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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.

Case No. C 13-05996 PJH (SK)

**DEFENDANT FACEBOOK, INC.'S  
 OPPOSITION TO PLAINTIFFS'  
 MOTION TO COMPEL PRODUCTION  
 OF DOCUMENTS**

No Hearing Unless Requested By Court (Dkt.  
 203)

The Honorable Phyllis J. Hamilton

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1 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

2 Plaintiffs’ three motions to compel further discovery suffer from several similar problems.  
3 Fundamentally, Plaintiffs disregard their previous admission that only *after* the “extensive discovery”  
4 *already completed* was this case “appropriate for class certification” (Dkt. 177 at 4:22-23), and they  
5 also ignore this Court’s explicit instruction that any “additional discovery [shall be] confined to the  
6 limitations necessitated by the Court’s class certification ruling” (Dkt. 203). To thread this  
7 impossible needle, Plaintiffs misrepresent the history of the parties’ discovery to date and gloss over  
8 Facebook’s extensive production of documents, source code, written discovery responses, and the  
9 dozens of hours of deposition testimony during which Facebook engineers walked them through the  
10 relevant source code, line by line. Rather than engage in a small amount of additional discovery after  
11 this “extensive discovery,” Plaintiffs now seek to open the floodgates and request extremely broad  
12 additional discovery, without any concern for tailoring their requests to the claims and practices at  
13 issue, and the needs (and schedule) of the case at this stage of the litigation.

14 The Court should deny all three motions. With respect to the present motion, after presenting  
15 a false account of the prior discovery in this case, Plaintiffs present the Court with proposed search  
16 terms, custodians, and date ranges that are inappropriate for three reasons. ***First***, Plaintiffs’ request is  
17 overbroad and unduly burdensome because it fails to tailor the proposed search terms to the practices  
18 at issue (i.e., *URLs in messages*) and their relevant date ranges. Even obtaining “hit counts” for  
19 Plaintiffs’ proposed searches has cost Facebook tens of thousands of dollars, and the number of  
20 responsive documents from Plaintiffs’ proposed searches will require additional hundreds of  
21 thousands of dollars in discovery vendor costs alone (separate and apart from outside counsel fees for  
22 attorney review), which is unreasonable at this stage of the litigation—and in a case that concerns  
23 only injunctive relief. Plaintiffs’ overbroad discovery also will threaten the case schedule, further  
24 delaying a much-needed resolution of this case *on the merits*. Given these facts, the proposed  
25 discovery is not proportional, especially given the lack of importance of the information that  
26 Plaintiffs hope to receive. Indeed, given their elaborate representations to the Court in their class  
27 certification papers about the practices they now challenge, it is unclear what further information  
28

1 about those practices they need. Further extensive discovery will only confirm facts that Plaintiffs  
2 already know, as reflected in the detailed discovery and source code already provided.

3 **Second**, Facebook has proposed additional discovery—based largely on Plaintiffs’ proposed  
4 terms and custodians—that is in fact proportional. Rather than compromise with Facebook in good  
5 faith, Plaintiffs took an absolutist position and filed an unnecessary and inaccurate motion. If the  
6 Court agrees that any additional discovery should be limited to the challenged practices, the Court  
7 need not wade into the morass of Plaintiffs’ proposed search terms. Facebook will proceed with its  
8 counterproposal, and if Plaintiffs can articulate a need for additional proportional discovery, the  
9 parties can work through that process and only involve the Court if truly necessary.

10 **Finally**, in light of the “extensive” discovery already provided by Facebook in this case, the  
11 lack of need for the requested relief, and Plaintiffs’ disregard for the exorbitant costs of their  
12 overbroad requests, Facebook respectfully requests that if the Court is inclined to grant this Motion,  
13 then Plaintiffs should bear the cost of Facebook’s review of the results of their proposed searches.  
14 *See In re Nat’l Ass’n of Music Merchants, Musical Instruments & Equip. Antitrust Litig.*, No. MDL  
15 2121, 2011 WL 6372826, at \*4 (S.D. Cal. Dec. 19, 2011) (denying Plaintiffs’ request for Defendants  
16 to run additional searches but holding “to the extent Plaintiffs are willing to bear the cost of running  
17 the searches and conducting the review . . . cost shifting shall apply”).

