BEFORE THE
UNITED STATES JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

IN RE: FACEBOOK, INC., CONSUMER PRIVACY USER PROFILE LITIGATION	**MDL DOCKET NO. 2843**

FACEBOOK, INC.'S RESPONSE IN SUPPORT OF PLAINTIFFS' MOTIONS TO TRANSFER RELATED CASES FOR CONSOLIDATED PRETRIAL PROCEEDINGS

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I. INTRODUCTION

Facebook respectfully submits this response to support the plaintiffs' motions to establish a multidistrict litigation ("MDL") proceeding for consumer class action arising from recent events involving Cambridge Analytica. Facebook agrees with the plaintiffs that organizing these cases into an MDL would create substantial efficiencies and avoid inconsistent rulings. Facebook also agrees with the *Beiner* and *Rubin* plaintiffs that the Northern District of California is the most appropriate transferee district.

In the wake of recent press reports describing the alleged misuse of Facebook user data, fourteen consumer class actions have been filed in six federal districts. Facebook is strongly committed to protecting users' information, and it has already taken and continues to take substantial actions to address the conduct that gave rise to these cases. But the lawsuits that have been filed against Facebook are misguided: Facebook broke no laws and violated no legal duties. And although Cambridge Analytica and other related actors used data for purposes that Facebook and its users never authorized, there was no data breach—no unauthorized access to Facebook's systems and no hacking of user data.

All of the cases seek to certify nationwide classes of Facebook accountholders based on the same alleged underlying facts: that a third-party app developer named Aleksandr Kogan, beginning in 2013, used an app he created to obtain information about Facebook users by paying them to take a personality test in exchange for their agreement that the information could be used for academic purposes; that Kogan collected information about those individuals and their Facebook "friends" and then shared that information, through his company Global Science Research ("GSR"), with Cambridge Analytica, contrary to Facebook's terms of service; that Kogan, GSR, Cambridge Analytica, and others each certified that they had deleted this data in

response to Facebook's demands; and that Cambridge Analytica still apparently used the data to target advertisements in connection with the 2016 U.S. Presidential election. All of the cases are at the earliest stage, having been filed in the last few weeks with no substantive motions filed or scheduling conferences held. All of these putative class actions name Cambridge Analytica and Facebook as defendants, and several also name Kogan and GSR. And while the actions assert a variety of related and overlapping legal theories, all of them suffer from similar deficiencies.

Facebook agrees with plaintiffs that an MDL is the most efficient and sensible way to handle pretrial proceedings in these actions and the copycat actions likely to follow in the coming weeks and months. Should this panel agree to establish an MDL, Facebook agrees with the *Beiner* and *Rubin* plaintiffs that the Northern District of California is the most appropriate venue. Nine of the fourteen consumer class actions have been filed in that district, which also is home to a closely related series of shareholder class actions pending before Judge Edward J. Davila based on the same news reports about Cambridge Analytica. Facebook is headquartered in the district and many relevant witnesses are likely to be located there. And, as this panel is aware, judges in the Northern District of California are well-versed in handing MDL proceedings involving multiple class actions like those at issue here, and there is an ample body of Ninth Circuit precedent on class certification and other relevant issues. In light of these circumstances, the Northern District of California is the most sensible and efficient forum for these putative class actions.

II. BACKGROUND

The litigation pertaining to Cambridge Analytica followed on the heels of two news articles published on March 17, 2018, by *The New York Times* and *The Guardian*.[1] The actions fall into three broad categories: (1) shareholder class actions brought under the federal securities laws, all filed in the Northern District of California;[2] (2) shareholder derivative class actions, also all filed in the Northern District of California;[3] and (3) fourteen consumer class action suits brought under various federal and state law theories, pending in six different districts, including the Northern District of California. Plaintiffs' motions, and this response, relate to the third category—the consumer cases—which includes the following actions (the particulars of which are set out in more detail in Appendices to this brief, as noted below):

a. **Northern District of California**:

i. *Beiner v. Facebook, Inc.*, No. 3:18-CV-1953 (N.D. Cal.) (filed Mar. 29, 2018) (Corley, M.J.)

