

**PLAINTIFF'S AND K2xL's
EXHIBIT A**

1 I. NEEL CHATTERJEE (STATE BAR NO. 173985)
nchatterjee@orrick.com
2 THOMAS J. GRAY (STATE BAR NO. 191411)
tgray@orrick.com
3 JULIO C. AVALOS (STATE BAR NO. 255350)
javalos@orrick.com
4 ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
5 Menlo Park, CA 94025
Telephone: 650-614-7400
6 Facsimile: 650-614-7401

7 Attorneys for Defendant
FACEBOOK, INC.
8

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

13 DANIEL M. MILLER,

14 Plaintiff,

15 v.

16 FACEBOOK, INC. and YAO WEI YEO,

17 Defendants.
18

Case No. 3:10-CV-00264 (WHA)

**FACEBOOK, INC.'S FIRST SET OF
INTERROGATORIES TO
PLAINTIFF MILLER**

19 Pursuant to Federal Rule of Civil Procedure 33, Plaintiff Facebook, Inc. ("Facebook")
20 hereby propounds the following interrogatories to be answered, under oath, by Plaintiff Miller,
21 within 30 days after service of these interrogatories, or whatever date is ordered by the Court,
22 whichever is sooner, as required by Federal Rule of Civil Procedure 33.

23 **DEFINITIONS**

24 A. "ANY" shall be understood to include and encompass "ALL." As used herein, the
25 singular shall always include the plural and the present tense shall also include the past tense.
26 The words "AND" as well as "OR" shall be construed disjunctively or conjunctively as necessary
27 to bring within the scope of this request all documents or things that might otherwise be construed
28 to be outside its scope.

1 B. The terms "PERSON" and "PERSONS" mean both natural persons and legal
2 entities, including without limitation, corporations, companies, firms, partnerships, joint ventures,
3 proprietorships, associations, and governmental bodies or agencies. Unless noted otherwise,
4 references to any person, entity or party herein include its, his, or her agents, attorneys,
5 employees, employers, officers, directors, or others acting on or purporting to act on behalf of
6 said person, entity, or party.

7 C. "EVIDENCE" or any variant thereof, including but not limited to
8 "EVIDENCING," when used in connection with any document, shall be understood to apply if
9 the document directly or indirectly mentions, discusses, constitutes, concerns, supports
10 contradicts, relates to, refers to, or in any other way deals with the subject matter described in the
11 request in which the term appears.

12 D. "REFER TO" or "RELATE TO" as used herein mean pertaining to, relevant to,
13 material to, evidencing, affecting, comprising, discussing, dealing with, considering or otherwise
14 concerning in any manner whatsoever the subject matter of the inquiry.

15 E. As used herein, the term "DOCUMENT" means the original and each non-
16 identical copy of any written, printed, typed, recorded, computerized, electronic, taped, graphic,
17 or other matter, in whatever form, whether in final or draft, including but not limited to all
18 materials that constitute "writings" or "recordings" or "photographs" within the broadest meaning
19 of Rule 34 of the Federal Rules of Civil Procedure. The word "Document" includes, without
20 limitation, printed matter, electronic mail, materials stored on computer hard drives, diskettes,
21 tapes, any other computer media, recorded voice mail messages and any other information stored
22 magnetically, optically or electronically.

23 F. "COMMUNICATION" as used herein means any contact, oral or documentary,
24 formal or informal, at any place or under any circumstances whatsoever whereby information of
25 any nature is transmitted or transferred, including without limitation, any note, memorandum or
26 other record thereof, or a single person seeing or hearing any information by any means.

27 G. "MILLER," "YOU," "YOUR," or "YOURSELF," means PLAINTIFF Daniel M.
28 Miller, K2XL LLC, and all of their agents, representatives, accountants, investigators,

1 consultants, attorneys, predecessors, or successors in interest, and anyone else acting OR
2 purporting to act on their behalf.

3 H. "FACEBOOK" means, without limitation, Facebook, Inc. (formerly
4 TheFacebook, Inc.), its past and present parents, subsidiaries, affiliates, predecessors, divisions,
5 officers, directors, trustees, employees, staff members, agents, counsel, representatives,
6 consultants, AND ALL PERSONS acting or purporting to act on its behalf.

7 I. "YEO" means DEFENDANT Yao Wei Yeo, and all of his agents, representatives,
8 accountants, investigators, consultants, attorneys, predecessors, or successors in interest, and
9 anyone else acting OR purporting to act on his behalf.

10 J. "BOOMSHINE" means the Flash game application at issue in this litigation and
11 upon which MILLER alleges copyright infringement against YEO and FACEBOOK, as
12 identified in Plaintiff's Complaint.

13 K. "CHAINRXN" means the Flash game application alleged to have infringed
14 BOOMSHINE's copyright, as identified in Plaintiff's Complaint.

15 L. "K2XL" means the company operating the website <http://k2xl.com/> and
16 purportedly owning, hosting, or developing the video game applications contained thereon.

17 INSTRUCTIONS

18 1. If YOU object to any of the interrogatories herein on privilege grounds, state the
19 privilege claimed and describe the facts giving rise to the privilege claim in sufficient detail so
20 that the Court can adjudicate the validity of the claim.

21 2. "IDENTIFY," when used with respect to a natural person, means state the name,
22 current telephone number and current home or business address of the person(s). If current
23 information is not available, please provide the last available information regarding the person(s).

24 3. "IDENTIFY," and all variants including "IDENTITY" when used with respect to
25 any entity, means state the name, place and date of incorporation or organization, principal place
26 of business, and the identity of all natural persons having knowledge of the matter with respect to
27 which it is named in an answer to an interrogatory.

28 4. To "IDENTIFY" a document means:

1 a. to refer to the document's identification or exhibit number if the document
2 has been previously produced or used in discovery or to attach a true copy of the document to the
3 interrogatory answers and to state the document's title and date, or if unknown, the approximate
4 date of creation;

5 b. to identify each person who signed or participated in the preparation of the
6 document;

7 c. to identify each person who is an addressee, including each person to whom a copy
8 was to be sent or who received a copy of the document;

9 d. to summarize the subject matter of the document;

10 e. to provide the present location of the document and the identity of the custodian of
11 the original and each copy thereof; and

12 f. if the document no longer exists, to give the date on which it was destroyed, the
13 identity of the person who destroyed it, and the person under whose authority it was destroyed.