## 18 **II. BACKGROUND**

19 Plaintiffs filed this lawsuit over two and a half years ago, and they began propounding broad  
20 discovery over 18 months ago. Since then, Plaintiffs have served, and been permitted, wide-ranging  
21 discovery. Among other things, Plaintiffs have served 60 requests for production, propounded 8  
22 detailed interrogatories (to which Facebook has provided detailed, technical responses), reviewed  
23 Facebook’s highly confidential and proprietary source code for 86 days, and taken 8 days of  
24 deposition testimony from Facebook’s fact witnesses (including several days of 30(b)(6) deposition  
25 testimony) and two days of deposition testimony from Facebook’s experts. (Dkt. 201 at 5; Dkt. 114-  
26 1 ¶ 21.)

27 After receiving Plaintiffs’ initial discovery requests, Facebook proactively engaged Plaintiffs’  
28 counsel and identified the information that Facebook intended to provide. (Dkt. 114-1 ¶ 17.) The

1 parties subsequently *agreed* on the document review set, including *agreed-upon custodians, search*  
2 *terms*,<sup>1</sup> and *date ranges*. (*Id.* ¶¶ 21-23.) At every step, Plaintiffs were consulted and involved  
3 throughout the collection and review process, and they were specifically advised of the significant  
4 details. (*Id.* ¶¶ 21-28.) Plaintiffs agreed to the processes Facebook employed.<sup>2</sup>

5 Indeed, Plaintiffs used the “rather extensive discovery” they received to argue that this case  
6 was “appropriate for class certification.” (Dkt. 177 at 4:22-23.) Plaintiffs repeatedly represented to  
7 this Court that only after “contentious and hard-fought discovery” (*id.* at 6:4-6) were they able to  
8 identify “new” practices and present them for the first time in their motion for class certification.<sup>3</sup>  
9 (*Id.*; *see also id.* at 4:22-23, 18:8-11, 19:22-25.) Plaintiffs also submitted two lengthy declarations  
10 from their technical expert, Dr. Jennifer Golbeck, purporting to demonstrate that the challenged  
11 practices were suitable for certification and *continued to the present day*. (Dkt. 183-4; Dkt. 184-17.)  
12 Based on Plaintiffs’ representations, the Court certified a Rule 23(b)(2) injunctive relief class of  
13 Facebook users in the United States “who have sent, or received from a Facebook user, private  
14 messages that included URLs in their content (and from which Facebook generated a URL  
15 attachment) . . . .” (Dkt. 192 at 2-3.) The Court also permitted Plaintiffs to amend their complaint to  
16 include the new practices, such that Plaintiffs’ now challenge four practices: storage of the URL  
17 attachment (the “EntShare”), as well as three anonymous and aggregate “uses” of that information:  
18 (1) the counter next to the “Like” button plugin, (2) “recommendations for other users” in Facebook’s

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19 <sup>1</sup> Plaintiffs’ complaint regarding the search term “share object” (a term they agreed to) is meritless.  
20 The term “share object” appears throughout the documents produced by Facebook, and is used  
21 extensively, including by Plaintiffs’ own expert in her declarations in this case and the source code  
she relies upon. (*See, e.g.*, Dkt. 199-2 ¶¶ 29, 32-43, 55, 57, 59, 63, 84, 96,99, 105.)

22 <sup>2</sup> Although Plaintiffs now claim to have objected to Facebook’s use of predictive coding, Facebook  
advised Plaintiffs early on of its intention to use predictive coding and its methods for doing so.  
23 Contrary to their assertion, Plaintiffs never objected, but instead merely raised questions concerning  
the precise protocol used—to which Facebook diligently responded. (Dkt. 114-1 ¶¶ 23-28.)  
24 Plaintiffs’ complaint about the use of “keyword culling” is another red herring, and their suggestion  
that it is improper is incorrect. *See Bridgestone Amers., Inc. v. IBM Corp.*, No. 13-1196, 2014 WL  
25 4923014, at \*2 (M.D. Tenn. July 22, 2014) (allowing a party to use search terms and then predictive  
coding and refusing to compel production). Facebook repeatedly solicited ideas from Plaintiffs for  
26 alternative methods for culling the massive results from the agreed-upon search terms, but Plaintiffs  
declined to offer alternatives.