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[1] M. Rosenberg, N. Confessore & C. Cadwalladr, *How Trump "Consultants" Exploited the Facebook Data of Millions*, N.Y. Times (Mar. 17, 2018), https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html; C. Cadwalladr & E. Graham-Harrison, *Revealed: 50 Million Facebook Profiles Harvested for Cambridge Analytica in Major Data Breach*, The Guardian (Mar. 17, 2018), https://www.theguardian.com/news/2018/mar/17/cambridge-analytica-facebook-influence-us-election.

[2] *Yuan v. Facebook, Inc.*, No. 5:18-CV-01725 (N.D. Cal.) (filed Mar. 20, 2018) (Davila, J.); *Casey v. Facebook, Inc.*, No. 5:18-CV-01780 (N.D. Cal.) (filed Mar. 22, 2018) (Davila, J.); *Ernestine v. Facebook, Inc.*, No. 3:18-CV-01868 (N.D. Cal.) (filed Mar. 27, 2018) (Alsup, J.).

[3] *Hallisey v. Zuckerberg*, 4:18-CV-01792 (N.D. Cal.) (filed Mar. 22, 2018) (pending before Gilliam, J.); *Martin v. Zuckerberg*, No. 4:18-CV-01834 (N.D. Cal.) (filed Mar. 23, 2018) (pending before Ryu, M.J.); *Ocegueda v. Zuckerberg*, No. 4:18-CV-01893 (N.D. Cal.) (filed Mar. 27, 2018) (Westmore, M.J.); *Karon v. Facebook, Inc.*, No. 5:18-CV-01929 (N.D. Cal.) (pending before Cousins, J.); *Gloria Stricklin Trust v. Zuckerberg*, No. 3:18-CV-02011 (N.D. Cal.) (filed Apr. 2, 2018) (pending before Corley, M.J.).

ii. *Gennock v. Facebook, Inc.*, No. 3:18-CV-01891 (N.D. Cal.) (filed Mar. 27, 2018) (Ryu, M.J.)

iii. *Haslinger v. Facebook, Inc.*, No. 3:18-CV-01984 (N.D. Cal.) (filed Mar. 30, 2018) (Rogers, J.)

iv. *Kooser v. Facebook, Inc.*, No. 3:18-cv-02009 (N.D. Cal.) (filed Apr. 2, 2018) (Laporte, M.J.)

v. *Labajo v. Facebook, Inc.*, No. 4:18-CV-02093 (N.D. Cal.) (filed Apr. 5, 2018) (Westmore, M.J.)

vi. *O'Kelly v. Facebook, Inc.*, No. 3:18-CV-01915 (N.D. Cal.) (filed Mar. 28, 2018) (Laporte, M.J.)

vii. *Picha v. Facebook, Inc.*, No. 3:18-CV-02090 (N.D. Cal.) (filed Apr. 5, 2018) (Kim, M.J.)

viii. *Price v. Facebook, Inc.*, No. 3:18-CV-01732 (N.D. Cal.) (filed Mar. 20, 2018) (Chhabria, J.)

ix. *Rubin v. Facebook, Inc.*, No. 3:18-CV-01852 (N.D. Cal.) (filed Mar. 26, 2018) (Spero, M.J.)

b. **Northern District of Illinois**: *Comforte v. Cambridge Analytica*, No. 1:18-CV-02120 (N.D. Ill.) (filed Mar. 22, 2018) (Bucklo, J.)

c. **Southern District of Texas**: *Lodowski v. Facebook, Inc.*, No. 4:18-CV-00907 (S.D. Tex.) (filed Mar. 23, 2018) (Ellison, J.)

d. **District of New Jersey**: *Malskoff v. Facebook, Inc.*, No. 2:18-CV-04451 (D.N.J.) (filed Mar. 27, 2018) (Salas, J.).

e. **Central District of California:** *O'Hara v. Facebook, Inc.*, No. 8:18-CV-00571 (C.D. Cal.) (filed Apr. 4, 2018) (unassigned)

f. **Northern District of Alabama:** *Williams v. Facebook, Inc.*, No. 2:18-CV-00535-RDP (N.D. Ala.) (filed Apr. 4, 2018) (Proctor, J.)

