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8 *Attorneys for Non-Party Francisco Partners  
Management, L.P.*

9  
10 IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION  
12

13 WhatsApp Inc. and Facebook, Inc.,

14 Plaintiffs,

15 v.

16 NSO Group Technologies Ltd and Q Cyber  
17 Technologies Ltd.,

18 Defendants.

Case No. 4:19-cv-07123-PJH

**NON-PARTY FRANCISCO  
PARTNERS MANAGEMENT, L.P.'S  
OBJECTIONS AND RESPONSES TO  
PLAINTIFFS' SUBPOENA TO  
PRODUCE DOCUMENTS,  
INFORMATION, OR OBJECTS**

1 Pursuant to Federal Rules of Civil Procedure 26 and 45 and the Local Rules of the United  
2 States District Court for the Northern District of California, Non-Party Francisco Partners  
3 Management, L.P. (“Francisco Partners”), serves the following objections and responses to Plaintiffs’  
4 Subpoena to Produce Documents, Information, or Objects (“Subpoena”).

5 **RECURRING OBJECTIONS**

6 1. Francisco Partners objects to each definition, instruction, and request to the extent  
7 that Plaintiffs attempt to impose upon Francisco Partners obligations beyond those imposed by the  
8 Federal Rules of Civil Procedure and the Local Rules for the Northern District of California.  
9 Francisco Partners does not undertake any duties not imposed by the Federal Rules of Civil  
10 Procedure, or the Local Rules for the Northern District of California, in the absence of agreement by  
11 the parties or order of the Court.

12 2. Francisco Partners objects to each request to the extent it fails to identify a time  
13 period for which Francisco Partners must produce documents. Francisco Partners also objects to  
14 each definition, instruction, and request that is not confined to an identified time period as  
15 overbroad, vague, and unduly burdensome.

16 3. Francisco Partners objects to each definition, instruction, and request to the extent  
17 that it seeks discovery of information or documents protected by the attorney-client privilege, work-  
18 product immunity, the joint-defense or common-interest privilege, or any other applicable privilege  
19 or immunity, and to the extent that it seeks identification of privileged information or information  
20 that is otherwise exempt from discovery. In the event that any privileged or immune document is  
21 produced by Francisco Partners, such production is inadvertent and is not intended as a waiver of  
22 any privilege or immunity. In the event that Plaintiffs believe it may have received any privileged or  
23 immune information, it should promptly inform Francisco Partners, return or destroy all documents  
24 constituting or referencing such information, and refrain from using such information in any way.

25 4. Francisco Partners objects to each definition, instruction, and request to the extent  
26 that the discovery sought by any such request calls for production of documents or things that are not  
27 reasonably accessible, are unreasonably cumulative or duplicative, or are obtainable from some other  
28 source that is more convenient, less burdensome, or less expensive, and to the extent compliance

1 with any such request would be unduly burdensome, expensive, and oppressive, as prohibited by  
2 Fed. R. Civ. P. 26(b), especially because Francisco Partners is a non-party to this action.

3 5. Francisco Partners objects to each definition, instruction, and request that uses the  
4 terms or phrases “each,” “any,” or “all” on the grounds that the use of such terms or phrases renders  
5 the requests overbroad, unduly burdensome, vague, and ambiguous and on the further ground that  
6 requests so phrased fail to describe with reasonable particularity the documents or things sought.

7 6. Francisco Partners objects to the Subpoena and to the requests to the extent that the  
8 burden and expense of the proposed discovery outweighs its likely benefit.

9 7. Francisco Partners objects to each request to the extent it seeks documents that are  
10 already in Plaintiffs’ possession or are readily available to Plaintiffs, for example, documents  
11 previously produced to Plaintiffs, documents available from parties in the above-captioned litigation,  
12 or documents widely available through public sources.

