

## EXHIBIT 5

Tab A

### **Time & Expenses Protocol**

(previously filed as ECF No. 72-6)

## EXHIBIT 6

## MEMORANDUM

TO: Facebook Data Breach Litigation Counsel

FROM: John A. Yanchunis, Andrew N. Friedman,  
Ariana J. Tadler

DATE: January 15, 2019

RE: Time and Expense Reporting Protocol for Plaintiffs' Firms

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In order to efficiently litigate this case, we are implementing the time-keeping and expense-reporting requirements described below. We have also attached an Excel spreadsheet template for your use. Please review this protocol carefully. If the protocol's procedures and requirements are not followed, you may forfeit your ability to be compensated for any time if we are fortunate enough to earn a fee.

### **I. Overall Policies**

As fiduciaries to the proposed Class, we are obligated to litigate this case effectively and efficiently, without unnecessary effort and duplication. Proposed Co-Lead Interim Counsel ("Co-Lead Counsel") have, therefore, prepared this protocol to ensure those goals. We will strictly adhere to these directives. Accordingly, before you expend any time in this litigation for which you may seek compensation, you must obtain **written approval in advance from Co-Lead Counsel**. Moreover, the written approval must clearly authorize all of the time for which you seek to be compensated. If you have any doubts about whether your time has been so authorized, please reach out to us for clarification.

Simply reporting the time does not mean a firm will be paid for that time or that such time will be included in any fee application. We will not be able to include in any fee petition any time that is not expended and timely reported in accordance with this protocol. Further, Co-Lead Counsel will evaluate the propriety of all reported time to ensure that the tasks were efficiently handled and the time is reasonable.

### **II. Submission of Time**

Time and expense reports will be compiled and maintained by Milberg Tadler Phillips Grossman LLP. Please transmit your monthly time and expense reports electronically in PDF and Excel format to FacebookTime@Milberg.com. If you have any questions regarding the reports, please contact AJ de Bartolomeo at Milberg Tadler, either by email (ajdebartolomeo@milberg.com) or by telephone (415-710-7273).

Each monthly time and expense submission must include the Time and Expense Reports in both a single Microsoft Excel workbook format (.xls) and PDF (.pdf) format. This means that each monthly submission email will consist of **one** PDF file and **one** Excel file, within which there will be three tabs: Monthly Expense Report; Monthly Time Report; and Monthly Time Report Summary. **Submissions must be made using the attached Time and Expense Reports. Time and expenses not submitted using these Reports will not be considered.**

The first time and expense reports are due on **February 15, 2019**, and should include all qualified time and expenses incurred through January 31, 2019. Time and expense reports thereafter are to be submitted by the 15th of each month (or the first business day thereafter) for the preceding month (e.g., the April 15, 2019, time and expense reports should include all time and expenses from March 2019). ***If not submitted in a timely manner, your time and expenses will not be considered for compensation absent good cause for any delay.***

You must maintain the underlying time and expense records that support your monthly submissions, including original receipts. Time and expense reports shall be created and submitted pursuant to the protocol set forth herein.

### **III. Verification**

All Time and Expense Reports must be certified by an attorney with authority in each firm attesting to the accuracy of the submissions. This requirement may be satisfied by including such a certification along with each submission, either as a separate attachment to the email containing the submissions, or, if the submission email is sent directly by the certifying attorney, then in the body of the email containing the submissions.

### **IV. Time Reporting Details**

So that there are no issues with time reporting, please observe the following protocols:

- Time submissions must be based on contemporaneously kept records.
- Time reporting is to be recorded in segments of 1/10th of an hour.
- Time reported must include a detailed description of the subject matter and work performed. Vague task descriptions, such as “performed legal research” or “reviewed documents” are not sufficient.
- Avoid block billing where possible. Rather than listing several events collectively and noting a single block of time, separately designate time for each distinct task. Only very closely related tasks should be billed together.
- Time entries related to telephone calls or meetings should list all participants, either by title or general group (e.g., “opposing counsel,”) or, preferably, by name.
- Do not bill for leaving a voicemail or communication with administrative staff (except for very lengthy substantive conversations, such as training staff on document review protocols).
- Time reported must be reasonable and necessary and shall not exceed the fair value of the services performed. Unnecessarily duplicative work by multiple lawyers in the same firm will not be accepted.