14 5. "IDENTIFY" a circumstance, occurrence or event, means to describe it in detail,
15 including date, time, surrounding circumstances, PERSONS involved OR present, reasons,
16 effects, results, where AND how it occurred, AND what occurred.

17 6. In answering the following interrogatories, YOU are required to provide ALL
18 information that is available to YOU within YOUR control, including information in the
19 possession of YOUR attorneys, investigators, employees, agents, representatives, and guardians
20 or any other person acting on YOUR behalf, and not merely information from YOUR own
21 personal knowledge.

22 7. If YOU cannot answer any interrogatory in full, answer to the extent YOU are able
23 to do so, state the reason for YOUR inability to answer further, and state the knowledge or
24 information available to YOU concerning the unanswered portion.

25 8. If YOU object to any of the interrogatories, YOU must state the grounds for any
26 objection(s). If YOU object to only part of an interrogatory, YOU must state the objection and
27 the grounds for any objection(s) and respond to the remainder of the interrogatory.

28

1 **INTERROGATORY NO. 7**

2 Describe in detail AND IDENTIFY when YOU first became aware of the existence of
3 CHAINRXN.

4 **INTERROGATORY NO. 8**

5 Describe in detail AND IDENTIFY when YOU first believed that CHAINRXN infringed
6 BOOMSHINE's copyright.

7 **INTERROGATORY NO. 9**

8 Describe in detail AND IDENTIFY ANY AND ALL instances where YOU believe OR
9 believed that the BOOMSHINE was copied by a third party. Include the IDENTITY of the
10 alleged infringer(s), the date YOU became aware of the alleged infringement, and the actions, if
11 any, YOU took against the alleged infringer(s).

12 **INTERROGATORY NO. 10**

13 To the extent you so contend, provide in detail the basis for your contention that the
14 Digital Millennium Copyright Act's ("DMCA") safe harbors, including those enumerated at 17
15 U.S.C. §§ 512(a), 512(c), and 512(d), *et seq.*, do not apply to FACEBOOK in this matter.

16 **INTERROGATORY NO. 11**

17 Describe in detail and IDENTIFY ALL contacts AND COMMUNICATIONS YOU have
18 had with YEO.

19 **INTERROGATORY NO. 12**

20 If YOU so contend, provide in detail the basis for your contention that DEFENDANT
21 YEO "improperly accessed" and then copied BOOMSHINE's source code in developing
22 CHAINRXN, including ANY AND ALL evidence in your possession supporting said contention.

23 **INTERROGATORY NO. 13**

24 If you so contend, provide in detail the basis for your contention that CHAINRXN copies
25 BOOMSHINE'S "look and feel," including, but not limited, a detailed description of the
26 audio/visual elements of BOOMSHINE that YOU contend have been copied, including sound
27 effects, pixel size, sprite size, size of floating balls used in BOOMSHINE and CHAINRXN,
28

1 scoring system, background music, explosion effects, explosion colors, font size, font type and
2 the like.

3 **INTERROGATORY NO. 14**

4 If you so contend, provide in detail the basis for your contention that DEFENDANT YEO
5 had access to BOOMSHINE prior to OR during the time he developed CHAINRXN.

6 Dated: October 19, 2010

ORRICK, HERRINGTON & SUTCLIFFE LLP

7 
8 _____

I. NEEL CHATTERJEE
Attorneys for Defendant
FACEBOOK, INC.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 I. NEEL CHATTERJEE (STATE BAR NO. 173985)
nchatterjee@orrick.com
2 THOMAS GRAY (STATE BAR NO. 191411)
tgray@orrick.com
3 JULIO C. AVALOS (STATE BAR NO. 4476370)
javalos@orrick.com
4 ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
5 Menlo Park, CA 94025
Telephone: 650-614-7400
6 Facsimile: 650-614-7401
7 Attorneys for Defendant
FACEBOOK, INC.
8

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

13 DANIEL M. MILLER,
14 Plaintiff,
15 v.
16 FACEBOOK, INC. and YAO WEI YEO,
17 Defendants.

Case No. 5:10-CV-00264 (WHA)

PROOF OF SERVICE

1 **PROOF OF SERVICE**

2 I am more than eighteen years old and not a party to this action. My business address is
3 Orrick, Herrington & Sutcliffe LLP, 1000 Marsh Road, Menlo Park, CA 94025. On October 19,
4 2010, I served the following document(s):

5 **FACEBOOK, INC.'S FIRST SET OF INTERROGATORIES**
6 **TO PLAINTIFF MILLER [NOS. 1-14]**

7 on the interested parties in this action by placing true and correct copies thereof in sealed
8 envelope(s) addressed as follows:

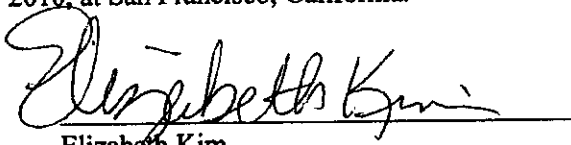
9 Douglas L. Bridges
10 **HENINGER GARRISON DAVIS, LLC**
11 1 Glenlake Parkway
12 Suite 700
Atlanta, GA 30328
email: doug@hgdllawfirm.com
Tel: 678.638.6308
Fax: 678.638.6201
Main: 678.638.6309

Brian D. Hancock
HENINGER GARRISON & DAVIS LLC
2224 1st Avenue North
Birmingham, AL 35203
email: bdhancock@hgdllawfirm.com
Main: 205-326-3336
Fax: (205)-326-3332

13 I deposited such envelope(s) with postage thereon fully prepaid in the United
14 States mail at a facility regularly maintained by the United States Postal Service at San Francisco,
15 California on the date indicated above.