13 8. Francisco Partners objects to each definition, instruction, and request to the extent  
14 that it fails to specify with reasonable particularity the information sought, and Francisco Partners  
15 will, therefore, produce, if at all, only those documents or things which reasonably can be identified  
16 as responsive by Francisco Partners.

17 9. Francisco Partners objects to each definition, instruction, and request insofar as it  
18 seeks documents or things that are not within Francisco Partners’ possession, custody, or control, or  
19 are in the possession, custody, or control of a third party, or are not obtainable through reasonable  
20 diligence.

21 10. Francisco Partners objects to each definition, instruction, and request to the extent  
22 that it seeks disclosure of information in violation of the legal or contractual obligations of Francisco  
23 Partners to third parties, including but not limited to obligations arising out of non-disclosure and/or  
24 confidentiality agreements. Francisco Partners will not produce any such documents or things until  
25 first receiving permission from such other party under the terms of any confidentiality agreement.

26 11. Francisco Partners objects to each definition, instruction, and request to the extent it  
27 calls for a legal conclusion.  
28

1           12.     Francisco Partners objects to each definition, instruction, and request to the extent it  
2 seeks documents and information that are not kept in the ordinary course of business and/or are not  
3 reasonably accessible due to undue burden or cost. Francisco Partners objects to each definition,  
4 instruction, and request to the extent that it imposes a significant expense within the meaning of Fed.  
5 R. Civ. P. 45(d)(2)(B)(ii).

6           13.     A statement that Francisco Partners will produce a particular category of documents  
7 is not a representation that any such documents currently exist or that they existed in the past.  
8 Rather, it means only that Francisco Partners will produce such documents to the extent that they  
9 currently exist, are in Francisco Partners' possession, custody, or control, and can be located after a  
10 reasonably diligent search in locations in which they are likely to be found.

11           14.     These Recurring Objections apply to all of Francisco Partners' responses. Specific  
12 objections are provided because they are believed to be particularly applicable to the specific request  
13 and are not to be construed as a waiver of any other Recurring Objection.

14           15.     These responses and objections are based upon information known and available to  
15 Francisco Partners at this time, as Francisco Partners interprets and understands each request.  
16 Francisco Partners reserves the right to modify, change, or supplement these responses and  
17 objections.

#### 18                                   **OBJECTIONS TO DEFINITIONS**

19           16.     Francisco Partners objects to the definition of "You" and "Your" to the extent it  
20 purports to include within its definition any person or entity other than Francisco Partners  
21 Management, L.P., which is the only entity upon whom the Subpoena was served, and Francisco  
22 Partners will not answer for any entity or person other than Francisco Partners Management, L.P. and  
23 will not produce documents or things not within Francisco Partners Management, L.P.'s possession,  
24 custody, or control.

#### 25                                   **OBJECTIONS TO INSTRUCTIONS**

26           17.     Francisco Partners objects to and refuses to comply with any instruction that purports  
27 to impose obligations in addition to or inconsistent with those imposed by the Federal Rules of Civil  
28 Procedure and/or the Local Rules for the Northern District of California.

1 18. Francisco Partners objects to producing privileged commentary or notation on any  
2 document that is protected by the attorney-client privilege or the attorney work product doctrine.  
3 Francisco Partners objects to producing privileged drafts protected by the attorney-client privilege or  
4 the attorney work product doctrine. Francisco Partners objects to the requirements specified for  
5 preparation of a privilege log, which exceed the obligations that have been recognized by applicable  
6 case law.

7 19. Francisco Partners objects to each instruction to produce and/or identify “all” or  
8 “any” documents to the extent this instruction renders the requests overbroad, unduly burdensome,  
9 vague, and ambiguous and on the further ground that requests so phrased fail to describe with  
10 reasonable particularity the documents or things sought.

