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19 **UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**

21 MATTHEW CAMPBELL, MICHAEL
22 HURLEY, on behalf of themselves and all
others similarly situated,

23 Plaintiffs,

24 v.

25 FACEBOOK, INC.,
26 Defendant.

Case No. C. 13-5996-PJH-SK

**JOINT DECLARATION OF CLASS
COUNSEL IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: April 12, 2017
Time: 9:00 a.m
Courtroom: Courtroom 3, 3rd Floor
The Honorable Phyllis J. Hamilton

1 Michael W. Sobol and Hank Bates, under penalty of perjury, submit this Joint Declaration
2 in support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Joint
3 Declaration”), and declare as follows:

4 **I. INTRODUCTION**

5 1. Michael W. Sobol is a partner at Lief, Cabraser, Heimann & Bernstein, LLP
6 (“LCHB”), and Hank Bates is a partner at Carney Bates & Pulliam, PLLC (“CBP”).

7 2. We are counsel to Class Representatives Matthew Campbell and Michael Hurley
8 (“Plaintiffs” or “Class Representatives”) and the Settlement Class in the above-captioned case
9 (the “Action”).

10 3. We submit this Joint Declaration in support of Plaintiffs’ Motion for Preliminary
11 Approval of Class Action Settlement, and have personal knowledge of the matters set forth below
12 based on our active participation in all aspects of the prosecution and settlement of this litigation.

13 4. In sum, the Settlement requires Facebook to make meaningful business practice
14 changes that will benefit the Settlement Class now, without the inherent risks of continued
15 litigation and without requiring Class Members to release any claims they may have for monetary
16 relief. The Settlement was only reached after years of discovery and months of arm’s-length
17 negotiations and enjoys the support of a neutral mediator who had an integral part in the
18 settlement negotiations. Consequently, the Settlement satisfies the criteria for preliminary
19 approval.

20 5. Class Counsel believes that these technical changes are substantial and that these
21 changes bring Facebook’s email processing practices in compliance with Class Counsel’s view of
22 the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510, *et seq.* (“ECPA”) and the
23 California Invasion of Privacy Act, Cal. Penal Code §§ 630, *et seq.* (“CIPA”).

24 **II. OVERVIEW OF THE LITIGATION**

25 6. On December 30, 2013, Plaintiffs Matthew Campbell and Michael Hurley filed a
26 class action complaint in the United States District Court for the Northern District of California
27 asserting claims under the Electronic Communications Privacy Act (“ECPA”; 18 U.S.C. §§ 2510
28 *et seq.*); the California Invasion of Privacy Act (“CIPA”; Cal. Penal Code §§ 630, *et seq.*); and

1 California’s Unfair Competition Law (“UCL”; California Business and Professions Code
2 §§ 17200, *et seq.*), alleging, *inter alia*, that Facebook “read[] its users’ personal, private Facebook
3 messages without their consent” for “purposes including but not limited to data mining and user
4 profiling,” and “generating ‘Likes’ for web pages” and “targeted advertising,” on behalf of
5 themselves and a proposed class of “[a]ll natural person Facebook users located within the United
6 States who have sent or received private messages where such message included URLs in the
7 content, from within two years before the filing of this action up through and including the date of
8 the judgment in this case” (Dkt. 1).

9 7. On January 21, 2014, plaintiff David Shadpour filed another complaint in the
10 United States District Court for the Northern District of California alleging similar facts and
11 asserting similar claims under ECPA, CIPA and the UCL against Facebook (*see Shadpour v.*
12 *Facebook, Inc.*, Case No. 5:14-cv-00307-PSG (N.D. Cal.), Dkt. 1).

13 8. On April 15, 2014, the Court granted Plaintiffs’ Motion to Consolidate the Related
14 Actions (*see* Dkt. 24), thereby consolidating the *Campbell* and *Shadpour* actions, and on April 25,
15 2014, the Class Representatives filed a Consolidated Amended Complaint asserting ECPA, CIPA,
16 and UCL claims on behalf of themselves and a proposed class of “[a]ll natural-person Facebook
17 users located within the United States who have sent or received private messages that included
18 URLs in their content, from within two years before the filing of this action up through and
19 including the date when Facebook ceased its practice” (*see* Dkt. 25).