16 I declare under penalty of perjury that the foregoing is true and correct.

17 Executed on October 19, 2010, at San Francisco, California.

18 
19
20 Elizabeth Kim

1 I. NEEL CHATTERJEE (STATE BAR NO. 173985)
nchatterjee@orrick.com
2 THOMAS J. GRAY (STATE BAR NO. 191411)
tgray@orrick.com
3 JULIO C. AVALOS (STATE BAR NO. 255350)
javalos@orrick.com
4 ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
5 Menlo Park, CA 94025
Telephone: 650-614-7400
6 Facsimile: 650-614-7401

7 Attorneys for Defendant
FACEBOOK, INC.

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

13 DANIEL M. MILLER,
14 Plaintiff,
15 v.
16 FACEBOOK, INC. and YAO WEI YEO,
17 Defendants.

Case No. 3:10-CV-00264 (WHA)
**FACEBOOK, INC.'S FIRST SET OF
REQUESTS FOR PRODUCTION TO
PLAINTIFF MILLER**

18
19 PLAINTIFF MILLER is HEREBY REQUESTED, pursuant to Rule 34 of the Federal
20 Rules of Civil Procedure, to respond to the following requests for production separately and fully,
21 in writing, and under penalty of perjury, within thirty (30) days after service or whatever date is
22 ordered by the Court, whichever is sooner.

23
24
25
26
27
28

1 DEFINITIONS

2 A. "ANY" shall be understood to include and encompass "ALL." As used herein, the
3 singular shall always include the plural and the present tense shall also include the past tense.
4 The words "AND" as well as "OR" shall be construed disjunctively or conjunctively as necessary
5 to bring within the scope of this request ALL DOCUMENTS or things that might otherwise be
6 construed to be outside its scope.

7 B. The terms "PERSON" and "PERSONS" mean both natural persons and legal
8 entities, including without limitation, corporations, companies, firms, partnerships, joint ventures,
9 proprietorships, associations, and governmental bodies or agencies. Unless noted otherwise,
10 references to any person, entity or party herein include its, his, or her agents, attorneys,
11 employees, employers, officers, directors, or others acting on or purporting to act on behalf of
12 said person, entity, or party.

13 C. "EVIDENCE" or any variant thereof, including but not limited to
14 "EVIDENCING," when used in connection with any document, shall be understood to apply if
15 the document directly or indirectly mentions, discusses, constitutes, concerns, supports
16 contradicts, relates to, refers to, or in any other way deals with the subject matter described in the
17 request in which the term appears.

18 D. "REFER TO" or "RELATE TO" as used herein mean pertaining to, relevant to,
19 material to, evidencing, affecting, comprising, discussing, dealing with, considering or otherwise
20 concerning in any manner whatsoever the subject matter of the inquiry.

21 E. As used herein, the term "DOCUMENT" means the original and each non-
22 identical copy of any written, printed, typed, recorded, computerized, electronic, taped, graphic,
23 or other matter, in whatever form, whether in final or draft, including but not limited to all
24 materials that constitute "writings" or "recordings" or "photographs" within the broadest meaning
25 of Rule 34 of the Federal Rules of Civil Procedure. The word "Document" includes, without
26 limitation, printed matter, electronic mail, materials stored on computer hard drives, diskettes,
27 tapes, any other computer media, recorded voice mail messages and any other information stored
28 magnetically, optically or electronically.

1 F. "COMMUNICATION" as used herein means any contact, oral or documentary,
2 formal or informal, at any place or under any circumstances whatsoever whereby information of
3 any nature is transmitted or transferred, including without limitation, any note, memorandum or
4 other record thereof, or a single person seeing or hearing any information by any means.

5 G. "MILLER," "YOU," "YOUR," or "YOURSELF," means PLAINTIFF Daniel M.
6 Miller, K2XL LLC, and all of their agents, representatives, accountants, investigators,
7 consultants, attorneys, predecessors, or successors in interest, and anyone else acting OR
8 purporting to act on their behalf.

9 H. "FACEBOOK" means, without limitation, Facebook, Inc. (formerly TheFacebook,
10 Inc.), its past and present parents, subsidiaries, affiliates, predecessors, divisions, officers,
11 directors, trustees, employees, staff members, agents, counsel, representatives, consultants, AND
12 ALL PERSONS acting or purporting to act on its behalf.

13 I. "YEO" means DEFENDANT Yao Wei Yeo, and all of his agents, representatives,
14 accountants, investigators, consultants, attorneys, predecessors, or successors in interest, and
15 anyone else acting OR purporting to act on his behalf.

16 J. "BOOMSHINE" means the Flash game application at issue in this litigation and
17 upon which MILLER alleges copyright infringement against YEO and FACEBOOK, as
18 identified in Plaintiff's Complaint.

19 K. "CHAINRXN" means the Flash game application alleged to have infringed
20 BOOMSHINE's copyright, as identified in Plaintiff's Complaint.

21 L. "K2XL" means the company operating the website <http://k2xl.com/> and
22 purportedly owning, hosting, or developing the video game applications contained thereon.

23 **INSTRUCTIONS**

24 A. In responding to the following requests, you are required to provide ALL
25 DOCUMENTS that are available to YOU or within YOUR control, including DOCUMENTS in
26 the possession of YOUR attorneys, investigators, employees, agents, representatives, and
27 guardians or any other person acting on YOUR behalf, and not merely DOCUMENTS from
28 YOUR own personal files.

1 B. If YOU object to any of the requests, YOU must state the grounds for any
2 objection(s). If YOU object to only part of a request, YOU must state the objection and the
3 grounds for any objection(s) and respond to the remainder of the request.

4 C. If YOU object to the production of any document on the grounds that it is
5 protected from disclosure by the attorney-client privilege, work-product doctrine, or any other
6 privilege, YOU are requested to identify each document for which the privilege is claimed and
7 give ALL information required by applicable case law, including but not limited to the following:

8 a. the name of the writer, sender, or initiator of each copy of
9 the document;

10 b. the name of the recipient, addressee, or party to whom any
11 copy of the document was sent;

12 c. the date of each copy of the document, if any, or an estimate
13 of its date;

14 d. a statement of the basis for the claim of privilege; and

15 e. description of the document sufficient for the Court to rule
16 on the applicability and appropriateness of the claimed privilege.

17

18

19

20

21

22

23

24

25

26

27

28

1 **REQUESTS FOR PRODUCTION**

2 **REQUEST FOR PRODUCTION NO. 1**

3 ALL COMMUNICATIONS AND DOCUMENTS relating, referring or evidencing the
4 development, creation OR origin of BOOMSHINE.

5 **REQUEST FOR PRODUCTION NO. 2**

6 A copy of ALL versions of source code related to BOOMSHINE.

7 **REQUEST FOR PRODUCTION NO. 3**

8 A copy of ALL executable files of ALL versions of BOOMSHINE.

9 **REQUEST FOR PRODUCTION NO. 4**

10 ALL DOCUMENTS submitted to the Copyright Office that RELATE TO BOOMSHINE,
11 including the application(s) for its copyright registration, any pending application, any submitted
12 deposits, as well as all correspondence with, or notes of telephone conferences with, the
13 Copyright Office concerning such applications OR registrations.

