counsel Melissa  
27 Gardner.  
28

1 **III. Other Discovery Issues**

2 **A. Facebook’s “Public-Facing Statements” and “Dedicated Team of Privacy**  
3 **Professionals”**

4 21. In their Motion, Plaintiffs assert as follows:

5 Discovery also demonstrates that Facebook’s public-facing statements about  
6 “procedural safeguards” for ensuring user privacy in product development are  
7 false. Facebook has represented, *inter alia*, in its filings with the Security and  
8 Exchange Commission that it has “a dedicated team of privacy professionals who  
9 are involved in new product and feature development from design through  
10 launch” and who conduct “ongoing review and monitoring of the way data is  
11 handled by existing features and applications.” However, when asked to produce  
12 documents sufficient to identify the individuals comprising this “dedicated team,”  
13 Facebook responded that *none* existed.

14 (Dkt. 138 at 20-21.)

15 22. In fact, Facebook’s counsel never told Plaintiffs’ counsel that Facebook did not have a  
16 “dedicated team of privacy professionals.” On the contrary, Facebook specifically *denied* Plaintiffs’  
17 request to admit that there was no such team, and indeed there is such a team. Attached as **Exhibit X**  
18 is a true and correct copy of Defendant Facebook, Inc.’s Responses and Objections to Plaintiffs’ First  
19 Set of Requests for Admission dated June 29, 2015.

20 23. Rather, Facebook’s counsel simply confirmed that, in response to a *document request*,  
21 there was not a “specific list.” Plaintiffs’ request sought “*documents*” regarding “the ‘dedicated team  
22 of privacy professionals’ identified on page 8 of Your Form 10-K for fiscal year ending  
23 December 31, 2013.” (Dkt. 138-4, Ex. 31.) Facebook responded by explaining that it did not have a  
24 *document* responsive to Request No. 29, listing members of its internal privacy team. Plaintiffs even  
25 misstated the correspondence among counsel by *omitting* the bolded portion below in their brief:

26 With respect to Request No. 29, please be advised that there is no specific list of  
27 the ‘dedicated team of privacy professionals’ referenced in the Request, **but we**  
28 **have already agreed to conduct a reasonable search for non-privileged**  
**documents sufficient to identify Facebook’s current and former employees**  
**who may possess knowledge relevant to the practice challenged in this action,**  
**and we also have identified witnesses with relevant knowledge in Facebook’s**  
**Initial Disclosures and responses to Plaintiffs’ Interrogatories.**

Plaintiffs attached Facebook’s complete response to the request as Exhibit 32 (Dkt. 138-4, Ex.  
32).

1           **B. Plaintiffs’ Expanded Proposed Class Definition Exceeds The “Relevant Time**  
2           **Period” For Discovery**

3           24. Plaintiffs’ Consolidated Amended Complaint identified the following proposed class:  
4           “All natural-person Facebook users located within the United States who have sent or received  
5           private messages that included URLs in their content, from within two years before the filing of this  
6           action up through and including the date when Facebook ceased its practice,” which Plaintiffs alleged  
7           to be “at some point after it was exposed in October 2012.” (Dkt. 25 ¶ 59 & n.3.)

8           25. In their Motion for Class Certification, Plaintiffs now seek to certify a proposed class  
9           of all “Facebook users located within the United States who have sent, or received from a Facebook  
10           user, private messages that included URLs in their content (and from which Facebook generated a  
11           URL attachment), within two years before the filing of this action *up through the date of*  
12           *certification of the class.*” (Dkt. 138 at 10 (emphasis added).) In other words, Plaintiffs have now  
13           expanded their proposed class by over three years.

14           26. Plaintiffs’ new proposed class definition extends well beyond the relevant time period  
15           to which the parties expressly agreed for discovery. On April 7, 2015, Hank Bates, counsel for  
16           Plaintiffs, proposed that the “Relevant Time Period” for “producing documents” should be April 1,  
17           2010, to the date of filing the action, December 30, 2013. Attached as **Exhibit Y** is a true and correct  
18           copy of Mr. Bates’ letter dated April 7, 2015.

