

1 GIBSON, DUNN & CRUTCHER LLP
 JOSHUA A. JESSEN, SBN 222831
 2 JJessen@gibsondunn.com
 JEANA BISNAR MAUTE, SBN 290573
 3 JBisnarMaute@gibsondunn.com
 JESSICA S. OU, SBN 280534
 4 JOu@gibsondunn.com
 1881 Page Mill Road
 5 Palo Alto, California 94304
 Telephone: (650) 849-5300
 6 Facsimile: (650) 849-5333

7 GIBSON, DUNN & CRUTCHER LLP
 GAIL E. LEES, SBN 90363
 8 GLees@gibsondunn.com
 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 DIVISION

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

19 Plaintiffs,

20 v.

21 FACEBOOK, INC.,

22 Defendant.

23 DAVID SHADPOUR, Individually and on
 24 Behalf of All Others Similarly Situated,

25 Plaintiffs,

26 v.

27 FACEBOOK, INC.,

28 Defendant.

Case No. C 13-05996 PJH
 Case No. C 14-00307 PJH

CLASS ACTION

**DEFENDANT FACEBOOK, INC.'S
 RESPONSE TO PLAINTIFFS' MOTION
 TO CONSOLIDATE RELATED ACTIONS
 AND APPOINT INTERIM COUNSEL**

HEARING:

Date: May 7, 2014
 Time: 9:00 a.m.
 Place: Courtroom 3, 3rd Floor
 Judge: The Honorable Phyllis J. Hamilton

1 Defendant Facebook, Inc. (“Facebook”) supports Plaintiffs’ request to consolidate the cases
2 for pretrial purposes pursuant to Rule 42 of the Federal Rules of Civil Procedure. Facebook
3 specifically reserves its right to oppose class certification on all available grounds, including but not
4 limited to the absence of common questions susceptible to common answers, *see Wal-Mart Stores,*
5 *Inc. v. Dukes*, 131 S. Ct. 2541, 2551, 180 L. Ed. 2d 374 (2011), and that common questions do not
6 predominate over individualized questions, Fed. R. Civ. P. 23(b)(3), and *Comcast Corp. v. Behrend*,
7 133 S. Ct. 1426 (2013).

8 Facebook generally expresses no view as to which lawyer and firm should serve as interim
9 class counsel, because this is a matter for the Plaintiffs/clients and the Court to decide. However,
10 Facebook respectfully requests that this Court approve a structure that ensures coordinated and
11 efficient prosecution of these overlapping putative class actions through consolidated discovery and
12 motions practice.¹

13 Subject to the Court’s preference, Facebook submits a hearing is unnecessary on Plaintiffs’
14 Motion.

15 Respectfully submitted,

16 DATED: April 4, 2014

GIBSON, DUNN & CRUTCHER LLP

17
18 By: _____/s/
19 JOSHUA A. JESSEN

20 Attorneys for Defendant FACEBOOK, INC.

21
22 _____
23 ¹ Facebook also reserves its right to object to any future request for attorneys’ fees. Where, as
24 here, numerous attorneys and law firms seek a lead role in the litigation, the Court is tasked with
25 developing an efficient structure. Fed. R. Civ. P. 23(g). A primary purpose of appointing interim
26 class counsel is to maximize efficiencies and to eliminate duplication of efforts and “unproductive
27 posturing” by the various plaintiffs’ lawyers and firms. *See 5 Moore’s Federal Practice* ¶ 23.121
28 (3d ed. 2010). Any proposed structure should reduce the risk “of overstaffing or an ungainly
counsel structure.” Fed. R. Civ. P. 23(g) advisory committee’s note. *See also, e.g., Bernard v.*
Cont’l Ill. Corp., 572 F. Supp. 931, 933 (N.D. Ill. 1983) (“Generally, attorneys should work
independently, without the incessant ‘conferring’ that so often forms a major part of the fee
petition in all but the tiniest cases.”); *In re Fine Paper Antitrust Litig.*, 98 F.R.D. 48, 75 (E.D. Pa.
1983) (It is “inevitable that this type of [multi-firm committee] structure [will] generate wasted
hours on useless tasks, propagate duplication and mask outright padding.”).