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

17 MATTHEW CAMPBELL and MICHAEL
HURLEY,

18 Plaintiffs,

19 v.

20 FACEBOOK, INC.,

21 Defendant.
22

Case No. C 13-05996 PJH (MEJ)

**DEFENDANT FACEBOOK, INC.'S
REQUEST TO RESPOND TO
PLAINTIFFS' "OBJECTION" TO
FACEBOOK'S ERRATA REGARDING
CERTAIN PRE-CLASS PERIOD
CONDUCT**

1 Facebook respectfully requests leave to submit the following brief response to Plaintiffs’
2 “Objection” to Facebook’s Errata to evidence regarding certain pre-class period conduct. (Dkt. 187.)

3 Last week, Facebook filed its short Errata to correct and clarify an unintentional and
4 immaterial error in the record regarding certain *pre*-class period conduct. Specifically, in connection
5 with its briefing, Facebook submitted evidence that (i) before the start of Plaintiffs’ proposed class
6 period, in some circumstances certain data regarding URL attachments sent with Facebook messages
7 *may* have been logged in a Hive table called “share_stats,” and (ii) the table was deleted *before* the
8 beginning of the class period. (Dkt. 185.) Facebook recently learned that the second portion of this
9 statement was incorrect; specifically, the “share_stats” table itself existed for a *very brief* period (22
10 days) during the proposed class period. (*Id.*) But the first and more critical part of the statement
11 remains true: this table would only have reflected *pre-class period* data. (*Id.*) Therefore, no
12 Facebook user who sent or received a message during the proposed class period could have had data
13 regarding a URL attachment for that message logged to the “share_stats” table. (*Id.*) Nevertheless,
14 Facebook filed the Errata in the interests of complete transparency and to correct the record.

15 But “no good deed goes unpunished.” Less than 24 hours later, and without notice to
16 Facebook, Plaintiffs filed an “Objection” to Facebook’s Errata asking, in what must be a first, that the
17 Court “strike” the correction. (Dkt. 187.) Apparently, Plaintiffs want the Court to consider
18 *inaccurate* information (albeit on an immaterial point). Instead of identifying some effect on the
19 propriety (or lack thereof)¹ of class certification, Plaintiffs use their “Objection” to tarnish Facebook,
20 which is as meritless as it is unseemly. And once again, Plaintiffs’ filing is replete with
21 misrepresentations:²

22 1. Plaintiffs assert that Facebook “heavily relied upon” on the corrected information “in its
23 opposition to class certification.” (Dkt. 187 at 1.) That is false. The issue of when the “share_stats”
24 table was deleted was *not discussed* in Facebook’s Opposition Brief, and it was only one of several

25 _____
26 ¹ If anything, the fact that the “share_stats” table existed for the first 22 days of Plaintiffs’ proposed
27 1,539-day class period (which was 1.4% of the proposed class period) would create even *more*
28 variability that would further underscore why Plaintiffs’ claims are inappropriate for class treatment.

² The following addresses some but not all of the misstatements in Plaintiffs’ latest brief.

1 points referenced in Facebook’s voluminous appendix of evidence (which itself was necessary to
2 respond to brand new (and unpled) allegations mentioned for the first time in Plaintiffs’ Motion).

3 2. Plaintiffs accuse Facebook of “cherry-pick[ing]” information and producing documents
4 that were “strategically tailored specifically for this litigation” and “appear[] to reflect Facebook’s
5 lawyer’s editing.” (*Id.*) This is false. After Plaintiffs raised the “share_stats” table in their Motion
6 for Class Certification, Facebook investigated the issue and submitted a declaration from Mr. Himel.
7 (Dkt. 184-11, 185.) During his subsequent deposition, Mr. Himel testified that he determined when
8 the table was deleted by looking at the “history of this table” in the “metadata logs.” (Himel Depo.,
9 Feb. 4, 2016, 203:7-22.) Because Plaintiffs’ assertions regarding “share_stats” were *not pled*,
10 Facebook did not produce this documentation prior to class certification briefing. Facebook recently
11 agreed to (and did) produce this information to Plaintiffs. (Dkt. 185.) As is a standard and
12 appropriate practice for producing relevant material from internal systems, Facebook exported the
13 information to a file, in this case, Microsoft Excel, *a practice expressly contemplated by the agreed-*
14 *upon ESI Order in this matter.*³ Plaintiffs’ allegation that the document was edited by Facebook’s
15 lawyers is baseless. Facebook would have been happy to explain the provenance of the document to
16 Plaintiffs if they had bothered to ask.⁴

17 3. Plaintiffs also attempt to reargue points from their class certification briefing, including
18 points regarding certain logging functionality that they raised for the first time in their Reply Brief
19 (which are a subject of Facebook’s February 26 Objection and Request to Strike (Dkt. 178-4)). This
20 additional argument is inappropriate, and a number of Plaintiffs’ statements are incorrect. Facebook
21 requests that the Court disregard Plaintiffs’ new argument.

22 4. Plaintiffs claim that “Facebook has repeatedly taken the position that the production of key
23 data, such as Facebook’s source code, was unnecessary . . . *only to be eventually forced to do so by*
24 *the Court.*” (Dkt. 187 at 3 (emphasis added).) This is demonstrably false. While the parties initially

25 ³ (Dkt. 74 at 3 (“To avoid production of entire large databases and enterprise systems, a party may
26 opt to produce responsive information from databases and enterprise systems in an alternate form,
such as an Excel spreadsheet or similar report, where practicable.”).)

27 ⁴ Plaintiffs’ other claims about this document, for example that it comes from a “configuration
28 table,” a term we have repeatedly told them is ambiguous and inapplicable to this data, are also false.

1 disagreed over the propriety of producing Facebook’s highly confidential source code in this non-
2 patent case, Facebook voluntarily made it available last July. (Dkt. 114-1 ¶ 15.) Since then,
3 Plaintiffs’ three experts have collectively reviewed the source code for over 80 days. Facebook
4 hoped that production of its source code, which Plaintiffs told the Magistrate Judge was the “black
5 box” they needed to understand Facebook’s Messages product, would limit further burdensome
6 discovery requests by Plaintiffs. Instead, the exact opposite occurred: Facebook’s production of its
7 source code has led Plaintiffs to demand more and more information (most of it irrelevant, and
8 certainly not proportional, to their claims).⁵

9 For the foregoing reasons, Plaintiffs’ “Objection” to Facebook’s Errata concerning certain
10 pre-class period conduct is without merit and should be disregarded.

11 Dated: May 18, 2016

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

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13 By: _____ /s/
Christopher Chorba

14 Attorneys for Defendant FACEBOOK, INC.
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26 ⁵ Facebook has repeatedly made entirely voluntary discovery compromises in an effort to
27 streamline discovery and avoid unnecessary motions, only to have Plaintiffs use those compromises
28 against Facebook, call them admissions (despite Facebook’s continuing objections to their
irrelevance and overbreadth), and demand more.