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**VIA ECF**

The Honorable Robert W. Sweet
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *In re Facebook, Inc., IPO Securities and Derivative Litigation* 12-md-02389 (RWS).

Dear Judge Sweet:

On behalf of Facebook Defendants in the above-referenced litigation, I write in reply to Plaintiffs' letter dated May 4, 2016. Plaintiffs take the position that not only should discovery from unnamed class members be deferred but also that discovery of unnamed class members may not be available ***at all***, because the named Plaintiffs are not in possession of unnamed class members' documents. Plaintiffs have also previously said that Facebook Defendants may not communicate directly with unnamed class members. *See* Defs.' April 29, 2016 Letter to J. Sweet as Ex. 1, ECF 410. The positions Plaintiffs have now cobbled together demonstrate that there is no administratively feasible way to manage individualized discovery of unnamed class members' knowledge, an issue that this Court held "is a subjective inquiry for each and every investor." Class Cert. Op. at 31. It remains Plaintiffs' burden to show this case is manageable as a class action.[1] In the absence of an effective plan to manage individualized discovery—and Plaintiffs are suggesting there is not one—the Court may wish to reconsider class certification at some point. But at the very least, assuming this case proceeds as a class action, Facebook Defendants respectfully request that this Court confirm that Defendants will have the right to take individualized discovery from absent class members in a later phase of this case.

This Court granted class certification on the premise that it was "administratively feasible" to manage this case such that Defendants could "exercise[]their due process right to raise individualized knowledge defenses." Class Cert Op. at 47. Further discovery has

[1] *See, e.g.*, *Pelman v. McDonald's Corp.*, 237 F. Supp. 2d 512, 539 n.30 (S.D.N.Y. 2003) (plaintiffs have the "obligation of showing that the case is manageable as a class action"); *Doe v. Karadzic*, 176 F.R.D. 458, 463 (S.D.N.Y. 1997) (same).

confirmed that knowledge will be an individualized issue for each and every investor. Just last week, in the first deposition of underwriters' lead analysts, the [redacted] She also testified that [redacted]

Based on this testimony, as well as other evidence showing underwriters' analysts told investors about Facebook's revisions, *see* Defs.' Sur-Reply at 18-19 [redacted] Defendants will be entitled to inquire into the knowledge of ***each*** investor who seeks to recover damages. If one of those investors had brought these claims as an individual action, there would be no doubt that Facebook Defendants could seek discovery from that individual investor plaintiff about its knowledge. *See Fed. Hous. Fin. Agency v. UBS Americas Inc.*, 2013 WL 3284118, at *18 (S.D.N.Y. June 28, 2013). There should be no doubt that Defendants' substantive rights cannot be altered just because this is a class action. *See Police & Fire Ret. Sys. of the City of Detroit v. IndyMac MBS, Inc.*, 721 F.3d 95, 109 (2d Cir. 2013) ("Rules Enabling Act forbids interpreting Rule 23 to abridge, enlarge or modify any substantive right.") (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 367 (2011)).

We are grateful for Your Honor's attention to this matter.

Sincerely,

Andrew B. Clubok
Kirkland & Ellis LLP
Counsel for the Facebook Defendants

cc: All counsel by ECF

# EXHIBIT A

# (REDACTED)

# EXHIBIT B

# (REDACTED)