27 <sup>3</sup> That Plaintiffs were able to present these new practices to the Court based on Facebook’s past  
28 productions disproves their assertion that those productions were limited to the “Like” count issue.  
(*Mot.* at 2-3.)

1 Recommendations Feed, and (3) the “sharing of user data with third parties” through Facebook’s  
2 “Insights” product. (*Id.* at 3-5.)

3 Following the certification order, the Court and the parties anticipated that *some* additional  
4 follow-up discovery would be needed, and the Court set a schedule providing several additional  
5 months for that discovery. But the Court made clear that any “additional discovery [would be]  
6 confined to the limitations necessitated by the Court’s class certification ruling.” (Dkt. 203.)

7 Despite the Court’s admonition, Plaintiffs now request an order compelling Facebook to use  
8 search terms that are not tailored to the challenged practices, not remotely confined to the needs of  
9 the case, and that would potentially more than double the document discovery to date. Facebook has  
10 agreed to provide additional document discovery (as well as updated interrogatories and additional  
11 deposition testimony (as necessary)), and has provided a counterproposal that limits Plaintiffs’  
12 searches to the subject matter of this case (*URLs in messages*). Plaintiffs rejected Facebook’s  
13 counterproposal and refused to negotiate any further.

### 14 III. LEGAL STANDARD

15 Federal Rule of Civil Procedure 26 governs the scope of permissible discovery:

16 Parties may obtain discovery regarding any nonprivileged matter that is *relevant to*  
17 *any party’s claim or defense* and *proportional to the needs of the case*, considering  
18 the importance of the issues at stake in the action, the amount in controversy, the  
19 parties’ relative access to relevant information, the parties’ resources, the  
*importance* of the discovery in resolving the issues, and whether the burden or  
expense of the proposed discovery outweighs its likely benefit.

20 Fed. R. Civ. P. 26(b)(1) (emphasis added). “[A] party seeking discovery of relevant, non-privileged  
21 information must now show, before anything else, that the discovery sought is proportional to the  
22 needs of the case.” *Gilead Scis., Inc. v. Merck & Co, Inc.*, No. 13–04057–BLF, 2016 WL 146574, at  
23 \*1 (N.D. Cal. Jan. 13, 2016).

### 24 IV. ARGUMENT

#### 25 A. Plaintiffs’ Proposed Searches Are Overbroad and Unduly Burdensome

##### 26 1. *Plaintiffs’ Proposed Searches Are Not Tailored To Their Claims*

27 Plaintiffs bring this case on behalf of a class of users that sent or received URL attachments in  
28 messages, and they assert claims based on four practices (creation of EntShares, “Like” count,

1 Insights, and Recommendations) as they relate to Facebook’s processing of URLs in messages. (Dkt.  
2 192; Dkt. 196.) Yet Plaintiffs refuse to tailor their proposed search terms to their claims and class.  
3 See Fed. R. Civ. P. 26(a)(1) (limiting discovery to the “claim[s] or defense[s]”). Instead, Plaintiffs  
4 insist on pursuing subject matters beyond the scope of their complaint. For example, they seek  
5 documents pertaining to “logging Private Message content for future use,” but Plaintiffs’ case is *not*  
6 broadly about “Private Message content.” Rather, their case is about *four practices as they relate to*  
7 **URLs in messages**, on behalf of a class of people who *sent or received URLs in messages*. There is  
8 no reason for Facebook to search for documents that are not related to those practices and their class.  
9 See *Hughes v. LaSalle Bank, N.A.*, 2004 WL 414828, at \*1 (S.D.N.Y. Mar. 4, 2004) (“The purpose of  
10 discovery is to find out additional facts about a well-pleaded claim, not to find out whether such a  
11 claim exists.”).