The consumer class actions substantially overlap in many ways. Each seeks recovery on behalf of Facebook accountholders whose data allegedly was obtained by Cambridge Analytica

via Kogan's app, "thisisyourdigitallife." (*See* Appendix B.)[4] All of the complaints name Facebook and Cambridge Analytica as defendants, and five actions—*Lodowski*, *Malskoff*, *Rubin*, *Kooser*, and *O'Hara*—also name either Kogan or GSR.[5]

There is also substantial overlap among the legal theories and causes of action asserted in the various complaints. (*See* Appendix C.) Twelve actions—*Lodowski*, *Malskoff*, *O'Kelly*, *Price*, *Rubin*, *Beiner*, *Haslinger*, *Kooser*, *O'Hara*, *Williams*, *Labajo*, and *Picha*—allege violations of state consumer protection laws.[6] All allege state common-law torts and/or related privacy-law claims.[7] Eleven—*Comforte*, *Gennock*, *Lodowski*, *Malskoff*, *Beiner*, *Haslinger*, *Kooser*, *O'Hara*, *Williams*, *Labajo*, and *Picha*—allege federal causes of action under the Stored Communications Act, 18 U.S.C. § 2701, *et seq.,* or the Wiretap Act, 18 U.S.C. §2510, *et seq.* And all center around the same operative theories of wrongdoing: that Cambridge Analytica and other actors wrongfully

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[4] *See also Price,* Compl. ¶ 24; *Rubin*, Compl. ¶ 41; *Gennock*, Compl. ¶ 60; *O'Kelly*, Compl. ¶ 36; *Comforte*, Compl. ¶¶ 230-43; *Lodowski*, Compl. ¶ 27; *Beiner*, Compl. ¶ 68; *Malskoff*, Compl. ¶ 70; *Haslinger*, Compl. ¶ 36; *Kooser*, Compl. ¶ 40; *O'Hara*, Compl. ¶¶ 92-93; *Williams*, Compl. ¶¶ 29-30; *Picha*, Compl. ¶ 86; *Labajo*, Compl. ¶¶ 88-89.

[5] The *Rubin* and *Kooser* complaints also name Cambridge Analytica's parent entity, SCL Group, and the *Comforte* complaint names Mark Zuckerberg, Facebook's CEO. The *Lodowski* and *Malskoff* complaints name Robert Mercer, a hedge fund manager who reportedly owned Cambridge Analytica. The *O'Hara* complaint also names Stephen Bannon.

[6] Cal. Bus. & Prof. Code § 17200 (*Lodowski*, *Malskoff*, *O'Kelly*, *Price*, *Rubin*, *Beiner*, *Haslinger*, *O'Hara*, *Labajo*, and *Picha*); Illinois Consumer Fraud & Deceptive Practices Act, 815 ILCS 505 (*Comforte*); N.J. Consumer Fraud Act, N.J. Stat. Ann. § 56:8-1 (*Malskoff*); Ala. Deceptive Trade Practices Act, Ala. Code § 8-19-1 (*Williams*).

[7] Negligence (*Comforte*, *Lodowski*, *Malskoff*, *O'Kelly*, *Price*, *Rubin*, *Haslinger*, *Kooser*, *O'Hara*, *Williams*, *Labajo*, and *Picha*); invasion of privacy, under several theories (*Comforte*, *Gennock*, *O'Kelly*, *Rubin*, *Beiner*, *Haslinger*, *Kooser*, *O'Hara*, and *Picha*); conversion (*Beiner*, *Kooser*, *O'Hara*, *Williams*, and *Picha*); civil conspiracy (*Beiner*, *Kooser*, and *Williams*); fraudulent misrepresentation (*O'Kelly* and *Kooser*), and misappropriation of valuable property without compensation (*Labajo*).

exploited Facebook's platform to obtain data that they used for unauthorized purposes, and that Facebook should have done more to prevent these wrongs by imposing more robust controls on the use of data by third party apps. The nearly identical factual allegations all appear to be copied from the same two news reports—the March 17, 2018, articles in *The New York Times* and *The Guardian*. (*See* Appendix A.)