20 9. On December 23, 2014, the Court issued an order granting in part and denying in
21 part Facebook’s motion to dismiss the Consolidated Amended Complaint, dismissing the claims
22 under CIPA § 632 and the UCL, but denying the motion to dismiss claims under ECPA and CIPA
23 § 631 (*see* Dkt. 43).

24 10. The Parties engaged in almost two years of extensive discovery, including the
25 production of tens of thousands of pages of documents, fact and expert depositions of 18
26 witnesses (spanning 19 days of testimony), informal conferences and discussions, hundreds of
27 hours reviewing detailed technical documentation, substantial discovery motion practice and the
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1 exchange of hundreds of pages of written discovery requests and responses. A mediation between
2 the parties before Cathy Yanni of JAMS on August 19, 2015 was unsuccessful.

3 11. On October 2, 2015 David Shadpour voluntarily dismissed his claims, with
4 prejudice, pursuant to Federal Rule of Civil Procedure 41(a), (Dkt. 123).

5 12. On May 18, 2016, the Court issued an order granting in part and denying in part
6 Plaintiffs' Motion for Class Certification, denying certification as to the proposed damages class
7 under Federal Rule of Civil Procedure 23(b)(3), but granting certification of the injunctive-relief
8 class under Federal Rule of Civil Procedure 23(b)(2). Specifically, the Court certified for class
9 treatment three specific alleged uses by Facebook of URL's included in private messages: (1)
10 Facebook's cataloging URL's shared in private messages and counting them as a "like" on the
11 relevant third-party website, (2) Facebook's use of data regarding URLs shared in private
12 messages to generate recommendations for Facebook users, and (3) Facebook's sharing of data
13 regarding URLs in messages (and attendant demographic data about the messages' participants)
14 with third parties (Dkt. 192 at 3-5).

15 13. In addition, the Court directed the Class Representatives to file a Second Amended
16 Complaint "(1) revising the class definition to reflect the definition set forth in the class
17 certification motion, and (2) adding allegations regarding the sharing of data with third parties"
18 (Dkt. 192 at 6). On June 7, 2016, the Class Representatives filed a revised, Second Amended
19 Complaint as ordered (*see* Dkt. 196).

20 14. Following the class certification ruling, the parties engaged in additional discovery
21 and then agreed to further mediate their dispute; first in a second and third session before Cathy
22 Yanni on July 21, 2016 and July 28, 2016, and then in a fourth session with Randall Wulff on
23 December 7, 2016. In a Joint Status Report filed on December 23, 2016, the parties informed the
24 Court that they had reached a settlement-in-principle in the Action. (Dkt. 222). Thereafter, the
25 parties memorialized the settlement in the Settlement Agreement executed on March 1, 2017 and
26 filed herewith as **Exhibit 1**.

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1 **III. THE SETTLEMENT TERMS**

2 15. In consideration for the dismissal of the Action with prejudice and the releases
3 provided in this Settlement Agreement, Facebook agrees to the following:

4 a. Cessation of the Three URL Uses Relevant to this Class Action: In the
5 Settlement Agreement, Facebook confirms that the following uses of data from EntShares created
6 from URLs sent in Facebook Messages during the Class Period have ceased, as of the dates set
7 forth below specific to each use:

8 i. “Like” Count Increment: From the beginning of the Class Period
9 until on or about December 19, 2012, Facebook source code was engineered so that when an
10 anonymous, aggregate count was displayed next to a “Like” button on a third-party web page,
11 that count often included, *inter alia*, the number of times a URL related to that particular website
12 had been shared by Facebook users in Facebook Messages and resulted in creation of an
13 EntShare. On or about December 19, 2012, Facebook changed its source code such that the
14 external count no longer included the number of shares, by users, of URLs in private messages
15 that resulted in creation of EntShares. Settlement Agreement ¶ 40(a)(i).