12 The parties have agreed to a set of keywords—pertaining to certain Facebook features, tables,  
13 code files, and data structures—as the foundation for any further searches. (See the far-left column in  
14 Plaintiffs’ Appendix A to their Motion to Compel, Dkt. 208 at A-1.) But they do not agree on the  
15 proper limiting terms that will narrow the keywords to the actual practices at issue (“limiting terms”).  
16 Plaintiffs propose a set of terms that *purports* to limit the searches to the challenged practices, but  
17 even a cursory review reveals that their terms are not tailored to their claims. These are just a few  
18 examples:

- 19 • Searches using the limiting words “bootcamp,” “node,” or “API” are limited to neither URLs  
20 nor Facebook messages.
- 21 • Searches using the word “EntShares” are not limited to URLs or messages. EntShares store  
22 many other kinds of attachments (such as videos) and are created as a result of many other  
23 kinds of actions (such as sharing URL attachments in public posts). (Dkt. 170-2 ¶ 6.)
- 24 • The search for “tracking\_info” is not limited to URLs in *messages*, since it will yield  
25 information regarding *different sharing methods*, such as posts, comments, and clicks on a  
26 “Like” button. (Dkt. 184-11 ¶¶ 23-24.)
- 27 • Searches using the limiting word “Hbase” are not limited to URLs in Facebook messages.  
28 Hbase is [REDACTED].
- The search for “Domain Insights” is likewise not limited to URLs in messages. “Domain  
Insights” refers to an entire product team at Facebook, and the product involves information  
about all kinds of engagement with URLs, not just in messages. (Dkt. 184-11 ¶¶ 58-60.)

These are just a few examples of the overbreadth that is characteristic of each of Plaintiffs’

1 proposed searches.<sup>4</sup> Simply stated, searches that are not limited to the use of *URLs in messages* in  
2 one of the challenged practices are beyond the scope of Plaintiffs’ case and the additional discovery  
3 envisioned by the Court. (*See, e.g.*, Dkt. 192 at 10 (“[a]ny messages that did not generate a URL  
4 attachment (or share object) have already been excluded from the class definition, and thus, *they are*  
5 *not relevant*” (emphasis added)); Dkt. 203 (discovery must be “confined to the limitations  
6 necessitated by the Court’s class certification ruling”).) Plaintiffs’ proposed terms seek material well  
7 beyond the scope of permissible discovery, and this Court should not order their use. *See, e.g.*,  
8 *TVIIM, LLC v. McAfee, Inc.*, No. 13-04545-VC, 2014 WL 5280966, at \*2 (N.D. Cal. Oct. 15, 2014)  
9 (holding that responding party was not required to run search terms that were “not sufficiently  
10 narrowed by other keywords to reduce the risk of overproduction”); *I-Med Pharma Inc. v. Biomatrix,*  
11 *Inc.*, No. 03–3677, 2011 WL 6140658, at \*5-6 (D.N.J. Dec. 9, 2011) (affirming decision that party  
12 would not be forced to undertake an “enormously expensive” review based on overbroad search  
13 terms); *Perry v. Schwarzenegger*, 268 F.R.D. 344, 354 (N.D. Cal. 2010) (affirming decision to adopt  
14 a small number of terms because the other proposed terms “do not appear tailored to cabin  
15 production”).<sup>5</sup>

## 16 2. ***Plaintiffs’ Proposed Date Range Is Overbroad and Unduly Burdensome***

17 Plaintiffs propose that *all searches* be run on *all documents* for a *six-year period*—from April  
18 2010 to May 18, 2016 (the date of certification). (Mot. at 9.) This date range is overbroad because it  
19 does not track the operative dates of the challenged practices during the class period. Proportional,  
20 additional discovery should be limited to the time periods when each of the challenged practices was  
21 actually occurring during the class period; anything more is not proportional in light of the extensive  
22 discovery already conducted in this case.<sup>6</sup>

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23 <sup>4</sup> Several of Plaintiffs’ proposed search terms also are too generic. For example, “share,” “like,”  
24 “taste,” “entity,” and “graph” (and other terms) are simply too broad to be effective limiting terms.