- Time and expenses incurred prior to the appointment of Co-Lead Counsel will be considered for compensation only to the extent they contributed to advancement of the litigation as a whole. Time investigating or filing the initial complaints or seeking to lead the litigation should not be submitted and will not be considered compensable time.
- General review of Court filings, orders, transcripts, emails, or other documents not directly related to work assigned by Co-Lead Counsel will not be considered compensable time.
- Generally, only Co-Lead Counsel's firms shall be permitted to seek reimbursement of time and expenses associated with attending Court appearances. There may be good reasons to depart from this policy, such as when a lawyer is particularly knowledgeable about a matter to be taken up with the Court. Decisions to depart from the policy will be made by Co-Lead Counsel on a hearing-by-hearing basis.
- Time spent reviewing or drafting emails should be the actual time spent, just like time spent on every other authorized activity.
- If you receive advance authorization from Co-Lead Counsel to work on this case, you shall provide to us in advance of the work being done a list of the proposed attorneys/paralegals who will bill time on this case and their customary and usual court-approved hourly rates. For each attorney, you must also specify whether the attorney is a partner or associate (including of counsel or other designations), and the year of law school graduation. After receipt of these hourly rates, we reserve the right to harmonize these rates.

## V. Expense Report Details

Expense reports must be maintained contemporaneously and with specificity. Accordingly, please observe the following protocols:

- Counsel are reminded that only reasonable and appropriate expenses incurred while performing work to advance the litigation will be eligible for consideration as compensable expenses.
- Receipts for all expenses must be maintained by the submitting counsel and shall be provided to Co-Lead Counsel upon request.
- Co-Lead Counsel have established a litigation fund managed by Cohen Milstein LLP. The litigation fund that we have established will be used to pay common expenses, which include filing and service costs; deposition and court reporter fees; the cost of creating and operating a document depository; expert and consultant fees and expenses; fees for e-discovery, copying, and coding (done outside a firm); witness expenses; fees for independent investigators; bank charges; and such other common expenses approved by Co-Lead Counsel. Bills for common expenses should be sent for payment to Cohen Milstein. Absent good cause, requests for payment of common expenses will not be honored unless, before the expense is incurred, written approval is obtained from Co-Lead Counsel.

- You should report non-common expenses for which you may seek reimbursement on a monthly basis consistent with the policy set forth below all. Non-common expenses should be reported at cost without any markups. The following expenses are not reimbursable and should not be reported: fax charges; postage; long distance telephone charges; in-house photocopying; standard computerized legal research; and secretarial or clerical overtime. Any exceptions to this policy must be approved in writing by Co-Lead Counsel.
- Although counsel should submit all expenses incurred in a certain month in the submission made on the 15th of the next month, some third party billing and credit card statement schedules may make such quick expense submission difficult in some circumstances. In such circumstances, counsel may include expenses incurred in the previous months that—because of circumstances outside the submitting counsel's control—could not have been submitted by the deadline. Counsel must include an explanation for such submission in the "Explanation" column in the Expense Report.
- Any expenses submitted more than two months in arrears will not be considered or included in any compilation of compensable expenses and will be disallowed, except for good cause shown and with approval of Co-Lead Counsel.
- Expense Reports must be submitted using the attached form and must be reported using the following category codes:
  1. **Federal Express / Local Courier, etc.**
  2. **Hotels**
  3. **Meals**
  4. **Mileage** (any request for mileage expenses must include the total number of miles, which will be multiplied by the IRS Standard Business Mileage Rate for the period in which the mileage was driven)
  5. **Air Travel** (counsel shall use best efforts to obtain reasonably priced plane tickets; First-Class airfare shall not be reimbursed; at Co-Lead Counsel's discretion, Co-Lead Counsel may seek reimbursement of First-Class (or other premium) airfare at the economy/main cabin rate if counsel submitting the expense provides documentation showing the economy/main cabin rate, for the same flight, on the same date of the purchase of his/her First-Class or other premium flight)
  6. **Deposition Costs** (for all court reporter and videographer costs)
  7. **Bloomberg/Pacer**
  8. **Witness and Expert Expenses**
  9. **Court Fees**
  10. **Service of Process Fees**

- 11. Hearing and Trial Transcripts** (for all non-deposition transcripts; deposition transcript expenses should be recorded using Code 6)
  - 12. Ground Transportation** (i.e., rental car, taxi)
  - 13. Miscellaneous** (this code should be used rarely, if at all, and must include a specific explanation of the nature of the expense)
- Every expense needs to be detailed and specific. Descriptions such as “Deposition Services” or “Plane Ticket” are insufficient.
  - No entry should contain more than one category of expense and no entry should have more than one expense category code assigned. If, on the same day, one person incurs two expenses, there should be two separate entries for that person for that date. If multiple timekeepers incur the same expense for the same category, then there should be a separate entry for each person.