16 ii. Sharing of URL Data with Third Parties: Facebook makes its
17 “Insights” user interface and related API available to owners of third-party websites that choose to
18 include Facebook tools or features, for purposes of providing anonymous, aggregate data about
19 interaction with and traffic to their websites. During certain periods of time during the Class
20 Period, this information included anonymous, aggregate statistics and demographic information
21 about users who shared links to those sites across the Facebook platform. From the beginning of
22 the Class Period until on or about October 11, 2012, the anonymous, aggregate statistics and
23 demographic information included information about users who shared URLs in Facebook
24 Messages that resulted in creation of EntShares. On or about October 11, 2012, Facebook changed
25 its source code such that it ceased including information about URL shares in Facebook Messages
26 that resulted in creation of EntShares (and attendant statistics and demographic information) within
27 Insights and its related API. Settlement Agreement ¶ 40(a)(ii).

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1 iii. Use of URL Data to Generate Recommendations: Facebook’s
2 Recommendations Feed was a social plugin offered to developers that displayed a list of URLs
3 representing the most recommended webpages on that developer’s site. Over time, two different
4 units of Facebook source code determined the list of URLs that would appear in the
5 Recommendations Feed for a given webpage at a given time. One of those units of Facebook
6 source code was the “PHP backend.” Although, during the Class Period, the PHP backend was not
7 the primary system determining the list of URLs that would appear in the Recommendations Feed,
8 the PHP backend served as a backup system if the primary system failed. The PHP backend
9 considered, *inter alia*, an anonymous, aggregate count of, *inter alia*, the number of times a URL
10 had been shared in a Facebook Message and resulted in creation of an EntShare. On or about July
11 9, 2014, Facebook changed its code such that it ceased utilizing the PHP backend as the backup
12 system for its Recommendations Feed. Settlement Agreement ¶ 40(a)(iii).

13 iv. Use of EntShares created from URLs in Messages: Facebook
14 confirms that, as of the date of execution of the Settlement Agreement, it is not using any data from
15 EntShares created from URL attachments sent by users in Facebook Messages for: 1) targeted
16 advertising; 2) sharing personally identifying user information with third parties; 3) use in any
17 public counters in the “link_stats” and Graph APIs; and 4) displaying lists of URLs representing the
18 most recommended webpages on a particular web site. Settlement Agreement ¶ 40(b).

19 b. Disclosure Changes: Facebook implemented enhanced disclosures after the
20 filing of this Action that benefited the Class. Specific to the private message function, in January
21 2015, Facebook revised its Data Policy to disclose that Facebook collects the “content and other
22 information” that people provide when they “message or communicate with others,” and to
23 further explain the ways in which Facebook may use that content. Settlement Agreement ¶ 40(c).

24 c. Additional Explanatory Language: Facebook shall display the following,
25 additional language, without material variation, on its United States website for Help Center
26 materials concerning messages within 30 days of the Effective Date: “We use tools to identify
27 and store links shared in messages, including a count of the number of times links are shared.”
28 Facebook will make this additional language available on its United States website for a period of

1 one year from the date it is posted, provided however that Facebook may update the disclosures to
2 ensure accuracy with ongoing product changes. Settlement Agreement ¶ 40(d).

3 16. For purposes of the provisional certification, the Settlement Class shall be defined
4 as follows:

5 All natural-person Facebook users located within the United States
6 and its territories who have sent, or received from a Facebook user,
7 private messages that included URLs in their content (and from
8 which Facebook generated a URL attachment), from December 30,
9 2011 to March 1, 2017.

10 **IV. QUALIFICATIONS OF CLASS COUNSEL**

11 17. As exemplified in each firm's respective firm resume, Class Counsel have
12 extensive experience litigating and settling consumer class actions and other complex matters.
13 Each firm has held significant leadership roles in prominent class actions throughout the United
14 States. Collectively, Class Counsel have assisted putative class members in recovering billions of
15 dollars.

