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19 UNITED STATES DISTRICT COURT

20 NORTHERN DISTRICT OF CALIFORNIA

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

23 Plaintiffs,

24 v.

25 FACEBOOK, INC.,

26 Defendant.

Case No. 4:13-Cv-05996

**PLAINTIFFS' REQUEST FOR JUDICIAL
NOTICE**

HEARING

Date: September 17, 2014

Time: 9:00 a.m.

Place: Courtroom 3, 3rd Floor
The Honorable Phyllis J. Hamilton

1 **I. INTRODUCTION**

2 Plaintiffs hereby request that Court take judicial notice documents comprising Senate
3 Legislative History of the Electronic Communications Privacy Act (“ECPA”) and Facebook’s
4 publicly available disclosures, both of which the Consolidated Amended Complaint (“CAC”)
5 incorporates by reference. Plaintiffs also request judicial notice of a decision and order by the
6 Massachusetts Superior Court in Suffolk County that pertains directly to one of Facebook’s
7 defenses.

8 Pursuant to Federal Rule of Evidence 201, Plaintiffs request that the Court take judicial
9 notice of the following materials in support of Plaintiffs’ Opposition to Defendant’s Motion to
10 Dismiss:

11 A true and correct copy of Facebook’s current Statement of Rights and
12 Responsibilities, dated November 15, 2013, attached as Exhibit A to the Declaration of Michael
13 Sobol (“Sobol Declaration”);

14 A true and correct copy of Facebook’s current Data Use Policy, dated November
15 15, 2013, attached as Exhibit B to the Sobol Declaration;

16 A true and correct copy of Senate Report No. 99-541, dated October 17, 1986,
17 attached as Exhibit C to the Sobol Declaration;

18 A true and correct copy of an Order on a Motion to Dismiss in *Marquis v. Google*,
19 No. 11-02808, Mass. Superior Court dated January 17, 2012, attached as Exhibit D to the Sobol
20 Declaration.

21 Plaintiffs’ Exhibits A, and B are Facebook’s own publicly available disclosures and are a
22 source of Facebook’s affirmative misrepresentations as expressly referenced in the CAC. *See*
23 *Dreiling v. Am. Exp. Co.*, 458 F.3d 942, 946 n.2 (9th Cir. 2006) (court “may consider documents
24 referred to in the complaint or any matter subject to judicial notice”). Further, as with Plaintiffs’
25 Exhibit C, Facebook has sought judicial notice of altered versions of these same documents. ECF
26 No. 30. While Plaintiffs have opposed the request to judicially notice version of these documents
27 altered by counsel with highlighting, Plaintiffs respectfully submit that is proper to judicially
28 notice true and accurate copies of the documents without such alterations.

1 Plaintiffs also seek judicial notice of a January 17, 2012 Order by the Massachusetts
2 Superior Court. The Order denied a motion to dismiss in a case where the defendant, an
3 electronic communications services (ECS) provider, like Facebook, argued that ECPA's
4 "ordinary course of business" defense applies when an ECS provider intercepts the content of
5 communications that it is entrusted by its users to transmit. The holding by the Massachusetts
6 Court is relevant here to rebut Facebook's argument that its conduct falls within ECPA's
7 "ordinary course of business" exception to liability for ECS providers. *See United States ex rel.*
8 *Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (court
9 "may take notice of proceedings in other courts, both within and without the federal judicial
10 system, if those proceedings have a direct relation to matters at issue.").

11 Because they satisfy the requirements of Federal Rule of Evidence 201, Plaintiffs'
12 Exhibits A-D are properly subject to judicial notice by this Court.

13 Dated: July 30, 2014

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