\* \* \*

Co-Lead Counsel will submit all time and expense reports to the Court, *in camera*, every quarter beginning on April 1, 2019, and thereafter on the last business day of each July, October, January, and April. Assuming the Court orders this, to ensure that we remain current with our obligations, it is imperative that you follow the instructions above.

We look forward to litigating this case with you.

## EXHIBIT 5

Tab B

### **Litigation Code Definitions**

October 25, 2018

# Litigation Code Definitions

## Uniform Task-Based Management System

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### Litigation Code Set Code Definitions

The Litigation Code Set is intended for use in all adversarial matters including litigation, binding arbitrations, and regulatory/administrative proceedings. The following definitions elaborate on the intended scope of each phase and task and should guide attorneys in coding time.

#### L100 Case Assessment, Development and Administration.

Focuses on the case as a whole, the "forest" rather than the "trees".

#### L110 Fact Investigation/Development.

All actions to investigate and understand the facts of a matter. Covers interviews of client personnel and potential witnesses, review of documents to learn the facts of the case (but not for document production, L320), work with an investigator, and all related communications and correspondence.

#### L120 Analysis/Strategy.

The thinking, strategizing, and planning for a case, including discussions, writing, and meetings on case strategy. Also includes initial legal research for case assessment purposes and legal research for developing a basic case strategy. Most legal research will be under the primary task for which the research is conducted, such as research for a summary judgment motion (L240). Once concrete trial preparation begins, use L440 for trial strategy and planning.

#### L130 Experts/Consultants.

Identifying and interviewing experts and consultants (testifying or non-testifying), working with them, and developing expert reports. Does not include preparing for expert depositions (L340) or trial (L420).

**L140 Document/File Management.**

A narrowly defined task that comprises only the processes of creating and populating document and other databases or filing systems. Includes the planning, design, and overall management of this process. Work of outside vendors in building litigation support databases should be an Expense.

**L150 Budgeting.**

Covers developing, negotiating, and revising the budget for a matter.

**L160 Settlement/Non-Binding ADR.**

All activities directed specifically to settlement. Encompasses planning for and participating in settlement discussions, conferences, and hearings and implementing a settlement. Covers pursuing and participating in mediation and other non-binding Alternative Dispute Resolution (ADR) procedures. Also includes pre-litigation demand letters and ensuing discussions.

**L190 Other Case Assessment, Development and Administration.**

Time not attributable to any other overall task. Specific use in a given matter often may be pre-determined jointly by the client and law firm.

**L200 Pre-Trial Pleadings and Motions.**

Covers all pleadings and all pretrial motions and procedures other than discovery.

**L210 Pleadings.**

Developing (researching, drafting, editing, filing) and reviewing complaints, answers, counter-claims and third party complaints. Also embraces motions directed at pleadings such as motions to dismiss, motions to strike, and jurisdictional motions.

**L220 Preliminary Injunctions/Provisional Remedies.**

Developing and discussing strategy for these remedies, preparing motions, affidavits and briefs, reviewing opponent's papers, preparing for and attending court hearing, preparing witnesses for the hearing, and effectuating the remedy.

**L230 Court Mandated Conferences.**

Preparing for and attending hearings and conferences required by court order or procedural rules (including Rule 16 sessions) other than settlement conferences (L160).

## L240 Dispositive Motions.

Developing and discussing strategy for or opposing motions for judgment on the pleadings and motions for complete or partial summary judgment, preparing papers, reviewing opponent's papers, defensive motions (e.g., motion to strike affidavit testimony, Rule 56(f) motion), and preparing for and attending the hearing.

## L250 Other Written Motions/Submissions.

Developing, responding to, and arguing all motions other than dispositive (L240), pleadings (L210), and discovery (L350), such as motions to consolidate, to bifurcate, to remand, to stay, to compel arbitration, for MDL treatment and for change of venue.

## L260 Class Action Certification and Notice.

Proceedings unique to class action litigation and derivative suits such as class certification and notice.

## L300 Discovery.

Includes all work pertaining to discovery according to court or agency rules.

## L310 Written Discovery.

Developing, responding to, objecting to, and negotiating interrogatories and requests to admit. Includes mandatory meet-and-confer sessions. Also covers mandatory written disclosures as under Rule 26(a).

## L320 Document Production.

Developing, responding to, objecting to, and negotiating document requests, including the mandatory meet-and-confer sessions to resolve objections. Includes identifying documents for production, reviewing documents for privilege, effecting production, and preparing requested privilege lists. (While a general review of documents produced by other parties falls under this task, coding and entering produced documents into a data base is Task L140 and reviewing documents primarily to understand the facts is Task L110.)