19           27. After some further discussions between the parties, Facebook agreed to this time  
20           period in letters dated May 13 and June 12, 2015. Attached as **Exhibits Z** and **AA** are true and  
21           correct copies of these letters.

22           28. Regarding the production of source code, the parties agreed (and stipulated, *see*  
23           Dkt. 90) to a slightly different time period—September 1, 2009 to December 31, 2012—reflecting the  
24           fact that Plaintiffs had alleged that the challenged practice had ceased “at some point after it was  
25           exposed in October 2012.” (Dkt. 25 ¶ 59 & n.3.)

26           29. Additionally, during depositions of Facebook’s witnesses, counsel for Plaintiffs  
27           repeatedly limited questions to the time period of “2010 to 2012” or “2010 to 2013.” Attached as  
28           **Exhibits BB** and **CC** are true and correct copies of excerpts of the deposition transcripts of Facebook



1 witnesses, Jiakai Liu and Ray He, dated June 30, 2015 and September 25, 2015, respectively,  
2 reflecting, *inter alia*, a handful of those questions.

3 **C. Fernando Torres' Expert Report And The Information He Claims That He**  
4 **Needs To Complete His Damages Analysis**

5 30. Plaintiffs' proposed damages expert, Mr. Fernando Torres, testified that, in order to  
6 complete his damages analysis, he needed *additional* information that is distinct from Plaintiffs'  
7 previous damages discovery requests— which they represented were “critical to establishing” their  
8 damages theory. Attached as **Exhibit DD** is a true and correct copy of relevant excerpts of the  
9 deposition transcript of Mr. Fernando Torres on December 18, 2015.

10 31. In support of prior discovery motions, Plaintiffs argued that they would be “unduly  
11 prejudice[d]” without “discovery relevant to damages in this action.” (Dkt. 112 at 2; *see also*  
12 Dkt. 109 at 2, 4 (arguing that “[w]ithout discovery into the revenue Facebook has generated . . .  
13 Plaintiffs will be hampered in formulating a class-wide damages theory”).) Plaintiffs represented that  
14 the discovery they sought was “critical to establishing” their damages theory and that “expert analysis  
15 of the [] information sought” would allow them to “accurately model the profits attributable to the  
16 challenged conduct.” (Dkt. 112 at 2-3.) And they also argued that the damages discovery sought was  
17 “directly relevant to the issues of damages suffered by the class as well as the appropriate injunctive  
18 relief . . . and [was] . . . necessary for Plaintiffs to fashion a theory of class-wide relief for their class  
19 certification briefing.” (Dkt. 109 at 2, 4.)

20 32. In light of these and other arguments, Plaintiffs received a 30-day extension of the  
21 briefing schedule (Dkt. 117) and successfully compelled Facebook to produce extremely broad  
22 discovery (Dkt. 130, 136.).

23 33. In his expert report, however, Mr. Torres cited only 7 of the thousands of documents  
24 produced by Facebook during the course of this litigation. (Dkt. 138-4, Ex. 33.) He also asserted in  
25 his report that he needed *other information* from Facebook: “with additional information, including  
26 production from Facebook, and inputs, these conclusions [in the Report] could be refined.”  
27 (Dkt. 138-4, Ex. 33, ¶ 11 n.12.) In the final paragraph of his report, Mr. Torres explained, “With  
28 quantitative data on the number of affected ‘Like’ counts, and identification of the affected URLs, it

1 will be feasible to narrow the ranges discussed here and calculate more precisely the potential  
 2 incremental benefit attributable to the accused practice.” (*Id.* ¶ 74.)

3 34. During his deposition, Mr. Torres discussed the additional information he needed or  
 4 was expecting from Facebook in order to complete his analysis. But as of the date of this  
 5 Declaration, Plaintiffs have not requested the vast majority of information that Mr. Torres identified  
 6 in his deposition. To the extent some of the information has been requested previously, Facebook has  
 7 already conducted a reasonable search and diligent inquiry and has produced responsive information  
 8 to the extent it exists.