16 **A. Qualifications of Michael W. Sobol**

17 18. Michael W. Sobol is a 1989 graduate of Boston University School of Law. He
18 practiced law in Massachusetts from 1989 to 1997. From 1995 through 1997, he was a Lecturer
19 in Law at Boston University School of Law. In 1997, he left his position as partner in the Boston
20 firm of Shafner, Gilleran & Mortensen, P.C. to move to San Francisco, where he joined LCHB.
21 Since joining LCHB in 1997, he has almost exclusively represented plaintiffs in consumer
22 protection class actions. Mr. Sobol has been a partner with LCHB since 1999, and is in his
23 fifteenth years as chair of LCHB's consumer practice group. A copy of LCHB's firm resume,
24 which describes the firm's experience in class action and other complex litigation, can be found at
25 <http://www.lchbdocs.com/pdf/finn-resume.pdf> and is not attached hereto given its length.

26 19. During his time at LCHB, Mr. Sobol has overseen a wide range of consumer
27 protection litigation and has served as plaintiffs' class counsel in numerous nationwide consumer
28 class action cases. The following cases are representative examples of class actions in which he
has played a leadership role:

a. Mr. Sobol served as co-lead class counsel in *Gutierrez v. Wells Fargo*

1 *Bank, N A.*, No. C 07-05923 WHA (N.D. Cal.), a class action alleging unfair practices and false
2 representations by Wells Fargo in connection with its imposition of overdraft charges. In 2013,
3 the court reinstated a \$203 million class judgment that had been entered in 2010 following a
4 bench trial, and in 2014 the reinstated judgment was affirmed by the Ninth Circuit. Judge Alsup
5 noted that LCHB “performed at a superior level as class trial counsel” and that LCHB’s trial
6 performance “ranks as one of the best this judge has seen in sixteen years on the bench.”

7 *Gutierrez v. Wells Fargo Bank, N A.*, No. C 07-05923 WHA, 2015 WL 2438274, at *1, 7 (N.D.
8 Cal. May 21, 2015). In 2011, Mr. Sobol was named a finalist of the Consumer Attorneys of
9 California’s (“CAOC”) Consumer Attorney of the Year award for his work in this case.

10 b. Mr. Sobol served on the Plaintiffs’ Executive Committee in *In re Checking*
11 *Account Overdraft Litigation*, MDL 2036 (S.D. Fla.), a multidistrict proceeding involving more
12 than two dozen banks and allegations of unfair practices and false representations in connection
13 with the banks’ imposition of overdraft charges. Class settlements totaling over a billion dollars
14 have been approved by the court to date. In 2012, Mr. Sobol was named as a finalist for Trial
15 Lawyer of the Year by Public Justice for his work in this litigation. The same year, Mr. Sobol
16 was again named a finalist by CAOC for the Consumer Attorney of the Year award for his work
17 in *Yourke v. Bank of America*, a case that was a part of the MDL which resulted in a settlement of
18 \$410 million.

19 c. Mr. Sobol served as Plaintiffs’ Liaison Counsel and on the Plaintiffs’
20 Executive Committee in *In re Chase Bank USA, N A. “Check Loan” Contract Litigation*, MDL
21 No. 2032 (N.D. Cal.), a nationwide multidistrict class action alleging that Chase breached its
22 good faith obligation to credit cardholders by modifying the terms of their long-term fixed rate
23 loans. In November 2012, the court granted final approval to a \$100 million nationwide
24 settlement that provides direct payments to approximately one million cardholders and important
25 injunctive relief. In 2013, Mr. Sobol was again named a finalist for CAOC’s Consumer Attorney
26 of the Year award for his efforts in this litigation

27 d. Mr. Sobol served as co-class counsel in *Ebarle v. LifeLock, Inc.*, Case No.
28 15-cv-00258-HSG (N.D. Cal.), a class action alleging that LifeLock misrepresented certain

1 aspects of its identity theft protection services to its subscribers. On September 20, 2016, Judge
2 Gilliam granted final approval of a settlement providing \$68 million total to settlement class
3 members, with attorneys' fees and settlement administration cost being paid by LifeLock on top
4 of this \$68 million fund.