The class allegations in all of the actions also substantially overlap: although the class definitions vary slightly, all seek to certify nationwide classes of Facebook accountholders whose data was obtained by Cambridge Analytica and used without or beyond authorization. (*See* Appendix B.) And all of the putative classes suffer from the same weaknesses that, in Facebook's view, will make class certification impossible, including the common struggle to identify any cognizable theory of injury or damages, and the myriad individualized issues, including issues of consent, that will predominate over any classwide concerns. It is imperative for class certification proceedings to be handled in a coordinated manner in a single MDL proceeding.

Finally, all of these actions are in their nascent stages. Many of the complaints have not yet been served; no pleadings or other papers beyond the complaints have been filed; and the courts have expended few if any resources.

On March 30, 2018, the *Beiner* plaintiffs moved to establish an MDL in the Northern District of California for all of the consumer class actions. Dkt. 1. That same day, the *Lodowski* plaintiffs cross-moved to establish an MDL over the same actions in the Southern District of Texas,

Dkts. 5, 11, and the *Rubin* plaintiffs filed a response supporting the *Beiner* plaintiffs' request for an MDL in the Northern District of California, Dkt. 7.[8]

III. ARGUMENT

A. The Fourteen Consumer Class Actions Should Be Transferred Into An MDL.

Consolidation or coordination of pretrial proceedings in an MDL is appropriate if (1) actions pending in different federal courts involve "one or more common questions of fact"; and (2) consolidation "will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions." 28 U.S.C. § 1407(a). Facebook agrees with the moving plaintiffs that both factors strongly favor consolidation of the pretrial proceedings of these actions.

1. *The Actions Involve Overlapping Factual Allegations.*

Section 1407 requires that the cases to be consolidated raise "one or more common questions of fact."[9] It does not require that the cases be identical in every respect. "[T]ransfer under Section 1407 does not require a complete identity or even majority of common factual issues as a prerequisite to transfer." *In re Ins. Brokerage Antitrust Litig.*, 360 F. Supp. 2d 1371, 1372 (J.P.M.L. 2005). The actions at issue here plainly satisfy this requirement.

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[8] Since those motions were filed, six new consumer class actions were filed in the Northern and Central Districts of California and the Northern District of Alabama: the *Haslinger*, *Kooser*, *O'Hara*, *Williams*, *Labajo*, and *Picha* cases, included in the list above, all of which should be included in any MDL proceeding. Facebook has accordingly filed a Notice of Related Actions to include those first four actions in this MDL, Dkt. 13, and is concurrently filing a Notice of Related Actions regarding *Labajo* and *Picha*.

[9] Of course, this inquiry is very different from the class certification question required by Rule 23. *See*, *e.g.*, *In re Trade Partners, Inc., Inv'rs Litig.*, 493 F. Supp. 2d 1381 (J.P.M.L. 2007) (centralization under Section 1407 appropriate even where individual questions of fact and law predominate for class certification purposes). Facebook reserves all of its defenses and objections to class certification, including, the absence of common questions susceptible to common answers (*see Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011)), and the fact that common questions do not predominate over individualized questions. *See* Fed. R. Civ. P. 23(b)(3); *Comcast Corp. v. Behrend*, 133 S. Ct. 1426, 1436–37 (2013).

The consumer class actions at issue here present many "common question[s] of fact." 28 U.S.C. § 1407(a). As set out above, all of the actions stem from the same alleged factual predicate—Cambridge Analytica's unauthorized use of Facebook users' data—and propose identical or overlapping nationwide classes. Factual issues central to class certification, liability, and damages will be similar across all the cases. For example, the manner in which Kogan, GSR, and Cambridge Analytica misused the Facebook platform and misrepresented its activities to Facebook is a common issue in all actions that will be critical to determining proximate causation and liability.

