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

17 MATTHEW CAMPBELL, MICHAEL
 HURLEY, and DAVID SHADPOUR,

18 Plaintiffs,

19 v.

20 FACEBOOK, INC.,

21 Defendant.
 22

Case No. C 13-05996 PJH

CONSOLIDATED CLASS ACTION

**DEFENDANT FACEBOOK, INC.'S
 REPLY IN SUPPORT OF ITS REQUEST
 FOR JUDICIAL NOTICE IN SUPPORT
 OF ITS MOTION TO DISMISS
 PLAINTIFFS' CONSOLIDATED
 AMENDED COMPLAINT**

HEARING:

Date: September 17, 2014

Time: 9:00 a.m.

Place: Courtroom 3, 3rd Floor

The Honorable Phyllis J. Hamilton

1 Plaintiffs oppose Facebook’s Request for Judicial Notice (“RJN,” Dkt. No. 30) with an absurd
2 accusation that some of the documents have been “altered to reflect Facebook’s position” or that
3 some of the documents cannot be “verifi[ed].” (Pls.’ Opp. to Facebook’s Req. for Judicial Notice
4 (“RJN Opp.”), Dkt. No. 33, at 1, 4.) Plaintiffs’ arguments lack any merit and are a waste of this
5 Court’s time:

6 *First*, Facebook has not “altered” the documents. Rather, Facebook has included the original,
7 full-text documents and simply highlighted relevant provisions to aid this Court’s review. Facebook
8 never represented that any highlighting appeared in the underlying documents, and it is silly for
9 Plaintiffs to oppose the RJN on this basis.

10 *Second*, Plaintiffs do not have any substantive basis for opposing judicial notice of Exhibits A
11 and D to the Jordan Declaration (the current versions of Facebook’s Statement of Rights and
12 Responsibilities (“SRR”) and Data Use Policy (“DUP”)) and Exhibit 1 of Facebook’s Request for
13 Judicial Notice (Senate Report No. 99-541), because Plaintiffs *request judicial notice for the same*
14 *documents*. (Pls.’ Req. for Judicial Notice, Dkt. No. 32; RJN Opp. at 3.)

15 *Third*, Plaintiffs further object to Exhibits B, C, E, and F to the Jordan Declaration (versions
16 of Facebook’s SRR and DUP in effect during the alleged class period), and assert that these
17 documents “purport to be versions of [the relevant user agreements]” and that Facebook does not
18 “identify any source from which to verify these documents.” (RJN Opp. at 3-4.) Plaintiffs fail to
19 note that the authenticity of these documents has indeed been verified with a signed affidavit from a
20 Facebook employee with knowledge who certified each document to be a “true and correct” copy.
21 (See Jordan Declaration, Dkt. No. 29-1 at 1-2 (attaching Exhibits B, C, E, and F).) As Facebook has
22 attested to the authenticity of these documents, their veracity “is not subject to reasonable dispute.”
23 Fed. R. Evid. 201(b); RJN at 3; *see also In re Copper Mountain Sec. Litig.*, 311 F. Supp. 2d 857, 864
24 (N.D. Cal. 2004) (plaintiff disputed accuracy of document for which defendant sought judicial notice;
25 after defendant “attest[ed]” to measures taken to verify the document’s accuracy, the court took
26 judicial notice). Accordingly, this court may properly take judicial notice of Exhibits B, C, E, and F.

27 Further, “[e]ven if the Court [could not] properly take judicial notice of [the documents],
28 given [P]laintiffs’ reliance on the documents, the Court may consider them under the incorporation

1 by reference doctrine.” *In re Silicon Graphics, Inc. Sec. Litig.*, 970 F. Supp. 746, 758 (N.D. Cal.
2 1997). As explained in the RJN, Plaintiffs’ Complaint repeatedly insists that “Facebook [did] not
3 disclose anywhere in its Privacy Policy its practice [during the class period,] . . . nor has such a
4 practice ever been announced in any of Facebook’s disclosures to its users.” (RJN at 2-3.) As these
5 claims “necessarily rel[y]” on the prior versions of the SRR and DUP, Facebook submits the prior
6 versions to show that the relevant disclosures were indeed present during the proposed class period
7 (and Plaintiffs do not dispute this). (*Id.*) Plaintiffs cannot use these documents as both a sword and a
8 shield, using the unsubstantiated contention that they have not been sufficiently “verified” to
9 Plaintiffs’ liking. *See Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007) (plaintiffs not
10 permitted to “surviv[e] a Rule 12(b)(6) motion by deliberately omitting . . . documents upon which
11 their claims are based”) (citation and internal quotation marks omitted); *see also In re Silicon*
12 *Graphics*, 970 F. Supp. at 759 (“Having raised questions about defendants’ [practices] . . . plaintiffs
13 can hardly complain when defendants refer to the same information in their defense.”).

14 Facebook respectfully requests that the Court take judicial notice of Exhibits A, B, C, D, E,
15 and F attached to the Jordan Declaration and Exhibit 1 attached to Facebook’s Request for Judicial
16 Notice.

17
18 Dated: August 28, 2014

Respectfully submitted,

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By: _____/s/
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