9 35. The following chart summarizes the discovery information Mr. Torres claims he needs  
 10 to complete his analysis and whether the information has been previously requested by Plaintiffs:

Information Mr. Torres Needs	Requested by Plaintiffs?
“[T]he number of [Facebook] messages that were intercepted that contain URLs” (Ex. EE [Torres Depo. at 27:20-22].)	No.
“[T]he total number of [Facebook] messages” (Ex. EE [Torres Depo. at 27:22-23].)	No.
“[H]ow many messages each user sent, et cetera, how many fall into the definition of the class” (Ex. EE [Torres Depo. at 227:9-11].)	No.
“[H]ow many URLs were intercepted that . . . led to like counts being increased” (Ex. EE [Torres Depo. at 285:10-14].)	Yes, but no responsive documents existed. <sup>1</sup>

23  
 24 <sup>1</sup> Facebook’s Response to Plaintiffs’ Request for Production No. 57: “Facebook [] conduct[ed] a  
 25 reasonable search for non-privileged documents sufficient to identify the number [of] Likes that were  
 26 generated as a result of the processes involved in the practice challenged in this action (the alleged  
 27 increase in the Facebook ‘Like’ count on a website when the URL for that website was contained in a  
 28 message transmitted through Facebook’s Messages product) between April 1, 2010 and December  
 30, 2013, to the extent such documents exist, are within Facebook’s custody and control, ha[d] not  
 already been produced to Plaintiffs, and c[ould] be located using a reasonable search.”

Information Mr. Torres Needs	Requested by Plaintiffs?
<p data-bbox="224 241 820 315">“[T]he ratio of those increases to the total like counters”</p> <p data-bbox="224 346 722 384">(Ex. EE [Torres Depo. at 285:10-14].)</p>	No.
<p data-bbox="224 415 901 489">“[T]he value of the advertising revenue perceived by Facebook”</p> <p data-bbox="224 520 722 558">(Ex. EE [Torres Depo. at 285:14-15].)</p>	Yes. <sup>2</sup>
<p data-bbox="224 590 901 630">“The advertising revenue that reflects only the U.S.”</p> <p data-bbox="224 661 722 695">(Ex. EE [Torres Depo. at 205:16-22].)</p>	No.
<p data-bbox="224 726 876 800">“[T]he number of links captured that fall under the definition of the class.”</p> <p data-bbox="224 831 722 869">(Ex. EE [Torres Depo. at 208:19-20].)</p>	No.
<p data-bbox="224 900 795 940">“[T]he number of links on the social graph.”</p> <p data-bbox="224 972 690 1005">(Ex. EE [Torres Depo. at 218:2-3].)</p>	No.
<p data-bbox="224 1037 909 1150">Whether websites corresponding to URLs in Facebook messages had social plugins at the time the message was sent.</p> <p data-bbox="224 1182 722 1218">(Ex. EE [Torres Depo. at 266:17-22].)</p>	No.

**D. Response To Rudolph Declaration And Plaintiffs’ Misstatements About Discovery**

36. In support of the Motion, Plaintiffs’ counsel David Rudolph filed a supporting declaration (Dkt. 138-3) in which he raises several complaints about discovery in this case. Mr. Rudolph’s declaration contains a large number of misstatements about the discovery conducted in this case, and the following paragraphs respond to his points in sequence.

37. First, relying on his previously filed Declaration in support of Plaintiffs’ Motion to Enlarge Time and Extend Deadlines (Dkt. 109-2), Mr. Rudolph argues that Plaintiffs’ “ability to

<sup>2</sup> Facebook produced documents in compliance with the Court’s Orders, which, *inter alia*, compelled Facebook to produce documents responsive to Plaintiffs’ Requests for Production Nos. 53, 54, and 59. (Dkt. 130, 136; *see also supra* ¶¶ 31-32.)

1 prepare their motion for class certification” was “prejudice[ed]” by Facebook’s alleged “delay[s]  
2 providing relevant discovery in this matter.” (Dkt. 138-3, ¶ 2.) More specifically, he claims that  
3 Facebook “delayed production of its source code by over five months . . . and [] failed to produce a  
4 significant number of documents responsive to Plaintiffs’ document requests” in a timely manner.  
5 (*Id.*)

6 38. Mr. Rudolph does not explain that this Court already was presented with these  
7 arguments on *two* separate occasions. After considering Facebook’s Opposition to Plaintiffs’ Motion  
8 to Enlarge Time and Extend Deadlines (Dkt. 114) and the supporting Declaration of Joshua Jessen  
9 (Dkt. 114-1), which rebutted similar assertions from Plaintiffs’ counsel, this Court ruled that the “90-  
10 day extension sought by plaintiffs would unnecessarily delay the case,” and instead ordered a 30-day  
11 extension. (Dkt. 117; *see also* Dkt. 113-1 at 13.)