5 e. Mr. Sobol served as Interim Co-Lead Class Counsel in *Corona v. Sony*
6 *Pictures Entertainment, Inc.*, No. 14-cv-9600 (C.D. Cal.), a case arising out of a breach of Sony's
7 computer networks causing highly-sensitive and personally identifiable information of thousands
8 of Sony employees to be stolen and made public, exposing class members to long-term risk of
9 identity theft and credit fraud. Final approval of a settlement providing for \$2 million to
10 compensate employees who had taken preventative measures to protect themselves and providing
11 for an additional two years of identity theft protection services was granted on April 6, 2016.

12 f. Mr. Sobol served as co-class counsel in *In re TracFone Unlimited Service*
13 *Plan Litigation*, Case No. 13-cv-03440-EMC (N.D. Cal.), a class action alleging that *TracFone*
14 falsely advertised its cell phone plans as providing "unlimited" data when it imposed secret data
15 caps on the plans, pursuant to which it would throttle (*i.e.* severely slow down) or suspend
16 consumers' data. On July 2, 2015, Judge Chen granted final approval to a \$40 million settlement
17 which included industry-leading business practice changes.

18 g. Mr. Sobol served as class counsel in *Brazil v. Dell Inc.*, No. C-07-01700
19 RMW (N.D. Cal.), a class action alleging false reference price advertising in connection with
20 defendant's online sale of computers. This was the first class action of its kind to receive
21 certification, and resulted in a settlement which allowed class members to submit claims for \$50
22 payments and also included important practice changes

23 h. Mr. Sobol served as Lead Plaintiffs' Counsel in *In re Apple and AT&T*
24 *iPad Unlimited Data Plan Litigation*, No. 10-cv-02553 RMW (N.D. Cal.), a class action alleging
25 that defendants falsely advertised access to an unlimited data plan for the iPad device. In 2014,
26 the court granted final approval of a settlement which allowed class members to submit claims for
27 \$40 payments and provided other benefits to class members.

28 i. Mr. Sobol served as co-lead counsel in *Yarrington v. Solvay*

1 *Pharmaceuticals, Inc.*, No. 09-CV-2261 (D. Minn.), a class action alleging that Solvay
2 deceptively marketed and advertised Estratest as an FDA-approved drug when in fact Estratest
3 was not FDA-approved for any use. In March 2010, the court granted final approval to a \$16.5
4 million settlement, pursuant to which consumers obtained partial refunds of up to 30% of the
5 purchase price paid for Estratest.

6 j. Mr. Sobol was co-lead plaintiffs' counsel in *Morris v. AT&T Wireless*
7 *Services, Inc.*, No. C-04-1997-MJP (W.D. Wash.), a case alleging that a nationwide class of cell
8 phone customers was subjected to an end-of-billing cycle cancellation policy implemented by
9 AT&T Wireless, thereby breaching customers' service agreements. On May 19, 2006, the New
10 Jersey Superior Court granted final approval to a class settlement that guaranteed delivery to the
11 class of \$40 million in benefits.

12 k. Mr. Sobol served as co-class counsel in *Pakeman, et al. v. American*
13 *Honda Finance Corporation* (M.D. Tenn.), a case raising race discrimination claims under the
14 Equal Credit Opportunity Act. On April 18, 2005, court granted final approval of a class
15 settlement requiring defendant to establish a refinance program applicable to \$1 billion of its
16 existing loan portfolio under which African Americans and Hispanic Americans are eligible for a
17 reduction on their auto loan interest rate. The settlement also imposed a limit to the amount of
18 "mark-up" lenders can impose on interest rates, increased the transparency of consumer
19 disclosures, and funded consumer education programs. The monetary benefit to the class was
20 estimated to be between about \$47 million to \$72 million.

