

1 Stephen A. Swedlow (admitted *pro hac vice*)
 stephenswedlow@quinnemanuel.com
 2 **QUINN EMANUEL URQUHART & SULLIVAN, LLP**
 191 N. Wacker Drive, Suite 2700
 3 Chicago, IL 60606-1881
 (312) 705-7400
 4
 Kevin Y. Teruya (Bar No. 235916)
 5 kevinteruya@quinnemanuel.com
 Adam B. Wolfson (Bar No. 262125)
 6 adamwolfson@quinnemanuel.com
 Brantley I. Pepperman (Bar No. 322057)
 7 brantleypepperman@quinnemanuel.com
QUINN EMANUEL URQUHART & SULLIVAN, LLP
 8 865 South Figueroa Street, 10th Floor
 Los Angeles, CA 90017-2543
 9 (213) 443-3000

Warren Postman (Bar No. 330869)
 wdp@kellerlenkner.com
 Jason Ethridge (admitted *pro hac vice*)
 jason.ethridge@kellerlenkner.com
KELLER LENKNER LLC
 1300 I Street, N.W., Suite 400E
 Washington, DC 20005
 (202) 918-1123
 Ashley Keller (admitted *pro hac vice*)
 ack@kellerlenkner.com
 Benjamin Whiting (admitted *pro hac*
vice)
 ben.whiting@kellerlenkner.com
KELLER LENKNER LLC
 150 N. Riverside Plaza, Suite 4270
 Chicago, IL 60606
 (312) 741-5220

10 *Attorneys for Plaintiffs*

11
 12 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
 13 **SAN JOSE DIVISION**

14 MAXIMILIAN KLEIN and SARAH
 GRABERT, individually and on behalf of all
 15 others similarly situated,

16 *Plaintiffs,*

17 vs.

18 FACEBOOK, INC., a Delaware corporation
 19 headquartered in California,

20 *Defendant.*

Case No. 5:20-cv-08570-LHK

**PLAINTIFFS' MOTION FOR
 ADMINISTRATIVE RELIEF TO
 CONSIDER WHETHER CONSUMER
 CASES SHOULD BE RELATED
 PURSUANT TO CIVIL LOCAL RULE 3-
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INTRODUCTION

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2 Currently, at least seven putative antitrust class actions are pending against defendant
3 Facebook, Inc. (“Facebook”) before six different judges in the Northern District of California.
4 These seven cases should be assigned into one of two unrelated groups.

5 The first consists of two cases: *Reveal Chat Holdco LLC et al. v. Facebook, Inc.*, Case No.
6 5:20-cv-00363-BLF (Freeman, J.) and the later-filed *Affilious, Inc. et al. v. Facebook, Inc.*, Case
7 No. 4:20-cv-09217-KAW (Westmore, J.) (collectively, the “*Reveal Chat* group”). *Reveal Chat*
8 and *Affilious* raise allegations about Facebook’s conduct towards *app developers* and *advertisers*
9 in the “Social Data” and “Social Advertising” relevant markets, focus on Facebook’s refusal to
10 provide them with access to data from its “Platform”, and were filed by the same plaintiffs’
11 counsel. Facebook, the *Reveal Chat* plaintiffs, and the *Affilious* plaintiffs stipulated to relate
12 *Affilious* to *Reveal Chat* before Judge Freeman on December 30, 2020. *See Reveal Chat*, Dkt. 98.

13 The second consists of four cases: *Klein et al. v. Facebook, Inc.*, Case No. 5:20-cv-08570-
14 LHK (this case) and the later-filed *Kupcho v. Facebook, Inc.*, No. 4:20-cv-08815-JSW (White, J.);
15 *Dames et al. v. Facebook, Inc.*, No. 3:20-cv-08817-HSG (Gilliam, J.); and *Steinberg v. Facebook,*
16 *Inc.* 3:20-cv-09130-VC (Chhabria, J.) (collectively, the “*Klein* group”). Unlike *Reveal Chat* and
17 *Affilious*, *Klein* and the later-filed *Kupcho*, *Dames*, and *Steinberg* raise allegations about
18 Facebook’s anticompetitive deception of *consumers* in the “Social Network” and/or “Social
19 Media”¹ relevant markets. Because the *Klein* group is unrelated to the *Reveal Chat* group, Local
20 Rule 3-12 does not require the same District Judge to preside over all actions simply because they
21 are antitrust cases against Facebook. In fact, antitrust class actions involving different plaintiff
22 classes and different relevant markets are frequently assigned to different judges in the Northern
23 District of California despite involving the same defendant or “platform.” *Compare In re Google*