25 <sup>5</sup> Plaintiffs’ reference to the Quartz article (Dkt. 209-6) in footnote 33 of their motion is merely  
26 another attempt to try to justify additional expansive discovery. The practice discussed in that article  
27 (a) is not a practice challenged in the complaint, and (b) is included in the source code that Plaintiffs  
28 have had for over a year. (Poole Decl. In Support of Facebook’s Opp. to Pls.’ Mot. to Compel  
Source Code ¶ 11.) Plaintiffs’ suggestion that it has been concealed is baseless. Plaintiffs already  
have discovery pertaining to this practice.

<sup>6</sup> The appropriate date range for each search is the beginning of the class period (Dec. 30, 2011) to  
the date when the practice of including URLs in messages in that product was discontinued—late



1           **3.        *Plaintiffs’ Searches Will Produce a Review Population That Is Unduly Burdensome***

2           Even *collecting* documents to learn how many are responsive to Plaintiffs’ proposed searches  
3 has already cost Facebook approximately \$50,000 in discovery vendor services alone. (Declaration  
4 of Jeana Bisnar Maute (“Maute Decl.”) ¶ 3.) In fact, Plaintiffs’ proposed searches from individual  
5 custodians alone would result in almost 100,000 documents for review. (*Id.*) Facebook has already  
6 incurred hundreds of thousands of dollars in discovery vendor costs for this matter, and, Facebook  
7 estimates that, if ordered to use Plaintiffs’ proposed searches, it would incur another several hundred  
8 thousand dollars in discovery costs. (*Id.*) These estimates do not include any resources expended  
9 internally at Facebook or outside counsel fees, the latter of which is likely to be in the hundreds of  
10 thousands of additional dollars. Facebook also estimates that it would take several months to  
11 complete review of the documents, risking further delaying a resolution of this matter on the merits.

12           Furthermore, given the post-certification stage of this case, where there has already been  
13 “extensive discovery” (and where damages are no longer at issue), this expenditure would serve *no*  
14 *purpose* other than to drive up Facebook’s costs. This discovery would only *confirm facts that*  
15 *Plaintiffs already know*, as reflected in the detailed discovery and source code already provided. The  
16 Court should not order the use of overbroad search terms that will generate a large volume of results,  
17 especially when Plaintiffs have articulated no legitimate need to develop any issues within the scope  
18 of their case that are not addressed by Facebook’s proposed discovery. *See Vasudevan Software, Inc.*  
19 *v. Microstrategy Inc.*, No. 11-06637-RS, 2012 WL 5637611, at \*5 (N.D. Cal. Nov. 15, 2012) (“the  
20 right way to resolve [a search term] dispute is to consider the yield against the purported need”).

21           **B.        Facebook Has Proposed Proportional Additional Discovery**

22           **1.        *Facebook’s Proposed Searches Are Appropriately Tailored to URLs in Messages***

23           Facebook’s proposed searches (*see* fourth column of Appendix A to Plaintiffs’ motion) add  
24 limiting terms that appropriately cabin further searches to *URLs in messages*. Plaintiffs argue that

25 \_\_\_\_\_  
26 2012 for Insights-related searches, May 9, 2014 (when the backup system was removed) for  
27 Recommendations-related searches, and the date of certification (May 18, 2016) for EntShare-related  
28 searches. Facebook is not asking Plaintiffs to take its word regarding when these practices ceased.  
On the contrary, Facebook has provided documents, testimony, and/or relevant source code reflecting  
the discontinuation dates, and Facebook also offered to provide additional discovery and stipulations  
related thereto. (*See* Facebook’s Opp. to Pls.’ Mot. to Compel Source Code at 6-8, 10.)