21 l. Mr. Sobol served as co-lead plaintiffs' counsel in Reverse Mortgage Cases,
22 J.C.C.P. No. 4061 (San Mateo Sup. Ct.), an action brought against Transamerica alleging that it
23 targeted senior citizens to market and sell "reverse mortgages" which were misleading as to loan
24 terms and contained unfair charges and fees. A nationwide settlement provided relief to
25 approximately 1600 members of the class averaging about \$5,000 per class member, with some
26 class members receiving many times that amount.

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1 **B. Qualifications of Hank Bates**

2 20. Hank Bates is a partner at CBP, a national law firm based in Little Rock,
3 Arkansas. CBP is recognized as one of the country's premiere firms in the areas of consumer
4 protection class actions, data privacy/security, securities fraud, environmental law and
5 employment discrimination. A copy of CBP's firm resume, which describes the firm's
6 experience in class action and other complex litigation is available at
7 <http://www.cbplaw.com/firm-resume/>.

8 21. Since joining CBP in 2004, Mr. Bates has focused his practice on representing
9 consumers, small businesses, governmental entities, farmers and shareholders in class actions and
10 complex litigation involving consumer fraud, computer privacy, environmental law, and
11 employment rights. He received his B.A. from Harvard University in 1987 and his J.D. from
12 Vanderbilt University School of Law in 1992. Following law school, Mr. Bates was a law clerk
13 for the Honorable Danny J. Boggs, United State Court of Appeals for the Sixth Circuit. Mr. Bates
14 practiced public-interest environmental law in San Francisco, California from 1993 to 1997, first
15 with the law firm of Shute, Mihaly & Weinberger and then with Earthjustice, before returning to
16 his home state of Arkansas. Below is a sampling of class actions and complex litigation
17 throughout the nation in which Mr. Bates and CBP are currently playing a leadership role

18 a. CBP served as Co-Lead Counsel in *Ebarle, et al. v. LifeLock, Inc.*, 3: 15-
19 cv-00258 (N.D. Cal.), a class action alleging that LifeLock misrepresented certain aspects of its
20 identity theft protection services to its subscribers. On September 20, 2016, Judge Gilliam
21 granted final approval of a settlement providing \$68 million total to settlement class members,
22 with attorneys' fees and settlement administration cost being paid by LifeLock on top of this \$68
23 million fund.

24 b. CBP serves on the Plaintiffs' Steering Committee in *In re: The Home*
25 *Depot, Inc., Customer Data Security Breach Litigation*, 1:14-md-02583-TWT (N.D. Ga.), a
26 putative class action brought on behalf of injured financial institutions in the wake of a massive
27 retailer data breach.

28 c. CBP served as Counsel for Lead Plaintiff Umpqua Bank in *In re: Target*

1 *Corporation Customer Data Security Breach Litigation*, 0:14-cmd-02522-PAM-JJK (D. Minn.), a
2 recently-settled class of financial institution plaintiffs over injuries suffered from one of the
3 largest data breaches in history. A settlement, valued at \$39.4 million, was granted final approval
4 by the Court on May 12, 2016 and settlement administration is ongoing

5 d. CBP served as Co-Counsel in *Corona v. Sony Pictures Entertainment, Inc.*,
6 No. CV 14-09600-RGK (Ex) (C.D. Cal.), a case arising out of a breach of Sony's computer
7 networks causing highly-sensitive and personally identifiable information of thousands of Sony
8 employees to be stolen and made public, exposing class members to long-term risk of identity
9 theft and credit fraud. Final approval of a settlement providing for \$2 million to compensate
10 employees who had taken preventative measures to protect themselves and providing for an
11 additional two years of identity theft protection services was granted on April 6, 2016.