14 **REQUEST FOR PRODUCTION NO. 5**

15 ALL DOCUMENTS evidencing, reflecting, or relating to ANY COMMUNICATIONS
16 between YOU and YEO.

17 **REQUEST FOR PRODUCTION NO. 6**

18 ALL COMMUNICATIONS AND DOCUMENTS RELATED TO CHAINRXN.

19 **REQUEST FOR PRODUCTION NO. 7**

20 ALL DOCUMENTS relating to any marketing or advertising efforts or campaigns for
21 BOOMSHINE.

22 **REQUEST FOR PRODUCTION NO. 8**

23 DOCUMENTS sufficient to show YOUR monthly AND annual revenue generated by
24 BOOMSHINE.

25 **REQUEST FOR PRODUCTION NO. 9**

26 DOCUMENTS sufficient to show YOUR monthly AND annual profits generated by
27 BOOMSHINE.

28

1 **REQUEST FOR PRODUCTION NO. 10**

2 ALL DOCUMENTS constituting, concerning, OR relating to ANY assignment or license
3 by YOU of ANY copyright interest related to BOOMSHINE.

4 **REQUEST FOR PRODUCTION NO. 11**

5 ALL COMMUNICATIONS AND DOCUMENTS relating to ANY instance(s) where
6 YOU believed that ANY copyright(s) related to BOOMSHINE was being OR had been infringed.

7 **REQUEST FOR PRODUCTION NO. 12**

8 ALL DOCUMENTS reflecting, associated with, OR that relate TO ANY of YOUR
9 responses to FACEBOOK's concurrently-served First Set of Interrogatories to Plaintiff MILLER.

10 **REQUEST FOR PRODUCTION NO. 13**

11 ALL DOCUMENTS relating to, reflecting, or associated with OR supporting ANY of the
12 allegations made in YOUR Seconded Amended Complaint in this action.

13 **REQUEST FOR PRODUCTION NO. 14**

14 ALL DOCUMENTS relating to, reflecting, or associated with ANY of FACEBOOK's
15 Counter Claims to YOUR Second Amended Complaint in this action.

16 **REQUEST FOR PRODUCTION NO. 15**

17 ALL DOCUMENTS sufficient to establish the number of BOOMSHINE users since the
18 game's online launch.

19 **REQUEST FOR PRODUCTION NO. 16**

20 DOCUMENTS sufficient to establish ANY AND ALL websites on which BOOMSHINE
21 has appeared OR been hosted on.

22 **REQUEST FOR PRODUCTION NO. 17**

23 ALL DOCUMENTS sufficient to establish ANY AND ALL websites linking to the
24 BOOMSHINE game or application.

25 **REQUEST FOR PRODUCTION NO. 18**

26 ALL DOCUMENTS relating to the K2XL company, including its date of incorporation,
27 officers and founders.

28

1 **REQUEST FOR PRODUCTION NO. 19**

2 ALL DOCUMENTS relating to K2XL's annual income OR profits.

3 **REQUEST FOR PRODUCTION NO. 20**

4 ALL DOCUMENTS relating to K2XL's advertising or marketing efforts.

5 **REQUEST FOR PRODUCTION NO. 21**

6 ALL DOCUMENTS sufficient to establish the identity of ANY AND ALL K2XL
7 employees or officers registered as FACEBOOK users.

8 **REQUEST FOR PRODUCTION NO. 22**

9 ALL DOCUMENTS received from third-parties in response to any discovery or subpoena
10 requests YOU have served in relation to this action.

11 **REQUEST FOR PRODUCTION NO. 23**

12 ALL DOCUMENTS sufficient to establish the amount of user traffic to the K2XL
13 website.

14 **REQUEST FOR PRODUCTION NO. 24**

15 ALL DOCUMENTS evidencing, reflecting or relating to Plaintiff's knowledge of other
16 games available prior to the development of BOOMSHINE that involved functionality and a user
17 interface similar to BOOMSHINE's including, but not limited to, games in which users/players
18 navigated to OR clicked on any shapes that caused any reaction.

19 **REQUEST FOR PRODUCTION NO. 25**

20 ALL DOCUMENTS evidencing, reflecting, or relating to Defendant Yeo's access to or
21 use of the BOOMSHINE game.

22 **REQUEST FOR PRODUCTION NO. 26**

23 ALL DOCUMENTS evidencing, reflecting or relating to the copying by third-parties of
24 the BOOMSHINE game.

25 **REQUEST FOR PRODUCTION NO. 27**

26 ALL DOCUMENTS that REFER or RELATE TO FACEBOOK.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

REQUEST FOR PRODUCTION NO. 28

ALL DOCUMENTS that REFER or RELATE TO YOUR decision NOT to offer BOOMSHINE on the FACEBOOK website.

REQUEST FOR PRODUCTION NO. 29

ALL COMMUNICATIONS AND DOCUMENTS that RELATE OR REFER TO the "Obechi" videogame, including but not limited to the developer responsible for uploading "Obechi" to the FACEBOOK website, when it was first accessible on the FACEBOOK website, and ANY revenues generated by the game.

REQUEST FOR PRODUCTION NO. 30

ALL DOCUMENTS that RELATE OR REFER TO ANY FACEBOOK user accounts used to create OR administer the Obechi videogame.

REQUEST FOR PRODUCTION NO. 31

ALL DOCUMENTS that RELATE OR REFER TO ANY FACEBOOK user information YOU collected from OR through the "Obechi" videogame.

Dated: October 19, 2010

ORRICK, HERRINGTON & SUTCLIFFE LLP



I. NEEL CHATTERJEE
Attorneys for Defendant
FACEBOOK, INC.

1 I. NEEL CHATTERJEE (STATE BAR NO. 173985)
nchatterjee@orrick.com
2 THOMAS GRAY (STATE BAR NO. 191411)
tgray@orrick.com
3 JULIO C. AVALOS (STATE BAR NO. 4476370)
javalos@orrick.com
4 ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
5 Menlo Park, CA 94025
Telephone: 650-614-7400
6 Facsimile: 650-614-7401

7 Attorneys for Defendant
FACEBOOK, INC.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DANIEL M. MILLER,
Plaintiff,
v.
FACEBOOK, INC. and YAO WEI YEO,
Defendants.