## L330 Depositions.

All work concerning depositions, including determining the deponents and the timing and sequence of depositions, preparing deposition notices and subpoenas, communicating with opposing or other party's counsel on scheduling and logistics, planning for and preparing to take

the depositions, discussing deposition strategy, preparing witnesses, reviewing documents for deposition preparation, attending depositions, and drafting any deposition summaries.

#### L340 Expert Discovery.

Same as L330, but for expert witnesses.

#### L350 Discovery Motions.

Developing, responding to, and arguing all motions that arise out of the discovery process.

Includes the protective order process.

#### L390 Other Discovery.

Less frequently used forms of discovery, such as medical examinations and on-site inspections.

#### L400 Trial Preparation and Trial.

Commences when lawyer and client determine that trial is sufficiently likely and imminent so that the process of actually preparing for trial begins. It continues through the trial and post-trial proceedings in the trial court. Once trial begins, lawyers who appear in court presumptively should bill their court time to L450 Trial and Hearing Attendance. Litigation work outside the courtroom during this phase (e.g., evenings, weekends and the time of other attorneys and support personnel), should continue to be classified using other L400 Tasks.

#### L410 Fact Witnesses.

Preparing for examination and cross-examination of non-expert witnesses.

#### L420 Expert Witnesses.

Preparing for examination and cross-examination of expert witnesses.

#### L430 Written Motions/Submissions.

Developing, responding to and arguing written motions during preparation for trial and trial, such as motions in limine and motions to strike proposed evidence. Also includes developing other written pre-trial and trial filings, such as jury instructions, witness lists, proposed findings of fact and conclusions of law, and trial briefs.

#### L440 Other Trial Preparation and Support.

All other time spent in preparing for and supporting a trial, including developing overall trial

strategy, preparing opening and closing arguments, establishing an off-site support office, identifying documents for use at trial, preparing demonstrative materials, etc.

#### L450 Trial and Hearing Attendance.

Appearing at trial, at hearings and at court-mandated conferences, including the pre-trial conferences to prepare for trial. For scheduling conferences that are denominated as "Pre-Trial Conferences", but not directed toward conduct of the trial, use Task L230.

#### L460 Post-Trial Motions and Submissions.

Developing, responding to and arguing all post-verdict matters in the trial court, such as motions for new trial or j.n.o.v., for stay pending appeal, bills of costs, and requests for attorney's fees.

#### L470 Enforcement.

All work performed in enforcing and collecting judgments and asserting or addressing defenses thereto.

#### L500 Appeal.

Covers all work on appeal or before a reviewing body.

#### L510 Appellate Motions and Submissions.

Developing, responding to and arguing motions and other filings before a reviewing body, such as motions and other filings for stay pending appeal.

#### L520 Appellate Briefs.

Preparing and reviewing appellate briefs.

#### L530 Oral Argument.

Preparing for and arguing an appeal before a reviewing body.

### Resources

- Litigation Code Set:
  - [Overview](#)
  - [Litigation Code Set](#)

- [Litigation Code Set Sample Budget Format](#)
- [Litigation Code Definitions](#)
- [Background, Definitions, Principles, and Assumptions](#)
- [Participants and Liaisons](#)

[Download the Codeset](#)

## EXHIBIT 5

Tab C

### **Billing Template**

<i>Firm Name:</i>
<i>Reporting Period:</i>
<i>Date of Submission:</i>
<i>Certified By:</i>

<b>Category Codes:</b>	<b>L210 Pleadings</b>	<b>L310 Written Discovery/ ESI, Protective Orders, and Stipulations Re Discovery</b>	<b>L410 Fact Witnesses (Trial)</b>
<b>L100 Case Administration</b>	<b>L220 Preliminary Injunctions/Provisional Remedies</b>	<b>L320 Document Production and Review</b>	<b>L420 Expert Witnesses (Trial)</b>
<b>L110 Fact Investigation/Development – Non-Expert</b>	<b>L230 Court Mandated Conferences/Hearings</b>	<b>L325 Document Review Mgmt/Advanced Doc Review</b>	<b>L430 Written Motions/Submissions (Trial)</b>
<b>L115 Client and Class Member Communications and Vetting</b>	<b>L240 Dispositive Motions</b>	<b>L330 Depositions – Non-Expert</b>	<b>L440 Other Trial Preparation and Support</b>
<b>L120 Analysis/Strategy</b>	<b>L250 Other Written Motions/Submissions</b>	<b>L340 Expert Discovery/Deposition</b>	<b>L450 Trial and Hearing Attendance</b>
<b>L130 Experts/Consultants and Expert Reports</b>	<b>L260 Class Certification and Notice of Certification</b>	<b>L350 Discovery Motions</b>	<b>L460 Post-Trial Motions and Submissions</b>
<b>L160 Settlement/Mediation</b>		<b>L390 Other Discovery</b>	<b>L500 Appeal (Trial)</b>
			<b>L601 Settlement Approval documents and hearings</b>
			<b>L602 Settlement Administration</b>
			<b>L603 Appeals from Settlement</b>