### 11 **REQUESTS FOR PRODUCTION**

#### 12 **REQUEST NO. 1:**

13 All Documents and Communications Relating to all relationships that You had with  
14 Defendants, WestBridge, Shalev Hulio, Omri Lavie, or with any other party acting on their behalf,  
15 including but not limited to: (i) all contracts or agreements with Defendants, WestBridge, their  
16 affiliates or agents; (ii) any marketing or promotional materials provided by Defendants or  
17 WestBridge or relating to Defendants’ or WestBridge’s business and products; (iii) all financial  
18 statements and other reports regarding Defendants’ or WestBridge’s business; (iv) copies of all  
19 minutes, notes, or resolutions from any meetings of the board of Defendants or WestBridge; (v) all  
20 Documents and Communications relating to Your investment in or purchase of Defendants’ or  
21 WestBridge’s businesses and any termination of Your relationship with Defendants or WestBridge,  
22 in whole or in part, including Documents reflecting the reasons for such termination and the timing  
23 of such termination.

#### 24 **RESPONSE TO REQUEST NO. 1:**

25 In addition to its Recurring Objections, incorporated herein by reference, Francisco Partners  
26 objects to this request insofar as it seeks documents protected by the attorney-client privilege, the  
27 work-product doctrine, the joint-defense or common-interest privilege, or any other applicable  
28 privilege or immunity. Francisco Partners objects to the terms “You” and “Your” to the extent that it

1 purports to include within its definition any person or entity other than Francisco Partners  
2 Management, L.P., which is the only entity upon whom the Subpoena was served, and Francisco  
3 Partners will not answer for any entity or person other than Francisco Partners Management, L.P.  
4 and will not produce documents or things not within Francisco Partners Management, L.P.'s  
5 possession, custody, or control. Francisco Partners further objects to the phrases "any other party  
6 acting on their behalf," "marketing or promotional materials," "Defendants' or WestBridge's  
7 business and products," and "other reports regarding Defendants' or WestBridge's business" as  
8 vague and ambiguous insofar as they are unclear, undefined, and subject to multiple reasonable  
9 interpretations. Francisco Partners further objects to this request as unduly burdensome, duplicative,  
10 and beyond the scope of permissible discovery under Rule 26 to the extent that it seeks from a non-  
11 party information that is more readily obtainable from a party to the litigation or a relevant third  
12 party. *See Nidec Corp. v. Victor Co. of Japan*, 249 F.R.D. 575, 577 (N.D. Cal. 2007); *Moon v. SCP*  
13 *Pool Corp.*, 232 F.R.D. 633, 638 (C.D. Cal. 2005) (because "plaintiffs have not shown they have  
14 attempted to obtain these documents from defendant, the Court finds that, at this time, requiring [the]  
15 non-party ... to produce these documents is an undue burden"). Francisco Partners objects to this  
16 request as overbroad, unduly burdensome, and beyond the scope of permissible discovery under  
17 Rule 26 to the extent that the request is unlimited both in temporal and substantive scope and fails to  
18 identify any specific time period or subject matter that is relevant to any claim or defense in the case;  
19 this failure is particularly burdensome in light of the fact that "a non-party subject to a subpoena  
20 *duces tecum* 'deserve[s] extra protection from the courts.'" *Soto v. Castlerock Farming and Transp.,*  
21 *Inc.*, 282 F.R.D. 492, 504 (N.D. Cal. 2012) (citing *High Tech Med. Instrumentation v. New Image*  
22 *Indus.*, 161 F.R.D. 86, 88 (N.D. Cal. 1995)). Francisco Partners objects to this request as not  
23 relevant to any claim or defense in the case. *Personal Audio LLC v. Togi Entm't, Inc.*, Case No. 14-  
24 mc-80025-RS (NC), 2014 WL 1318921, at \*2 (N.D. Cal. March 31, 2014) ("the party issuing the  
25 subpoena must demonstrate that the discovery sought is relevant."). Francisco Partners objects to  
26 this request as beyond the permissible scope of discovery under Rule 26 in that the burden in  
27 responding outweighs its likely benefit. Francisco Partners further objects to this request as  
28 overbroad, unduly burdensome, and at least not proportional to the needs of the case to the extent

1 that it seeks all documents merely “relating to” numerous subcategories of topics without reasonably  
2 tailoring the request to information that is relevant to any specific claim or defense in the case. *Soto*,  
3 282 F.R.D. at 504. Francisco Partners objects to this request to the extent that it imposes a  
4 significant expense within the meaning of Fed. R. Civ. P. 45(d)(2)(B)(ii).