As a result of this substantial overlap, the cases will present substantially similar issues at the motion to dismiss, class certification, and summary judgment phases.

2. *Consolidation Will Serve "The Convenience Of The Parties And Witnesses" And "Promote The Just And Efficient Conduct Of The Actions."*

Consolidation pursuant to Section 1407(a) also would be more convenient for the parties and efficient for the judicial system, for two principal reasons:

First, litigating these cases separately would impose substantial and duplicative discovery burdens. The Panel consistently has held that transfer under Section 1407 is intended to prevent such duplication. *See*, *e.g.*, *In re Starmed Health Pers. FLSA Litig.*, 317 F. Supp. 2d 1380, 1381 (J.P.M.L. 2004) (consolidating two actions in part because transfer was necessary to "eliminate duplicative discovery" and "conserve the resources of the parties").[10] That is especially so where,

[10] *See also In re Zyprexa Prods. Liab. Litig.*, 314 F. Supp. 2d 1380, 1382 (J.P.M.L. 2004) ("[T]ransfer under Section 1407 will offer the benefit of placing all actions in this docket before a single judge who can structure pretrial proceedings to consider all parties' legitimate discovery needs while ensuring that common parties and witnesses are not subjected to discovery demands that duplicate activity that will occur or has already occurred in other actions."); *In re Enron Corp. Sec., Deriv. & ERISA Litig.*, 196 F. Supp. 2d 1375, 1376–77 (J.P.M.L. 2002) (consolidating multiple actions because of the cases' strong connection to Southern District of Texas, where Enron was headquartered, witnesses were located, and auditors performed their work).

as here, the cases are numerous, are pending in several different districts, and are likely to be followed by additional actions. *See*, *e.g.*, *In re Schnuck Markets, Inc., Customer Data Sec. Breach Litig.*, 978 F. Supp. 2d 1379, 1380–81 (J.P.M.L. 2013) (centralizing cases because there was no "reasonable prospect" that Section 1404 transfer would "eliminate the multidistrict character of the litigation").

Because all of the actions concern the same factual core, discovery in the fourteen actions is likely to be virtually identical, including the same witnesses, the same documentary evidence, and the same third party discovery. "Allowing the witnesses to appear once in a single venue is more convenient that requiring them to appear multiple times in multiple venues." *Cluck v. IKON Office Sols., Inc.*, No. 11-05027-JSW, 2012 WL 1610789, at *2 (N.D. Cal. May 8, 2012). As the Panel has recognized, only centralization can achieve this goal: "informal coordination and cooperation among the parties and courts" is not "sufficient to eliminate the potential for duplicative discovery, inconsistent pretrial rulings, and conflicting discovery obligations." *In re Generic Pharm. Pricing Antitrust Litig.*, No. MDL 2724, 2017 WL 4582710, at *2 (J.P.M.L. Aug. 3, 2017). Similarly, it is appropriate to grant centralization now, without forcing the parties to litigate multiple change of venue motions, given the numerous tag along actions that likely will be filed in the coming weeks or months. *In re: Gerber Probiotic Prod. Mktg. & Sales Practices Litig.*, 899 F. Supp. 2d 1378, 1381 (J.P.M.L. 2012).

Second, centralization will eliminate the risk of inconsistent pretrial rulings on discovery, dispositive motions, and other pretrial matters. *See*, *e.g.*, *In re Pineapple Antitrust Litig.*, 342 F. Supp. 2d 1348, 1349 (J.P.M.L. 2004) (consolidating cases to "prevent inconsistent pretrial rulings"). That risk is especially acute in putative class actions with overlapping class definitions, as is the case here. Where there is such "overlap," ["[c]entralization in one district will bring