12 e. CBP is Co-Lead Counsel in *Daniel, et al. v. Ford Motor Company*, 2: 11-
13 02890 WBS EFB (E.D. Cal.), a class action alleging violations of the Song-Beverly Consumer
14 Warranty Act, the Magnuson-Moss Warranty Act, California's Consumers Legal Remedies Act,
15 and California's Unfair Competition Law arising from an alleged rear suspension defect in Ford
16 Focus model years 2005 through 2011. The Court has certified the class; CBP successfully
17 opposed Ford's Motion for Summary Judgment; and the class action trial is set for September
18 2017.

19 f. CBP is Co-Lead Counsel in *Jensen, et al. v Cablevision Systems*
20 *Corporation*, 2:17-cv-00100-ADS-AKT (E.D.N.Y.), a putative class action alleging violations of
21 the federal Computer Fraud and Abuse Act, arising from the defendant's practice of providing its
22 residential customers with wireless routers that secretly emit secondary, public Wi-Fi networks
23 over which the individual consumer had no control.

24 g. CBP is Co-Counsel in *Wayne Miner et al. v. Philip Morris USA Inc.*,
25 Circuit Court of Pulaski County, Arkansas, Case No. 60-CV-03-4661, a class action brought on
26 behalf of Arkansas smokers over claims that the defendant misrepresented the safety of its "light"
27 cigarette products, which settled in 2016 for \$45 million.

28 h. CBP is Co-Lead Counsel in *Williams, et al. v. State Farm Mutual*

1 *Automobile Ins. Co.*, 4:11-cv-00749 KGB (E.D. AR), a class action alleging State Farm violated
2 Arkansas subrogation law by receiving subrogation payments of medical payment and/or personal
3 injury protection coverage from customers' settlements without first obtaining a judicial
4 determination and/or agreement that the customer was made whole. The Court has certified the
5 class; class notice has been completed; CBP successfully opposed State Farm's Motion for
6 Summary Judgment; and the Court was recently notified that the parties have reached a
7 settlement.

8 i. CBP is Co-Lead Counsel in *Walker, et al. v. Bank of the Ozarks*, CV-11-77
9 (Ark.), a putative class action alleging violations of the Arkansas Deceptive Trade Practices Act,
10 the duty of good faith and fair dealing resulting from Bank of the Ozarks' unfair and
11 unconscionable assessment and collection of excessive overdraft fees. On March 17, 2016, the
12 Arkansas Supreme Court affirmed the lower court's denial of Bank of the Ozarks motion to
13 compel arbitration.

14 j. In addition to the above, CBP has successfully litigated several other
15 prominent class actions throughout the nation, a few of which include:

16 k. *In re Bank of America Credit Protection Marketing & Sales Practices*
17 *Litig.*, United States District Court for the Northern District of California, Case No. 11-md-2269-
18 THE (member of Plaintiffs' Executive Committee; \$20 million settlement).

19 l. *In re DQE, Inc. Securities Litigation*, United States District Court, Western
20 District of Pennsylvania, Case No. 01-1851 (Co-Lead Counsel; \$12 million settlement).

21 m. *Esslinger v. HSBC Bank Nevada*, United States District Court for the
22 Eastern District of Pennsylvania, Case No. 2:10-cv-03213-BMS (Co-Lead Counsel; \$23.5
23 million settlement).

24 n. *Kardonick v. JPMorganChase*, United States District Court for the
25 Southern District of Florida, Case No. 1:10-cv-23235-WMH (Co-Lead Counsel; \$20 million
26 settlement).

27 o. *In re Lernout & Hauspie Securities Litigation*, United States District Court
28 for the District of Massachusetts, No. OO-CV-11589-PBS (Co-Lead Counsel; \$115 million

1 settlement).

2 p. *In re Liberty Refund Anticipation Loan Litig.*, United States District Court
3 for the Northern District of Illinois, Case No. 1:12-cv-02949 (Co-Lead Counsel; \$5.3 million
4 settlement).