5 Subject to these specific objections and the Recurring Objections, Francisco Partners will not  
6 produce documents in response to this request as currently drafted. Francisco Partners is willing to  
7 meet and confer with Plaintiffs to understand why Plaintiffs believe this request is relevant to the  
8 claims and defenses asserted in the above-captioned litigation, seeks information that cannot be  
9 obtained from parties to the case or relevant third parties, and is proportional to the needs of the case.

10  
11 **REQUEST NO. 2:**

12 Documents sufficient to show the corporate structures of You, Defendants, and WestBridge.

13 **RESPONSE TO REQUEST NO. 2:**

14 In addition to its Recurring Objections, incorporated herein by reference, Francisco Partners  
15 objects to this request insofar as it seeks documents protected by the attorney-client privilege, the  
16 work-product doctrine, the joint-defense or common-interest privilege, or any other applicable  
17 privilege or immunity. Francisco Partners objects to the terms “You” and “Your” to the extent that it  
18 purports to include within its definition any person or entity other than Francisco Partners  
19 Management, L.P., which is the only entity upon whom the Subpoena was served, and Francisco  
20 Partners will not answer for any entity or person other than Francisco Partners Management, L.P.  
21 and will not produce documents or things not within Francisco Partners Management, L.P.’s  
22 possession, custody, or control. Francisco Partners objects to this request as not relevant to any  
23 claim or defense in the case. *Personal Audio LLC*, 2014 WL 1318921, at \*2 (N.D. Cal. March 31,  
24 2014) (“the party issuing the subpoena must demonstrate that the discovery sought is relevant.”).  
25 Francisco Partners further objects to this request as unduly burdensome, duplicative, and beyond the  
26 scope of permissible discovery under Rule 26 to the extent that it seeks from a non-party information  
27 that is more readily obtainable from a party to the litigation or a relevant third party. *See Nidec*  
28 *Corp.*, 249 F.R.D. at 577; *Moon*, 232 F.R.D. at 638 (because “plaintiffs have not shown they have

1 attempted to obtain these documents from defendant, the Court finds that, at this time, requiring [the]  
2 non-party ... to produce these documents is an undue burden”).

3 Subject to these specific objections and the Recurring Objections, Francisco Partners will not  
4 produce documents in response to this request as currently drafted. Francisco Partners is willing to  
5 meet and confer with Plaintiffs to understand why Plaintiffs believe this request is relevant to the  
6 claims and defenses asserted in the above-captioned litigation, seeks information that cannot be  
7 obtained from parties to the case or relevant third parties, and is proportional to the needs of the case.

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9 **REQUEST NO. 3:**

10 For any time since October 2017 (including but not limited to the Relevant Period), all  
11 Documents and Communications Relating to Defendants’ or WestBridge’s use of WhatsApp’s  
12 service, app, servers, or technology, including but not limited to the allegations described in the  
13 complaint brought by WhatsApp and Facebook against the Defendants in the Northern District of  
14 California, Case No. 4:19-cv-07123-PJH (2019), including any Communications regarding the  
15 litigation.