efficiencies to the pretrial proceedings of these actions and will eliminate duplicative discovery and prevent inconsistent pretrial rulings, particularly with respect to class certification." *In re Imprelis Herbicide Mktg., Sales Practices & Prod. Liab. Litig.*, 825 F. Supp. 2d 1357, 1359 (J.P.M.L. 2011); *accord*, *e.g.*, *In re Toys 'R' Us-Delaware, Inc., FACTA Litig.*, 581 F. Supp. 2d 1377, 1377–78 (J.P.M.L. 2008) (centralization will "eliminate duplicative discovery; prevent inconsistent pretrial rulings, especially with respect to class certification; and conserve the resources of the parties, their counsel and the judiciary"); *In re Sierra Wireless, Inc., Sec. Litig.*, 387 F. Supp. 2d 1363, 1364 (J.P.M.L. 2005) (same); *In re High Sulfur Content Gasoline Prods. Liab. Litig.*, 344 F. Supp. 2d 755, 757 (J.P.M.L. 2004) (same). Indeed, Section 1407 was "designed" to prevent the "pretrial chaos" resulting from "conflicting class action determinations." *In re Plumbing Fixture Cases*, 298 F. Supp. 484, 492–93 (J.P.M.L. 1968).

Such chaos is especially likely where proposed classes overlap because the first case to reach judgment could trigger res judicata consequences for putative class members in other cases; plaintiffs "would thus necessarily be in destabilizing competition to race to an early resolution." *In re Facebook, Inc., IOP Sec. & Derivative Litig.*, No. 12-CV-4081, 2013 WL 4399215, *5 (S.D.N.Y. Aug. 13, 2013). "Such conflicts are avoided by having … a single consolidated action on behalf of a unitary putative class." *Id.* Here, the putative classes are virtually identical, making the risk of conflicting rulings absent consolidation particularly acute.

Different federal courts also could reach contradictory rulings on other core legal issues. It will be critical for these issues to be adjudicated in a streamlined and consistent fashion.

In short, these actions involve a significant number of overlapping (and often identical) factual allegations, legal claims, and putative class members. Allowing them to proceed separately through the pretrial process would create a significant risk of inconsistent pretrial rulings on a wide

range of issues that could lead to inconsistent outcomes, including for members of the same putative classes whose interests are ostensibly represented in multiple jurisdictions. *See In re Texas Gulf Sulphur Sec. Litig.*, 344 F. Supp. 1398, 1400 (J.P.M.L. 1972) ("We have frequently held that the possibility of inconsistent class action determinations is an important factor favoring transfer."); *In re Sugar Indus. Antitrust Litig.*, 395 F. Supp. 1271, 1273 (J.P.M.L. 1975) (consolidation necessary for actions with "overlap[ping] or duplicat[ive]" class allegations). Centralization would prevent such inconsistency.

Centralization is particularly appropriate because none of these actions has moved past the pleadings stage. No answers or motions to dismiss have been filed, no Rule 26(f) conferences have been held, and no discovery has taken place. *See*, *e.g.*, *In re Int'l House of Pancakes Franchise Litig.*, 374 F. Supp. 1406, 1407 (J.P.M.L. 1974) (transfer appropriate where discovery not well-advanced). The cases should be consolidated in a single transferee district.

3. *Establishing An MDL Now Is The Most Efficient Way To Bring These Cases Together.*

In its briefing order, the Panel asked the parties to "address what steps they have taken to pursue alternatives to centralization." Dkt. 3. As noted above, all of the securities and derivative cases to date have been filed in the Northern District of California, and the plaintiffs in the securities cases are taking steps to relate all of the cases to a single judge, the Honorable Edward J. Davila. Indeed, the very first-filed case of all three categories of cases (securities, derivative, and consumer) is assigned to Judge Davila. *See Yuan*, No. 5:18-CV-01725 (N.D. Cal.) (filed Mar. 20, 2018). As for the consumer cases, the parties who have spoken on the issue appear to agree that an MDL is the most efficient and effective means of avoiding duplication in these cases, which currently are pending in six different judicial districts. Any effort at informal coordination and scheduling among these cases will not eliminate the near-certain risk of conflicting or competing