Case No. 5:10-CV-00264 (WHA)

PROOF OF SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I am more than eighteen years old and not a party to this action. My business address is Orrick, Herrington & Sutcliffe LLP, 1000 Marsh Road, Menlo Park, CA 94025. On October 19, 2010, I served the following document(s):

**FACEBOOK, INC.'S FIRST SET OF REQUESTS
FOR PRODUCTION TO PLAINTIFF MILLER [NOS. 1-31]**

on the interested parties in this action by placing true and correct copies thereof in sealed envelope(s) addressed as follows:

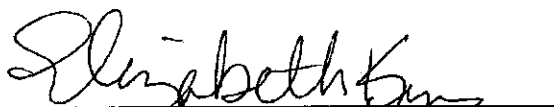
Douglas L. Bridges
HENINGER GARRISON DAVIS, LLC
1 Glenlake Parkway
Suite 700
Atlanta, GA 30328
email: doug@hgdllawfirm.com
Tel: 678.638.6308
Fax: 678.638.6201
Main: 678.638.6309

Brian D. Hancock
HENINGER GARRISON & DAVIS LLC
2224 1st Avenue North
Birmingham , AL 35203
email: bdhancock@hgdllawfirm.com
Main: 205-326-3336
Fax: (205)-326-3332

I deposited such envelope(s) with postage thereon fully prepaid in the United States mail at a facility regularly maintained by the United States Postal Service at San Francisco, California on the date indicated above.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 19, 2010, at San Francisco, California.


Elizabeth Kim

**PLAINTIFF'S AND K2xL's
EXHIBIT B**

1 I. NEEL CHATTERJEE (STATE BAR NO. 173985)
nchatterjee@orrick.com
2 JULIO C. AVALOS (STATE BAR NO. 255350)
javalos@orrick.com
3 ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
4 Menlo Park, CA 94025
Telephone: +1-650-614-7400
5 Facsimile: +1-650-614-7401

6 THOMAS J. GRAY (STATE BAR NO. 191411)
tgray@orrick.com
7 ORRICK, HERRINGTON & SUTCLIFFE LLP
4 Park Plaza, Suite 1600
8 Irvine, CA 92614-2558
Telephone: +1-949-567-6700
9 Facsimile: 949-567 6710

10 Attorneys for Defendant
FACEBOOK, INC.

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION
14

15 DANIEL M. MILLER

16 Plaintiff,

17 v.

18 FACEBOOK, INC. and YAO WEI YEO,

19 Defendants.
20

Case No. CV-10-264

NOTICE OF DEPOSITION OF
K2XL, LLC BY SUBPOENA

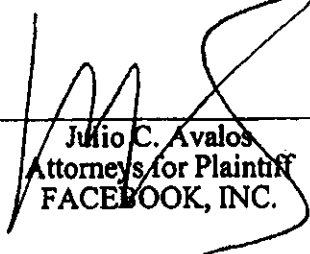
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TO PLAINTIFF AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT pursuant to Federal Rule of Civil Procedure 45, Defendant Facebook, Inc. ("Facebook") will take, by oral examination, the deposition of K2XL, LLC ("K2XL") which will commence on December 9, 2010, at 9:00 A.M., at the offices of Morris, Manning & Martin, LLP, 1600 Atlanta Financial Center, 3343 Peachtree Road, N.E., Atlanta, Georgia 30326-1044. The deposition will continue from day to day until completed. The testimony will be recorded by video, as well as stenographic means. LiveNote, RealTime and/or some other similar testimony transcription software will also be utilized. Attached herein as Exhibit A is the subpoena to K2XL.

Dated: November 8, 2010

ORRICK, HERRINGTON & SUTCLIFFE LLP



Julio C. Avalos
Attorneys for Plaintiff
FACEBOOK, INC.

EXHIBIT A

Issued by the
UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF GEORGIA

DANIEL M. MILLER

V.
 FACEBOOK, INC., and YAO WEI YEO

SUBPOENA IN A CIVIL CASE

Case Number: ¹ 10-CV-00264 WHA
 USDC Northern District of
 California

TO: K2XL, LLC
 2079 Kinsmon Drive
 Marietta GA 30062

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case. K2XL is to provide a corporate representative knowledgeable of the topics listed on Attachment A, attached.

PLACE OF DEPOSITION Morris Manning & Martin, 1600 Atlanta Financial Center 3343 Peachtree Road, NE, Atlanta Georgia 30326-1044	DATE AND TIME December 8, 2010 9:00 a.m.
---	---

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME
-------	---------------

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)  Attorney for Defendant Facebook, Inc.	DATE November 8, 2010
---	--------------------------

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER Julio C. Avalos, Counsel for Plaintiffs Orrick, Herrington & Sutcliffe LLP (Tel: 650.289.7184) 1000 Marsh Road, Menlo Park, CA 94025-1021	
---	--

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on next page)

¹ If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

DATE	PLACE
SERVED:	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____ DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance,
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend

trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

ATTACHMENT A

Attachment A

1
2 By the attached subpoena, Defendant Facebook, Inc. ("Facebook") requests that K2XL
3 LLC ("K2XL") make available for deposition the corporate representative employee(s) who is/are
4 most knowledgeable regarding the following subject matter:

