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17 *Attorneys for Plaintiffs and the Proposed Class*

18 UNITED STATES DISTRICT COURT  
19 NORTHERN DISTRICT OF CALIFORNIA  
20

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

24 Plaintiffs,

25 v.

26 FACEBOOK, INC.,

27 Defendant.  
28

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Case No. C 13-05996 PJH (MEJ)

**PLAINTIFFS' REQUEST FOR  
TELEPHONIC DISCOVERY  
CONFERENCE**

1 Pursuant to Paragraph 3 of the Court's Discovery Standing Order For Magistrate Judge  
2 Maria-Elena James, Plaintiffs hereby request a telephonic conference for the purpose of enforcing  
3 this Court's discovery procedures, specifically, to require Facebook to timely provide Plaintiffs  
4 with Facebook's portion of a joint letter regarding a time-sensitive discovery dispute in  
5 conformity with paragraph 2 of the Discovery Standing Order.

6 A dispute has arisen with respect to scheduling the deposition of Facebook employee Alex  
7 Himel in a timely manner so as to avoid a continuance of the schedule set forth in Judge James'  
8 April 13, 2015 Discovery Order (Docket No 68), which would, in turn, impact the deadlines in  
9 Judge Hamilton's March 12, 2015 Scheduling Order (Docket No 62). On April 13, 2015 a  
10 discovery conference was held to discuss Plaintiffs' discovery requests related to Facebook's  
11 source code. Because the parties disagreed regarding the discoverability of source code in this  
12 action, Judge James set the following discovery and briefing schedule:

- 13 • **By June 1, 2015**, Facebook will produce technical and other relevant  
14 documents in response to Plaintiffs' source code discovery requests, which  
15 will include a declaration explaining why the produced documents respond  
16 to Plaintiffs' requests without producing the source code itself.
- 17 • The parties will meet and confer following the production, and if Plaintiffs  
18 continue to believe that the actual source code should be produced,  
19 Plaintiffs may file a motion to compel by **July 2, 2015**. Facebook will file  
20 its **opposition by July 20, 2015**, and Plaintiffs will file their reply by July  
21 27, 2015. The Court will hold a hearing on the matter on **August 13, 2015**  
22 **at 10:00 am**.

23  
24 *See* Discovery Order Re: Source Code Briefing Schedule (Docket No 68).

25 During a telephonic meet and confer in mid-May 2015, counsel for Plaintiffs requested  
26 deposition dates in mid-June for Facebook's declarant in support of Plaintiffs' motion to compel  
27 source code. Facebook was non-committal but did not notify Plaintiffs of any concerns related to  
28 the declarant's availability. On June 1, 2015, counsel for the parties met and conferred in person

1 regarding the date for the declarant's deposition, during which Plaintiffs' counsel sought to  
2 schedule the deposition during the week of June 15, 2015, in light of the July 2, 2015 due date for  
3 Plaintiff's motion to compel. On June 2, 2015 Plaintiffs' counsel sought confirmation that  
4 Facebook would agree to make Facebook's declarant, Alex Himel, available during the week of  
5 June 15, 2015 as discussed during the in-person meet and confer. On June 3, 2015 Facebook's  
6 counsel informed Plaintiffs' counsel that Mr. Himel would not be available for deposition until  
7 July 8, 2015 and proposed a continuance or modification of the briefing schedule on the Motion  
8 to Compel. The parties have accordingly reached an impasse with respect to the issue of the  
9 timing of Mr. Himel's deposition, and Plaintiffs intend to seek an order compelling Facebook to  
10 produce Mr. Himel for deposition during the week of June 15, 2015, or alternatively continuing  
11 the August 13, 2015 hearing, and related briefing deadlines, by three weeks.

12 Consistent with this Court's Discovery Standing Order, and as described in the  
13 Declaration of David Rudolph, filed herewith ("Rudolph Decl."), on June 3, 2015, Plaintiffs'  
14 counsel informed Facebook's counsel that Plaintiffs intended to submit a letter brief seeking to  
15 compel the deposition of Mr. Himel the week of June 15, and, given the time-sensitive nature of  
16 this dispute, Plaintiffs would seek expedited resolution of this issue. Rudolph Decl., Ex. A at 4.  
17 Plaintiffs accordingly proposed that the parties exchange their respective positions on June 4,  
18 2015, and that the joint letter brief be filed on June 5, 2015. *Id.*

19 Facebook rejected this schedule, and instead suggested that the parties "discuss a bilateral  
20 briefing schedule for both our letter brief regarding Mr. Shadpour and your letter brief regarding  
21 Mr. Himel." *Id.* Facebook has indicated that it intends to move to compel discovery from named  
22 plaintiff David Shadpour, and the parties have agreed to a briefing schedule for that issue under  
23 which the parties exchange initial positions on June 9, 2015, revisions on June 16, 2015 and file  
24 the letter brief June 17, 2015. Rudolph Decl., ¶ 4. Because Plaintiffs seek to compel Mr.  
25 Himel's deposition to take place the week of June 15, 2015 a "reciprocal" briefing schedule by  
26 which the briefs would be filed on June 17, 2015 is not feasible, and Plaintiffs instead proposed  
27 the following compromise schedule: the parties will exchange positions June 5, 2015, any  
28 revisions on June 8, 2015, and the letter brief will be filed on June 9, 2015. Ex. A at 2.

1 Facebook's counsel did not agree to this schedule, instead suggesting that any briefing be  
2 delayed by further meeting-and-conferring on this issue, despite the fact that the parties had  
3 already met and conferred in person and reached an impasse. *Id.*, Ex. A at 1.

4 As such, Facebook has not agreed to provide its portion of the joint letter pursuant to a  
5 briefing schedule that will allow Plaintiffs to request the relief they seek in time for the Court to  
6 rule on it, necessitating the instant request for a telephonic conference. Plaintiffs seek a  
7 telephonic conference with Magistrate Judge James to either 1) enforce this Court's discovery  
8 procedures by requiring Facebook to participate in a briefing schedule that will allow Plaintiffs to  
9 timely pursue the relief they seek, or 2) preferably, rule on Plaintiffs' request seeking the  
10 deposition of Alex Himel the week of June 15, 2015 during the telephonic conference. In order to  
11 maintain the deadlines in Judge Hamilton's March 12, 2015 Scheduling Order (Docket No 62),  
12 Plaintiffs' strong preference is a timely deposition of Mr. Himel and maintenance of the current  
13 schedule.

14 Counsel for the parties have conferred and are generally available for a telephonic  
15 conference on June 5, on June 8 after 2 p.m., or June 9 prior to 12 p.m.

16 Respectfully submitted,

17 Dated: June 5, 2015

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