rulings on motions to dismiss or for class certification. Trying to transfer all of the cases to one district also would be time-consuming and possibly ineffectual. Already, different plaintiffs' counsel have asserted different positions to the Panel on where the MDL should be located, and it is unlikely that the same parties could achieve a voluntary transfer of the actions to a single judicial district. And litigating multiple contested transfer motions would be unnecessarily time-consuming and, given the discretionary nature of 28 U.S.C. § 1404, would provide no guarantee that the actions actually would end up in a single district. Extending the proceedings in this way would be burdensome to the parties and the judicial system, would not accomplish the immediate coordination of motion practice and discovery that Facebook believes is essential, and would be inconsistent with the urgent action that plaintiffs have asserted is necessary to resolve this litigation. Dkt. 7 at 2.

B. The Actions Should Be Transferred To The Northern District Of California.

In selecting an appropriate transferee district, the Panel considers multiple factors: where most discovery will take place; where the relevant conduct occurred; the procedural stage of each case; and where the plurality of cases have been filed. *See*, *e.g.*, *In re Treasury Sec. Auction Antitrust Litig.*, 148 F. Supp. 3d 1360, 1361–62 (J.P.M.L. 2015) (transferring to Southern District of New York because all defendants were headquartered there and most of the cases had been filed in that district); *In re Nat'l Football League's "Sunday Ticket" Antitrust Litig.*, 148 F. Supp. 3d 1358, 1359–60 (J.P.M.L. 2015) (transferring to Central District of California because 15 actions had been filed there, defendant maintained its headquarters there, and common evidence would likely be found there).

These factors strongly favor the Northern District of California. That district is home to Facebook's headquarters, so any discovery relating to its operations and the use of its platform would likely be conducted there. It also is where the majority of the consumer class actions (nine

of fourteen) have been filed, and where all of the related shareholder litigation (securities and derivative actions) is pending.

1. *Relevant U.S.-Based Documents And Witnesses Are Likely Located In The Northern District Of California.*

One factor the Panel considers in selecting an appropriate transferee district is the location where most discovery will take place and where the relevant conduct occurred. *See*, *e.g.*, *In re AMF Computerized Cash Register Contract Litig.*, 360 F. Supp. 1404, 1405 (J.P.M.L. 1973). Here, discovery likely will center around events in the U.K. (where Kogan resides and where Cambridge Analytica's relevant office is located) and the Northern District of California (where Facebook is headquartered). Aleksandr Kogan and Cambridge Analytica are the parties responsible for misappropriating consumer data and violating Facebook's terms of service. Kogan is a U.K. resident who apparently operated out of the U.K. Cambridge Analytica is based in New York, but its corporate parent, SLC, is a U.K. company, and the recent investigations by U.K. data regulators have focused on Cambridge Analytica's London offices, suggesting that the relevant documents and witnesses will be located there.[11] To the extent discovery focuses on Facebook's operations, the misuse of its platform and data, and the controls that Facebook had in place, that discovery will be centered in the Northern District of California, where Facebook is based and most of its relevant witnesses reside. Indeed, the Panel previously assigned Facebook privacy litigation to the Northern District of California because "[c]ommon defendant Facebook is headquartered in the Northern District of California, where relevant documents and witnesses are located." *In re Facebook Internet Tracking Litig.*, 844 F. Supp. 2d 1374, 1375 (J.P.M.L. 2012).

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[11] H. Summers & N. Slawson, Investigators complete seven-hour Cambridge Analytica HQ search, The Guardian (Mar. 24, 2018), https://www.theguardian.com/news/2018/mar/23/judge-grants-search-warrant-for-cambridge-analyticas-offices.

In this case, too, many Facebook witnesses whom plaintiffs might seek to depose work at Facebook's headquarters in Menlo Park, in the Northern District of California.