12 39. Several weeks later, Plaintiffs filed a Renewed Motion to Continue, attempting to  
13 revisit the issue and arguing that Facebook “delayed [] providing relevant discovery, including by  
14 failing to produce a significant proportion of relevant and responsive documents until October 13,  
15 and October 28.” (Dkt. 134-1.) Once again, Facebook responded to Plaintiffs’ false assertions and  
16 corrected the record. (Dkt. 135, 135-1.) This Court denied Plaintiffs’ motion. (Dkt. 136.)

17 40. Mr. Rudolph’s most recent declaration (Dkt. 138-3) again argues that Facebook  
18 “delayed” production of its source code, “delayed” producing a significant portion of documents until  
19 October 13-28, 2015, and “delayed” producing additional documents until November 3-7, 2015.  
20 (Dkt. 138-3, ¶¶ 2–5.) Facebook already refuted the first two assertions were before the Court. (*See*  
21 Dkt. 114-1 ¶¶ 8–36; 135-1 ¶¶ 2–10.) On Mr. Rudolph’s last point, he fails to mention that  
22 Facebook’s November productions were in response to Plaintiffs’ Motion to Compel (Dkt. 112),  
23 Magistrate Judge James’ Order on October 14, 2015 (Dkt. 130), and this Court’s Order on  
24 November 3, 2015. (Dkt. 136.) In other words, the productions were the result of *Plaintiffs’* motions  
25 to compel. Facebook produced all responsive documents it could locate after a reasonable search in a  
26 timely manner. Although Mr. Rudolph is correct to point out that the November 7 productions were  
27 significant in volume, this was through no fault of Facebook—it had repeatedly warned Plaintiffs that  
28

1 their requests were extremely overbroad and would yield many irrelevant documents, and Facebook  
2 undertook extensive efforts to try to reach a reasonable compromise. (Dkt. 131-1.) For example,  
3 Facebook offered to provide Plaintiffs with representative documents for certain of Plaintiffs'  
4 requests, but Plaintiffs rejected all offers for compromise and continued to litigate these issues.  
5 (Dkt. 131-1, Ex. 1.)

6 41. Contrary to Mr. Rudolph's declaration, Facebook's production was substantially  
7 complete as of September 30, 2015, with respect to the documents Facebook had agreed to produce at  
8 that point. Productions after this date were primarily in response to Plaintiffs' Motion to Compel  
9 (Dkt. 112, 113, 122), which were not even decided until after September 30. (See Dkt. 130, 136.)

10 **IV. Authentication Of Remaining Exhibits**

11 42. Attached as **Exhibit EE** is a true and correct copy of excerpts of the deposition  
12 transcript of Dr. Jennifer Golbeck (dated December 16, 2015).

13 43. Attached as **Exhibit FF** is a true and correct copy of excerpts of the deposition  
14 transcript of [REDACTED] (dated August 7, 2015).

15 44. Attached as **Exhibit GG** is a true and correct copy of excerpts of the deposition  
16 transcript of [REDACTED] (dated August 10, 2015).

17 45. Attached as **Exhibit HH** is a true and correct copy of excerpts of the deposition  
18 transcript of [REDACTED] (dated August 11, 2015).

19 46. Attached as **Exhibit II** is a true and correct copy of excerpts of the deposition  
20 transcript of Ray He (dated October 28, 2015).

21 47. Attached as **Exhibit JJ** is a true and correct copy of excerpts of the deposition  
22 transcript of Michael Adkins (dated October 28, 2015).

23 48. Attached as **Exhibit KK** is a true and correct copy of a document that begins with  
24 Bates number FB000006429, which Facebook produced during this litigation.