1 Facebook’s limitations are not appropriate because at least some relevant documents have already  
2 been produced that do not contain these terms. (Mot. at. 7-8.) But this is not the test for appropriate  
3 search criteria; the goal is not to craft a search that will be sure to sweep in every potentially relevant  
4 document regardless of the cost and burden. It is instead to craft reasonable searches, tailored to the  
5 claims and defenses, that are proportional to the needs of the case. Plaintiffs have already made  
6 emphatic representations regarding the functionality of all of the challenged practices in this case,  
7 including up to the present day, in their certification papers, based in large part on a lengthy  
8 declaration from Dr. Golbeck, who opined that she was comfortable drawing her conclusions based  
9 on the information she already had. (Dkt. 183-4 ¶¶ 57-78, 82-97; Dkt. 184-9 at 203:2-7 (confirming  
10 she is “comfortable giving opinions about the operation of Facebook’s messaging system after  
11 December 2012”).) Plaintiffs cannot now claim—in good faith, and consistent with their prior  
12 representations to the Court—that they need significant additional discovery. Proportional additional  
13 discovery must be limited to the practices actually at issue (both in time and scope) and take into  
14 account the extensive information Plaintiffs already have. Facebook’s proposal does exactly that.

15 **2. Facebook Already Agreed To Produce From Relevant Non-Individual Sources**

16 Plaintiffs state in their motion that “Facebook has resisted searching documents from the non-  
17 individual custodial sources . . . .” (Mot. at 10.) This is not true. On the contrary, Facebook already  
18 produced documents from these non-individual custodian sources and has expressed willingness to  
19 produce from them again, noting only that a different approach is necessary “since those sources do  
20 not have search capabilities that will allow for the types of searches we are considering for emails,  
21 and they also are not amenable to efficient collection processes.” (Dkt. 209-1.) Instead of discussing  
22 this issue, Plaintiffs simply filed their motion and mischaracterized Facebook’s statement. If  
23 Plaintiffs had agreed to discuss this matter with Facebook, Facebook would have explained the  
24 following:

- 25
- Facebook has already agreed to produce from the 12 individual custodians listed, as well as  
26 the Salesforce documents, which have the same search and collection capacity. (*Id.*)
  - Facebook’s █████ system should not be searched separately, since all █████ alerts are sent to  
27 the relevant custodian’s email, and therefore this search would be duplicative of other  
28 discovery. (Maute Decl. ¶ 5.)

- Several of these “custodians” (Facebook Temp, Facebook Email, Facebook) are likely to be metadata errors (not separate custodians), which Facebook is happy to discuss with Plaintiffs to ascertain whether custodian information is available for those documents. (*Id.* ¶ 6.)
- [REDACTED] This is an extremely labor-intensive process. A search for “EntShare” alone resulted in over 10,000 results, and it is simply too burdensome to manually export each document for all searches for all words in Plaintiffs’ proposed searches. (*Id.* ¶ 4.)
- [REDACTED]. This is an extremely labor-intensive process. If Plaintiffs identify a specific page from [REDACTED] or [REDACTED], Facebook can consider restoring those pages manually. (*Id.* ¶ 7.)

In short, there is no dispute as to almost *all* of the non-individual sources. But [REDACTED], [REDACTED], and [REDACTED] and [REDACTED] systems simply do not have the capacity to search and export documents responsive to Plaintiffs’ proposed searches in bulk, and this Court should not order Facebook to do so. *See Helmert v. Butterball, LLC*, No. 08-00342, 2010 WL 2179180, at \*4-5 (E.D. Ark. May 27, 2010) (rejecting search terms that are impossible to execute).

Facebook has already begun to run tailored searches to identify additional potentially responsive documents. If the Court agrees that additional discovery should be limited to the challenged practices, the Court need not wade into the details of proposed search terms. Facebook will proceed with its counterproposal, and the parties can only involve the Court if truly necessary.