16 **RESPONSE TO REQUEST NO. 3:**

17 In addition to its Recurring Objections, incorporated herein by reference, Francisco Partners  
18 objects to this request insofar as it seeks documents protected by the attorney-client privilege, the  
19 work-product doctrine, the joint-defense or common-interest privilege, or any other applicable  
20 privilege or immunity. Francisco Partners objects to this request as overbroad, unduly burdensome,  
21 and beyond the scope of permissible discovery under Rule 26 to the extent that the request is  
22 unlimited in substantive scope and fails to identify any specific subject matter that is relevant to any  
23 claim or defense in the case, and instead seeks “all” documents and communications “relating to”  
24 various overbroad categories of information, including the “allegations described in the complaint;”  
25 this failure is particularly burdensome in light of the fact that “a non-party subject to a subpoena  
26 *duces tecum* ‘deserve[s] extra protection from the courts.’” *Soto*, 282 F.R.D. at 504 (citing *High*  
27 *Tech Med. Instrumentation*, 161 F.R.D. at 88). Francisco Partners further objects to this request as  
28 unduly burdensome, duplicative, and beyond the scope of permissible discovery under Rule 26 to the



1 extent that it seeks from a non-party information that is more readily obtainable from a party to the  
2 litigation or a relevant third party. *See Nidec Corp.*, 249 F.R.D. at 577; *Moon*, 232 F.R.D. at 638  
3 (because “plaintiffs have not shown they have attempted to obtain these documents from defendant,  
4 the Court finds that, at this time, requiring [the] non-party ... to produce these documents is an undue  
5 burden”). Francisco Partners objects to this request as not relevant to any claim or defense in the  
6 case. *Personal Audio LLC*, 2014 WL 1318921, at \*2 (“the party issuing the subpoena must  
7 demonstrate that the discovery sought is relevant.”). Francisco Partners objects to this request as  
8 beyond the permissible scope of discovery under Rule 26 in that the burden in responding outweighs  
9 its likely benefit. Francisco Partners further objects to this request as overbroad, unduly  
10 burdensome, and at least not proportional to the needs of the case to the extent that it seeks all  
11 documents merely “relating to” Defendants’ or WestBridge’s “use of” various WhatsApp services  
12 without reasonably tailoring the request to information that is relevant to any specific claim or  
13 defense in the case. *Soto*, 282 F.R.D. at 504. Francisco Partners objects to this request to the extent  
14 that it imposes a significant expense within the meaning of Fed. R. Civ. P. 45(d)(2)(B)(ii).

15 Subject to these specific objections and the Recurring Objections, Francisco Partners will not  
16 produce documents in response to this request as currently drafted. Francisco Partners is willing to  
17 meet and confer with Plaintiffs to understand why Plaintiffs believe this request is relevant to the  
18 claims and defenses asserted in the above-captioned litigation, seeks information that cannot be  
19 obtained from parties to the case or relevant third parties, and is proportional to the needs of the case.

20 **K&L GATES LLP**

21  
22 Dated: July 22, 2020

By: /s/ Matthew G. Ball

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1 **PROOF OF SERVICE**

2 I am employed in the county of San Francisco, State of California. I am over the age of 18 and not a  
3 party to the within action; my business address is K&L GATES LLP, Four Embarcadero Center,  
Suite 1200, San Francisco, CA 94111. On **July 22, 2020** I served the document(s) described as:

4 **NON-PARTY FRANCISCO PARTNERS MANAGEMENT, L.P.'S OBJECTIONS AND**  
5 **RESPONSES TO PLAINTIFFS' SUBPOENA TO PRODUCE DOCUMENTS,**  
6 **INFORMATION, OR OBJECTS**

7 together with an unsigned copy of this declaration on the interested parties in this action:

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Telephone: (650) 752-2023  
11 [Micah.block@davispolk.com](mailto:Micah.block@davispolk.com)

*Counsel for Plaintiffs WhatsApp, Inc.  
and Facebook, Inc.*

12  
13 **BY ELECTRONIC SERVICE:** by transmitting a true copy of the foregoing document(s) to the  
14 e-mail addresses set forth above.

15 Dated: July 22, 2020

16 By: Stephany McKnight