- 5 • The development and origin of K2XL
- 6 • The relationship between K2XL and Plaintiff Daniel Miller
- 7 • The corporate structure, including employee and officer hierarchy, of K2XL
- 8 • The development and origin of Boomshine, including its programming and all responsible for
9 its programming
- 10 • The functionality and features of Boomshine
- 11 • K2XL's and Miller's use of Facebook, including any Facebook accounts that K2XL, its
12 agents and/or employees have used and or registered at the Facebook website
- 13 • K2XL's and Miller's use of other third-party platforms
- 14 • Ownership of Boomshine
- 15 • The conception and fixing of Boomshine in a tangible medium
- 16 • The alleged copyright registration process of Boomshine
- 17 • The marketing and advertising of K2XL's products, games and services
- 18 • The popularity of the K2XL website, service, products and games, including information
19 regarding use and traffic, revenue, licensing information, etc.
- 20 • The ChainRxn game/application, including its alleged infringement of K2XL products, games
21 or services
- 22 • The comparison of the functionality and features of Boomshine against ChainRxn and other
23 games
- 24 • Other "chain-reaction" type video games or video game applications
- 25 • K2XL's games, applications and services
- 26 • Defendant Yao Wei Yeo, including communications with him and/or efforts to locate him
- 27 • Whether the Boomshine source code is publicly available and/or accessible
- 28 • The accessing of Boomshine's source code by third-parties, including Defendant Yeo
- The licensing of Boomshine and other K2XL games
- All lawsuits involving K2XL or its agents

- 1 • The development and origin of Obechi, including its programming
- 2 • K2XL's publication of Obechi on third-party platforms, including Facebook.com
- 3 • The relationship between K2XL and Tim Halbert
- 4 • Tim Halbert's role in—and responsibilities relating to—the development of any video game applications related to K2XL, including, but not limited to, Boomshine and Obechi
- 5 • All notices sent to third-parties alleging or relating to alleged infringement of Mr. Miller's or
- 6 K2XL's products sent to third-parties

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 I. NEEL CHATTERJEE (STATE BAR NO. 173985)
nchatterjee@orrick.com
2 JULIO C. AVALOS (STATE BAR NO. 255350)
javalos@orrick.com
3 ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
4 Menlo Park, CA 94025
Telephone: +1-650-614-7400
5 Facsimile: +1-650-614-7401

6 THOMAS J. GRAY (STATE BAR NO. 191411)
tgray@orrick.com
7 ORRICK, HERRINGTON & SUTCLIFFE LLP
4 Park Plaza, Suite 1600
8 Irvine, CA 92614-2558
Telephone: +1-949-567-6700
9 Facsimile: 949-567 6710

10 Attorneys for Defendant
FACEBOOK, INC.

11 UNITED STATES DISTRICT COURT
12 UNITED STATES DISTRICT COURT
13

14 DANIEL M. MILLER,
15 Plaintiff,
16
17 v.
18 FACEBOOK, INC. and YAO WEI YEO,
19 Defendants.

Case No. 5:10-CV-00264 (WHA)

PROOF OF SERVICE

20
21
22
23
24
25
26
27
28

1 **PROOF OF SERVICE**

2 I am more than eighteen years old and not a party to this action. My business address is
3 Orrick, Herrington & Sutcliffe LLP, 1000 Marsh Road, Menlo Park, CA 94025. On November 8,
4 2010, I served the following document(s):

5 **NOTICE OF DEPOSITION OF**
6 **K2XL, LLC BY SUBPOENA**

7 on the interested parties in this action by placing true and correct copies thereof in sealed
8 envelope(s) addressed as follows:

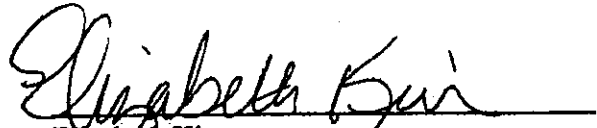
9 Douglas L. Bridges
10 HENINGER GARRISON DAVIS, LLC
11 1 Glenlake Parkway
12 Suite 700
13 Atlanta, GA 30328
14 email: doug@hgdlawfirm.com
15 Tel: 678.638.6308
16 Fax: 678.638.6201
17 Main: 678.638.6309

Brian D. Hancock
HENINGER GARRISON & DAVIS LLC
2224 1st Avenue North
Birmingham, AL 35203
email: bdhancock@hgdlawfirm.com
Main: 205-326-3336
Fax: (205)-326-3332

18 I deposited such envelope(s) with postage thereon fully prepaid in the United
19 States mail at a facility regularly maintained by the United States Postal Service at Menlo Park,
20 California on the date indicated above.

21 I declare under penalty of perjury that the foregoing is true and correct.

22 Executed on November 8, 2010, at Menlo Park, California.

23
24
25
26
27
28

Elizabeth Kim

**PLAINTIFF'S AND K2xL's
EXHIBIT C**

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

DANIEL M. MILLER,

Plaintiff,

v.

FACEBOOK, INC.; and
YAO WEI YEO,

Defendants.

Civil Action No. _____

(Presently Pending Before the United
Stated District Court for the Northern
District of California, San Francisco
Division, 10-CV-00264 WHA.)

AFFIDAVIT OF DANIEL M. MILLER

I, Daniel M. Miller, declare:

1. I am a 23-year old graduate of the Georgia Institute of Technology and the sole member and registered agent of K2xL, LLC, ("K2xL") a limited liability company organized under the laws of the State of Georgia.
2. K2xL has no employees and the principal office and registered agent address listed with the Georgia Secretary of State is 2079 Kinsmon Drive, Marietta, Georgia 30062. This is the address of my parents' home.
3. The documents and deposition testimony sought in Facebook's subpoenas, if available, would be documents and/or knowledge and information in my personal possession, custody, or control.

Pursuant to the laws of the United States, I declare under penalty of perjury
that the foregoing is true and correct.

Date 11/17/10



Daniel M. Miller

**PLAINTIFF'S AND K2xL's
EXHIBIT D**

Last revised November 20, 2008.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**SUPPLEMENTAL ORDER TO
ORDER SETTING INITIAL CASE MANAGEMENT CONFERENCE
IN CIVIL CASES BEFORE JUDGE WILLIAM ALSUP**

INTRODUCTION

The purpose of this supplemental order is to guide the parties on recurring practical questions that arise prior to trial and to impose certain requirements for the conduct of the case. Counsel must please read this order and follow it.

SERVICE OF THIS ORDER

1. For cases originating in this Court, plaintiff(s) must serve this order and the order setting the initial case management conference (along with any other required pleadings) on each defendant. For cases removed from state court, the removing defendant(s) must serve this order and the order setting the initial case management conference (along with any other required pleadings) immediately on each and every party that has previously appeared or that appears within thirty days after removal. Thereafter, any existing party to the action that brings a new party into the action must immediately serve a copy of this order and the order setting the initial case management conference (along with any other required pleadings) on the new party.