5 q. *Middlesex County Retirement System v. Semtech Corp. et al.*, United States
6 District Court for the Southern District of New York, Case No. 07-cv-7183 (DC) (Co-Lead
7 Counsel; \$20 million settlement).

8 r. *Spinelli v. Capital One Bank (USA), et al.*, United States District Court for
9 the Middle District of Florida, Case No. 8:08-cv-132-T-33EAJ (Co-Lead Counsel; more than
10 \$100 million settlement).

11 s. *In re Sterling Financial Corporation Securities Class Action*, United States
12 District Court of the Southern District of New York, Case No. CV 07-2171 (Co-Lead Counsel;
13 \$10.25 million settlement).

14 t. *Nelson v. Wal-Mart Stores, Inc.*, Eastern District of Arkansas, Case No.
15 04- 00171, (Co-Lead Counsel; \$17.5 million in recovery, as well as significant changes to Wal-
16 Mart's hiring policies and four years of court supervision of the settlement terms).

17 u. *The Quapaw Tribe of Oklahoma v. Blue Tee Corp.*, United States District
18 Court for the Northern District of Oklahoma, Case No.03-cv-0846-CVE-PJC (Co-Lead Counsel;
19 \$11.5 million settlement).

20 **V. RECOMMENDATION OF CLASS COUNSEL**

21 22. Class Counsel had a wealth of information at their disposal before entering into
22 settlement negotiations, which allowed Class Counsel to adequately assess the strengths and
23 weaknesses of Plaintiffs' case and balance the benefits of settlement against the risks of further
24 litigation. The parties conducted extensive discovery. For example, Class Counsel served and
25 reviewed responses to dozens of written discovery requests; reviewed tens of thousands of
26 documents and millions of lines of source code. Further, the parties took some 18 depositions.

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1 23. Against this backdrop, Class Counsel have weighed the benefits of the Settlement
2 against the inherent risks and expense of continued litigation, and believe that the proposed
3 Settlement is fair, reasonable, adequate, and in the best interest of the Class.

4 24. Facebook has vigorously denied Plaintiffs' allegations of wrongdoing, and, absent
5 settlement, Plaintiffs anticipate Facebook would defend this action aggressively at multiple
6 procedural steps prior to trial, including a motion for summary judgment. While Plaintiffs
7 strongly believe in the merits of their case, they recognize that the law is in relative infancy in the
8 context of ECPA's and CIPA's application to email communications, and this uncertainty
9 presents at least some element of risk at multiple, critical junctures in this Action.

10 25. The outcome of continued litigation, including trial and likely appeals, is far from
11 certain, could add years to this litigation, and would entail significant expense. In contrast, the
12 Settlement provides significant, immediate benefits to the Settlement Class.

13 26. Accordingly, Class Counsel believe the Settlement to be fair, adequate, and
14 reasonable.

15 **VI. CONCLUSION**

16 27. In sum, the settlement negotiations in this Action were conducted at arm's length
17 by informed and experienced counsel for both parties, spanned seven months, and included
18 numerous mediation sessions before reputable mediators who had an integral part in the
19 settlement negotiations. Further, the Settlement provides a significant benefit to the Class now,
20 without the inherent risk, expense, delay, and uncertainty of continued litigation.

21 28. Consequently, Class Counsel believe the proposed Settlement is fair, reasonable,
22 and adequate, and should be preliminarily approved by the Court.

23 We declare under penalty of perjury that the foregoing is true and correct and that this
24 declaration was executed on this 1st day of March, 2017.

25
26 San Francisco, California

/s/ Michael W. Sobol
 Michael W. Sobol, Esq.
 Lieff Cabraser Heimann & Bernstein, LLP

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Little Rock, Arkansas

/s/ Hank Bates
Hank Bates, Esq.
Carney Bates & Pulliam, PLLC

ATTESTATION

I, Michael W. Sobol, am the ECF user whose identification and password are being used to file this Joint Declaration. I hereby attest that Hank Bates has concurred in this filing.

/s/ Michael W. Sobol
Michael W. Sobol, Esq.