**C. If the Court Orders Expansive Discovery, Costs Should Be Shifted to Plaintiffs**

In light of the extensive discovery already conducted, the significant costs already incurred by Facebook, and the broad nature of the discovery requested, if the Court orders expansive further discovery, Facebook requests that the Court shift costs to Plaintiffs. To determine whether a request imposes an “undue burden or expense” on a responding party, thereby warranting cost-shifting, courts in the Ninth Circuit evaluate seven factors “weighted more-or-less in the following order”:

1. The extent to which the request is specifically tailored to discover relevant information;
2. The availability of such information from other sources;
3. The total cost of production, compared to the amount in controversy;
4. The total cost of production, compared to the resources available to each party;
5. The relative ability of each party to control costs and its incentive to do so;
6. The importance of the issues at stake in the litigation; and
7. The relative benefits to the parties of obtaining the information.

1 *OpenTV v. Liberate Techs.*, 219 F.R.D. 474, 475-76 (N.D. Cal. 2003) (quotation omitted).

2 All of these factors support denying Plaintiffs' Motion: As to the first two factors, Plaintiffs'  
3 proposed terms are not specifically tailored to discover relevant information, and the information  
4 Plaintiffs purport to seek has already been produced through other sources. (*See* Facebook's Opp. to  
5 Pls.' Mot. to Compel Source Code.) As to the third and fourth factors, the amount in controversy is  
6 zero, given this Court's denial of a damages class under Rule 23(b)(3), and, while Facebook has  
7 considerable resources, a parties' resources do not "justify unlimited discovery." Fed. R. Civ. P. 26,  
8 Adv. Comm. Note. Facebook has already incurred excessive discovery costs in this matter, and  
9 Plaintiffs' overbroad discovery requests (and lack of incentive to conserve costs) should not  
10 continually result in undue burden on Facebook.<sup>7</sup> If Plaintiffs are confident that the expansive  
11 discovery requested is necessary, they should be more than willing to incur the costs.<sup>8</sup>

12 Finally, if Plaintiffs' discovery delays the current schedule, Facebook respectfully requests an  
13 opportunity to file its motion for summary judgment regarding the cessation of several challenged  
14 practices on an earlier schedule. Those issues are ready for resolution now. Facebook should not be  
15 required to wait until Plaintiffs have completed their fishing expedition to resolve this litigation.

## 16 V. CONCLUSION

17 Plaintiffs have sought and obtained "extensive discovery," and they should not be permitted  
18 to conduct sweeping additional discovery outside the bounds of this Court's class certification ruling.  
19 Rather than compromise with Facebook in good faith, Plaintiffs filed an unnecessary and costly  
20 motion to compel that serves no purpose but to run up Facebook's already significant discovery costs.  
21 Facebook plans to provide proportional discovery, and the Court should deny Plaintiffs' Motion.

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22  
23  
24 <sup>7</sup> *See, e.g., Wiginton v. CB Richard Ellis, Inc.*, 229 F.R.D. 568, 575 (N.D. Ill. 2004) (splitting costs  
25 because "several hundred thousand dollars for one limited part of discovery is a substantial amount");  
26 *Rowe Entm't, Inc. v. William Morris Agency, Inc.*, 205 F.R.D. 421, 429 (S.D.N.Y. 2002) ("The less  
27 specific the requesting party's discovery demands, the more appropriate it is to shift the costs.");  
28 *Byers v. Illinois State Police*, No. 99-8105, 2002 WL 1264004, at \*12 (N.D. Ill. June 3, 2002) (cost-  
shifting where "plaintiffs are in the best position to control the total cost of production").

<sup>8</sup> *See Musical Instruments & Equip. Antitrust Litig.*, 2011 WL 6372826 at \*4; *Boeynaems v. L.A. Fitness Int'l*, 285 F.R.D. 331, 335 (E.D. Pa. 2012) ("If Plaintiffs' counsel has confidence in the merits of the case, they should not object to making an investment in the cost of securing documents.").

1 Dated: August 19, 2016

Respectfully submitted,

2 GIBSON, DUNN & CRUTCHER LLP

3 By: \_\_\_\_\_ /s/ \_\_\_\_\_  
4 Joshua A. Jessen

5 Attorneys for Defendant FACEBOOK, INC.

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