CASE MANAGEMENT CONFERENCE

1
2 2. The parties will please address the standardized items in the court-wide format
3 for the joint case management statement. This is available at the Standing Order For all Judges
4 of the Northern District of California — Contents of Joint Case Management Statements.
5 Please file (electronically or manually depending on your case) at least **SEVEN CALENDAR DAYS**
6 prior to the case management conference.

7 3. Each party shall be represented at the case management conference by counsel
8 prepared to address all such matters and with authority to enter stipulations and to make
9 admissions.

10 4. Pursuant to FRCP 26(d), no formal discovery shall be initiated by any party until
11 after the meet-and-confer session required by FRCP 26(f), except by stipulation or prior court
12 order. As soon as a party has notice of this order, however, the party shall take such affirmative
13 steps as are necessary to preserve evidence related to the issues presented by the action,
14 including, without limitation, interdiction of any document-destruction programs and any
15 ongoing erasures of e-mails, voice mails, and other electronically-recorded material.

ELECTRONIC CASE FILING — LODGING HARD COPIES WITH CHAMBERS

16
17 5. In all “E-Filing” cases, in addition to filing papers electronically, the parties are
18 required to lodge for chambers one paper copy of each document that is filed electronically.
19 These printed copies shall be marked “Chambers Copy — Do Not File” and shall be in an
20 envelop clearly marked with the judge’s name and case number. It shall be delivered to the
21 Clerk’s office no later than noon on the day following the day that the papers were filed
22 electronically. Parties shall *not file* a paper copy of any document with the Clerk’s Office that
23 has already been filed electronically. For the final pretrial conference, please follow
24 *Guidelines for Trial and Final Pretrial Conference In Civil Jury Cases Before the Honorable*
25 *William Alsup.*

SETTING MOTIONS FOR HEARING

26
27 6. Counsel need not request a motion hearing date and may notice non-discovery
28 motions for any Thursday (excepting holidays) at 8:00 a.m. The Court sometimes rules on the

1 papers, issuing a written order and vacating the hearing. If a written request for oral argument is
2 filed before a ruling, stating that a lawyer of four or fewer years out of law school will conduct
3 the oral argument or at least the lion's share, then the Court will hear oral argument, believing
4 that young lawyers need more opportunities for appearances than they usually receive.

5 **FORM OF SUBMISSIONS**

6 7. On summary judgment motions, joint statements of undisputed facts are not
7 required but are helpful if completely agreed upon. Please do *not* file separate statements of
8 "undisputed facts."

9 8. Reply declarations are disfavored. Opening declarations should set forth all facts
10 on points foreseeably relevant to the relief sought. Reply papers should not raise new points that
11 could have been addressed in the opening.

12 9. The title of the submission must be sufficient to alert the Court to the relief
13 sought; for example, please do not bury a request for continuance in the body of a memorandum.

14 10. All submissions filed with the Court shall include on the cover sheet the date and
15 time of the hearing or conference. Counsel should include their facsimile transmission numbers
16 along with their telephone numbers on their papers.

17 **DISCOVERY**

18 11. The following paragraphs on discovery provide counsel and the parties with
19 views and guidelines of Judge Alsup so that they can plan accordingly. For good cause, the
20 parties are invited to propose any modifications in their joint case management conference
21 statement. Unless and until modified, however, the following provisions shall supplement the
22 requirements of the Federal Rules of Civil Procedure and the local rules.

23 12. In responding to requests for documents and materials under FRCP 34, all parties
24 shall *affirmatively state* in a written response the full extent to which they will produce materials
25 and shall, promptly after the production, confirm in writing that they have produced *all* such
26 materials so described that are locatable after a diligent search of *all* locations at which such
27 materials might plausibly exist. It is not sufficient to state that "responsive" materials will be or
28

1 have been produced. Such a response leaves open the distinct possibility that other responsive
2 materials have not been produced.

3 13. In searching for responsive materials in connection with FRCP 34 requests or for
4 materials required to be disclosed under FRCP 26(a)(1), parties must search computerized files,
5 e-mails, voice mails, work files, desk files, calendars and diaries, and any other locations and
6 sources if materials of the type to be produced might plausibly be expected to be found there.
7 The Court has found that certain basic information normally learned by counsel anyway should
8 be made available to the other side at the time of production, as if it were a response to a
9 standing interrogatory, as follows. At the time of the production, the responding party should
10 provide a written list to the requesting party setting forth in detail each specific source and
11 location searched. The list must also identify, by name and position, all persons conducting the
12 search and their areas of search responsibility. The producing party shall also provide a list
13 describing the specific source for each produced item as well as for each item withheld on a
14 ground of privilege, using the unique identifying numbers to specify documents or ranges.
15 Materials produced in discovery should bear unique identifying control numbers on each page.

16 14. To the maximum extent feasible, all party files and records should be retained
17 and produced in their original form and sequence including file folders, and the originals should
18 remain available for inspection by any counsel on reasonable notice.

19 15. Except for good cause, no item shall be received as case-in-chief evidence if the
20 proponent has failed to produce it in response to a reasonable and proper discovery request
21 covering the item, regardless of whether any discovery motion was made. A burden or
22 overbreadth or similar objection shall not be a valid reason for withholding requested materials
23 actually known to counsel or a party representative responsible for the conduct of the litigation.

24 16. Privilege logs shall be promptly provided and must be sufficiently detailed and
25 informative to justify the privilege. *See* FRCP 26(b)(5). No generalized claims of privilege or
26 work-product protection shall be permitted. With respect to each communication for which a
27
28

1 claim of privilege or work product is made, the asserting party must at the time of assertion
2 identify:

3 (a) all persons making or receiving the privileged or protected
4 communication;

5 (b) the steps taken to ensure the confidentiality of the communication,
6 including affirmation that no unauthorized persons have received the
7 communication;

8 (c) the date of the communication; and

9 (d) the subject matter of the communication.

10 Failure to furnish this information at the time of the assertion will be deemed a waiver of the
11 privilege or protection. The log should also indicate, as stated above, the location where the
12 document was found.

13 17. Absent extraordinary circumstances, counsel shall consult in advance with
14 opposing counsel and unrepresented proposed deponents to schedule depositions at
15 mutually-convenient times and places. That some counsel may be unavailable shall not,
16 however, be grounds for deferring or postponing a deposition if another attorney from the
17 same firm or who represents a party with similar interests to that witness is able to attend.
18 Ordinarily, if one side desires a prompt deposition, the other side is expected to agree to dates
19 falling within *thirty days* of the request. On the other hand, rarely should one side expect the
20 other side to agree to a deposition sooner than *seven days* of the request.