<i>Firm Name:</i>	
<i>Reporting Period:</i>	
<i>Date of Submission:</i>	
<i>Certified By:</i>	

<b>Category Codes:</b> L100 Case Administration L110 Fact Investigation/Development – Non-Expert L115 Client and Class Member Communications and Vetting L120 Analysis/Strategy L130 Experts/Consultants and Expert Reports L160 Settlement/Mediation	L210 Pleadings L220 Preliminary Injunctions/Provisional Remedies L230 Court Mandated Conferences/Hearings L240 Dispositive Motions L250 Other Written Motions/Submissions L260 Class Certification and Notice of Certification	L310 Written Discovery/ESI, Protective Orders, and Stipulations Re Discovery L320 Document Production and Review L325 Document Review Mgmt/Advanced Doc Review L330 Depositions – Non-Expert L340 Expert Discovery/Deposition L350 Discovery Motions L390 Other Discovery	L410 Fact Witnesses (Trial) L420 Expert Witnesses (Trial) L430 Written Motions/Submissions (Trial) L440 Other Trial Preparation and Support L450 Trial and Hearing Attendance L460 Post-Trial Motions and Submissions L500 Appeal (Trial) L601 Settlement Approval documents and hearings L602 Settlement Administration L603 Appeals from Settlement
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<u>Name</u>	<u>Title</u>	<u>Date</u>	<u>Category of Work Performed</u>	<u>Description of Work</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
							\$0.00
							\$0.00
							\$0.00
<b>TOTALS</b>					<b>0.00</b>		<b>\$0.00</b>

<i>Firm Name:</i>	
<i>Reporting Period:</i>	

<u>Timekeeper Name</u>	<u>Timekeeper Title (include years of experience)</u>	<u>Hours</u>	<u>Rate</u>	<u>Total Lodestar</u>
				\$0.00
				\$0.00
				\$0.00
				\$0.00
				\$0.00
<b>TOTAL</b>		<b>0.00</b>		<b>\$0.00</b>

<i>Firm Name:</i>	
<i>Reporting Period:</i>	

<u>Category Name</u>	<u>Total Time per Category</u>	<u>Total Fees per Category</u>
<b>Client and Case Management and Investigation</b>		
L100 Case Administration		
L110 Fact Investigation/Development – Non-Expert		
L115 Client and Class Member Communications and Vetting		
L120 Analysis/Strategy		
L130 Experts/Consultants and Expert Reports		
L160 Settlement/Mediation		
<b>Case Pleadings and Motions</b>		
L210 Pleadings		
L220 Preliminary Injunctions/Provisional Remedies		
L230 Court Mandated Conferences/Hearings		
L240 Dispositive Motions		
L250 Other Written Motions/Submissions		
L260 Class Certification and Notice of Certification		
<b>Discovery – Fact and Expert</b>		
L310 Written Discovery/ ESI, Protective Orders, and Stipulations Re Discovery		
L320 Document Production and Review		
L325 Document Review Mgmt/Advanced Doc Review		
L330 Depositions – Non-expert		
L340 Expert Discovery/Depositions		
L350 Discovery Motions		
L390 Other Discovery		
<b>Trial</b>		
L410 Fact Witnesses (Trial)		
L420 Expert Witnesses (Trial)		
L430 Written Motions/Submissions(Trial)		
L440 Other Trial Preparation and Support/Trial Analysis & Strategy		

Firm Name:	
Reporting Period:	

\*\*\*\*\*ALL ORIGINAL RECEIPTS MUST BE MAINTAINED AND PROVIDED TO CO-LEAD COUNSEL UPON REQUEST\*\*\*\*\*

Name	Title	Date	<u>Nature of Expense / Charge</u> <u>Incurred</u>	<u>Description of Expense / Charge</u>	Cost
<b>TOTAL</b>					<b>\$0.00</b>