24 ¹ *Klein* and the later-filed *Kupcho* allege anticompetitive behavior in the Social Network
25 and Social Media Markets. *Dames* and *Steinberg* both allege anticompetitive behavior in the
26 “Personal Social Networking Market,” which, but for the name, is substantially similar to the
27 Social Network Market first alleged in the earlier-filed *Klein*.

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1 *Digital Advertising Antitrust Litig.*, Case No. 5:20-cv-03556-BLF (Freeman, J.) (putative class of
2 users of Google’s search advertising services in “Online Display Advertising Services Market”);
3 with *In re Google Play Consumer Antitrust Litig.*, Case No. 3:20-cv-05761-JD (Donato, J.)
4 (putative class of consumers in “App Distribution Market” that purchased mobile apps using
5 Google Play app store).

6 A seventh case—*Sherman et al. v. Facebook, Inc.*, Case No. 3:20-cv-08721-JSW (White,
7 J.)—is an outlier because it, unlike the others, could arguably be assigned to either group.
8 *Sherman* asserts claims on behalf of consumers based on the same anticompetitive deception of
9 consumers first alleged in *Klein*.² See, e.g., *Sherman*, Dkt. 1, at ¶¶ 12–17, 79–89. But unlike the
10 cases in the *Klein* group, and like the cases in the *Reveal Chat* group, *Sherman* also asserts claims
11 on behalf of non-consumers based on Facebook’s conduct aimed at those non-consumers. *Id.* at ¶¶
12 18–21, 74–77. And, unlike the cases in the *Klein* group—which involve only putative classes of
13 consumers—the *Sherman* plaintiffs seek to represent both an “Antitrust Facebook User Class” and
14 an “Antitrust Facebook Advertiser Class.” *Id.* at ¶ 181.

15 Several piece-meal motions to relate these seven cases are pending before different judges
16 in the Northern District of California. Pending before Judge Freeman in *Reveal Chat* are: (1)
17 Facebook’s motion to relate *Klein* to *Reveal Chat* (which the *Klein* Plaintiffs oppose); (2)
18 Facebook’s motion to relate the later-filed *Sherman*, *Kupcho*, and *Dames* to *Reveal Chat*³; (3) the

19
20 ² Facebook has previously conceded that the anticompetitive deception of consumers
21 theory first alleged in *Klein* and then alleged in the later-filed cases “is absent from the *Reveal*
22 *Chat* complaint.” *Reveal Chat*, Dkt. 87, at 3; see also *Reveal Chat*, Dkt. 85, at 4.

23 ³ The *Dames* and *Sherman* plaintiffs each opposed Facebook’s motion to relate *Dames* and
24 *Sherman* to *Reveal Chat*. *Reveal Chat*, Dkts. 93, 94. The *Kupcho* plaintiff filed a response
25 indicating that she “does not oppose the relation or any necessary coordination among the cases”
26 but “opposes any consolidation of the Facebook User Cases . . . with the *Reveal Chat* case, based
27 on the factual and legal differences between the cases.” *Reveal Chat*, Dkt. 92, at 1.
28

1 *Affilius* plaintiffs’ unopposed motion to relate *Affilius* to *Reveal Chat*; and (4) Facebook’s
2 motion to relate *Steinberg* to *Reveal Chat* (which the *Steinberg* plaintiff opposes). *Reveal Chat*,
3 Dkts. 85, 87, 98, 99. Already pending before this Court is the *Sherman* plaintiffs’ motion to relate
4 *Sherman* to *Klein* rather than to *Reveal Chat*. *Klein*, Dkt. 19.