2. *No Case Has Advanced Past The Filing Of A Complaint.*

This Panel also considers the degree of procedural advancement of the pending cases in selecting a transferee district. *See*, *e.g.*, *In re Air Crash near Peixoto De Azevada, Brazil on Sept. 29, 2006*, 493 F. Supp. 2d 1374, 1376 (J.P.M.L. 2007) (selecting a transferee district in part because actions pending in the district were "more procedurally advanced than the actions pending elsewhere"). Here, although all of the pending cases are in their nascent stages, the first case (*Price*) was filed in the Northern District of California. All cases were filed within the last three weeks, Facebook has filed no answers or motions to dismiss, no court has held a Rule 26(f) conference, and no discovery has taken place.

3. *Actions Have Been Filed In Districts Across The Country, With The Largest Number Filed In The Northern District Of California.*

The Panel also considers the prevalence of the member actions in the candidate districts. *See*, *e.g.*, *In re PepsiCo, Inc., Bottled Water Mktg. & Sales Practices Litig.*, 560 F. Supp. 2d 1348, 1349 (J.P.M.L. 2008) (selecting a transferee district in part because two of four filed actions were already pending there); *In re Fosamax Prods. Liab. Litig.*, 444 F. Supp. 2d 1347, 1349–50 (J.P.M.L. 2006) (15 of 19 actions already pending in transferee district); *In re Holiday Magic Sec. & Antitrust Litig.*, 368 F. Supp. 806, 807 (J.P.M.L. 1973) (per curiam) (two of five cases already pending in transferee district).

Here, plaintiffs have filed actions against Facebook in six districts across the country. Nine actions were filed in the Northern District of California. One action was filed in each of the Southern District of Texas, the Northern District of Illinois, the District of New Jersey, the Central District of California, and the Northern District of Alabama. That so many plaintiffs have filed

their cases in the Northern District of California is a strong indication that their counsel view that district as being appropriate for these actions.

In addition, all of the various securities class actions and shareholder derivative actions that have been filed in the wake of the same news articles are already pending in the Northern District of California, and two of the three securities class actions are pending before Judge Edward J. Davila (the plaintiffs in those cases are in the process of consolidating the third such action with Judge Davila as well). *Cf. In re: Apple, Inc. Device Performance Litig.*, MDL No. 2827, Dkt. 40, at 2 (J.P.M.L. Apr. 4, 2018) (assigning MDL to Judge Davila because he "already ha[d] taken steps to coordinate the actions before him"). These shareholder actions center around the same operative set of underlying facts pertaining to Cambridge Analytica, such that any discovery in those proceedings will necessarily overlap with discovery in the consumer actions. Litigation in the same district would give the transferee court substantial opportunities to achieve efficiencies not only across the consumer classes, but also in the broader litigation, particularly if the same judge is assigned to all actions. This factor, too, suggests that the Northern District of California is the appropriate center of gravity for consolidated proceedings.

4. *Transfer To The Southern District of Texas Would Not Further The Interests Of Multidistrict Litigation.*

In contrast, transfer to the Southern District of Texas would not further the interests of MDL consolidation. Only one action was filed in that district and, to Facebook's knowledge, none of the relevant documents or witnesses will be located in Texas. The *Lodowski* plaintiffs point to Houston's geographic location in the center of the country as being beneficial. Dkt. 11-1 at 5-7. But Houston's relative proximity to the east coast is substantially outweighed by the travel burdens that would be imposed on all California-based witnesses, as well as counsel in

most of the cases. And, as the *Beiner* and *Rubin* plaintiffs point out, travel in and out of the San Francisco Bay Area is very easy, facilitated by three international airports.

IV. CONCLUSION

For the foregoing reasons, consolidation of these actions into a multidistrict litigation for pretrial proceedings would further "the convenience of parties and witnesses and promote the just and efficient conduct of [the] actions." 28 U.S.C. § 1407(a). Facebook respectfully requests that this Panel grant the pending motion to establish an MDL covering the actions listed on the schedule attached to the *Beiner* plaintiff's motion and the actions identified in Facebook's Notices of Related Actions and assign the MDL to the Northern District of California for consolidated pretrial proceedings.

Dated: April 6, 2018

Respectfully submitted,

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