5 The *Klein* Plaintiffs’ present motion defers to the Court and takes no position on which
6 judge should decide which motion first. Nor does the motion seek to relate *Sherman* to *Klein*
7 (which is the subject of the *Sherman* plaintiffs’ already pending motion, which the *Klein* Plaintiffs
8 do not oppose).⁴ Instead, the motion recognizes that these seven cases are the subject of multiple
9 piece-meal motions to relate that are pending before multiple courts, including this one.

10 Accordingly, to comply with Local Rule 3-12(b) and to assist the Court (and the Northern District
11 of California) with the orderly management of the cases in the *Klein* group, Plaintiffs in this
12 case—the “lowest-numbered” case challenging Facebook’s anticompetitive deception of
13 consumers—move to relate the later-filed *Kupcho*, *Dames*, and *Steinberg* to the earlier-filed
14 *Klein*.⁵

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19 ⁴ The *Klein* plaintiffs filed a response to the *Sherman* plaintiffs’ motion maintaining that
20 “[w]ith respect to the proper assignment of *Klein*, . . . *Klein* is not related to *Reveal Chat*,” but that
21 with respect to the assignment of *Sherman*, the *Klein* Plaintiffs “do not oppose the *Sherman*
22 plaintiffs’ motion to relate their later-filed *Sherman* case to *Klein* rather than to *Reveal Chat*.”
23 *Klein*, Dkt. 24 at 1.

24 ⁵ The *Steinberg* and *Dames* plaintiffs agreed to stipulate that their respective cases are
25 related to *Klein*. See Dkt. 34-2, ¶¶ 6, 9. The *Kupcho* plaintiff indicated that she takes no position
26 as to the *Klein* Plaintiffs’ motion to relate while Facebook’s motions to relate are pending before
27 Judge Freeman in *Reveal Chat*. *Id.*, ¶ 8. Facebook opposes the *Klein* Plaintiffs’ motion. *Id.*, ¶ 7.

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ARGUMENT

First, Klein and the later-filed *Kupcho*, *Dames*, and *Steinberg* concern substantially similar parties, transactions, and events. *See* N.D. Cal. L.R. 3-12(a)(1). The below chart highlights some of these similarities.

	<u>Klein</u>	<u>Kupcho</u>	<u>Dames</u>	<u>Steinberg</u>
Plaintiffs	Two individual Facebook users: Maximilian Klein and Sarah Grabert. Exh. 1, ¶¶ 18–25.	One individual Facebook user: Rachel Banks Kupcho. Exh. 2, ¶¶ 20–22.	Two individual Facebook users: Deborah Dames and Timothy Mathews. Exh. 4, ¶¶ 11–14.	One individual Facebook user: Charles Steinberg. Exh. 6, ¶ 16.
Relevant Market(s)	The Social Network Market and the Social Media Market in the United States. Exh. 1, ¶¶ 52, 74.	The Social Network Market and the Social Media Market in the United States. Exh. 2, ¶¶ 53, 75.	The Personal Social Networking Market in the United States. Exh. 4, ¶¶ 33, 38.	The Personal Social Networking Market in the United States. Exh. 6, ¶¶ 20–21.
Putative Classes(s)	The Antitrust Consumer Class and the Unjust Enrichment Consumer Class. ⁶ Exh. 1, ¶ 216.	The Antitrust Consumer Class and the Unjust Enrichment Consumer Class. Exh. 2, ¶ 218.	The Antitrust Class and the Unjust Enrichment Class. Exh. 4, ¶ 114.	The Antitrust Class and the Unjust Enrichment Class. Exh. 6, ¶ 60.

⁶ The *Klein* Plaintiffs’ proposed classes include: “All persons or entities in the United States who maintained a Facebook profile from 2007 up to the date of the filing of this action.” Each of the later-filed *Kupcho*, *Dames*, and *Steinberg* include class definitions that are identical to those in *Klein*. *See* Exh. 2, ¶ 218; Exh. 4, ¶ 114; Exh. 6, ¶ 60.

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