21 18. If any objection to a request for materials is overruled, and if the disputed request
22 was due and pending at the time of a deposition, the withholding party or counsel must, at the
23 request of any other party, re-produce all deponents under its control or represented by them for
24 further deposition examination as to any new materials produced in response that are germane
25 to that deponent and must bear the expense of doing so. A party objecting to producing
26 requested materials may not use the existence of its own objections as a basis for postponing
27 any deposition unless such party promptly meets and confers and then, if failing to reach an
28 agreement, seeks to bring a prompt motion for a protective order.

1 19. Counsel and parties shall comply with FRCP 30(d)(1). Deposition objections
2 must be as to privilege or form only. Speaking objections are prohibited. Under no
3 circumstances should any counsel interject, "if you know," or otherwise coach a deponent.
4 When a privilege is claimed, the witness should nevertheless answer questions relevant to the
5 existence, extent or waiver of the privilege, such as the date of a communication, who made the
6 statement, to whom and in whose presence the statement was made, other persons to whom the
7 contents of the statement have been disclosed, and the general subject matter of the statement.
8 Private conferences between deponents and attorneys in the course of examination, including a
9 line of related questions, are improper and prohibited except for the sole purpose of determining
10 whether a privilege should be asserted.

11 20. Deponents and their counsel must make a good-faith effort to prepare for
12 depositions and to refresh witness memories on important matters in the suit about which the
13 witness reasonably should be expected to have knowledge. Deponents who claim to lack
14 recollection during their deposition but who later claim at trial to have had their memories
15 refreshed in the interim, may be, among other things, impeached with their previous failures of
16 recollection during their depositions or be subject to preclusion. In preparing deponents,
17 defending counsel shall segregate and retain all materials used to refresh their memories and
18 shall provide them to examining counsel at the outset of the deposition.

19 21. To the maximum extent feasible, deposition exhibits shall be numbered in a
20 simple manner that will allow the same numbering at trial. In discovery, counsel shall agree on
21 blocks of exhibit numbers to be used by the respective parties. Identical exhibits should not be
22 re-marked, but various versions of the same document, such as copies with hand notes added,
23 should be separately marked if used. *See* Local Rule 30-2(b)(3).

24 22. FRCP 26(a)(2)(B) requires disclosure of all opinions, bases, reasons and "other
25 information considered" by an expert. Counsel shall preserve all drafts of expert reports
26 (partial or complete) and notes and other evidence of communications with experts (or with
27 any intermediaries between counsel and the experts) on the subject of this actual or potential
28 testimony, and shall instruct their experts and any intermediaries to do likewise. All such

1 materials shall be produced upon expert designation (unless all parties otherwise stipulate in
2 writing). This requirement does not apply to intermediate drafts prepared solely by the
3 testifying expert not provided to or discussed with anyone else. Counsel's private notes of
4 conversations will be treated as work product and need not be produced absent the showing
5 required by FRCP 26(b)(3).

6 23. With respect to depositions under FRCP 30(b)(6), the fundamental purpose is to
7 allow a party to notice a deposition by subject matter, thereby requiring the respondent to
8 designate and to produce one or more organization witnesses knowledgeable on the designated
9 topic, a useful procedure when the roles of percipient witnesses controlled by an adverse party
10 are unknown. In some cases, however, counsel routinely appear to notice
11 Rule 30(b)(6) depositions on numerous and wide-ranging topics, including even the basis for
12 "contentions" made by adverse parties. To obviate disputes and to give guidance, these
13 guidelines will be observed:

14 (a) Without a prior order increasing the limit, a party may seek
15 Rule 30(b)(6) depositions from another party on up to a total of ten subject
16 matters (for the entire case) described with "reasonable particularity." In framing
17 the subjects, it is normally improper to ask for Rule 30(b)(6) deponents to testify
18 concerning the entire basis of a claim or defense. On the other hand, examples of
19 proper subjects, which would require the respondent to find and to produce
20 knowledgeable deponents, include "the time line of research and development
21 leading to the invention in question" or "the efforts undertaken by defendant to
22 locate documents responsive to plaintiff's document request." The notice should
23 be directed at discovering percipient facts in the possession of the adverse party,
24 not at forcing a supposed "fact witness" to appear and defend the entire thesis of a
25 claim or defense. If a notice includes an overbroad topic, the overbroad topic
26 shall be unenforceable and may not be later replaced with a proper topic.

27 (b) Each witness-designee deposed for one half-day or more in a
28 Rule 30(b)(6) deposition shall count as a single deposition for purposes of the

1 deposition limit under FRCP 26 or under any case management order setting a
2 limit on the number of depositions. A corporate designee may, immediately after
3 being deposed on the stated subject, be deposed in his or her individual capacity.
4 Both such sessions shall count together as a single deposition (although they
5 should be separately transcribed). If two designees, to take another example, are
6 interrogated, each for one half-day or more, then they count as two depositions.

7 (c) If an organization cannot reasonably locate a witness to testify
8 based on personal knowledge, there is no requirement under Rule 30(b)(6) for the
9 organization to “woodshed” or to “educate” an individual to testify on the subject.
10 If the organization does not produce any such deponent, however, the
11 organization may not present case-in-chief evidence at trial or on summary
12 judgment on that topic from any witness it could have so designated.

13 (d) Rule 30(b)(6) testimony never constitutes an irrebuttable judicial
14 admission. It will normally, however, be evidence admissible against the
15 organization producing the witness. The jury may, upon request, be instructed on
16 the significance of the testimony under Rule 30(b)(6).

17 24. If a dispute arises during a deposition and involves either a persistent obstruction
18 of the deposition or a refusal to answer a material question on a ground other than privilege,
19 counsel may attempt to arrange a telephone conference with the Court through the courtroom
20 deputy, Dawn Toland, at 415-522-2020. Any such conference should be attended by the same
21 court reporter recording the deposition.

22 25. All other requests for discovery relief must first be summarized in a letter no
23 longer than three pages from the party seeking relief after having met and conferred. Up to
24 twelve pages of attachments may be added. In the letter, counsel should identify themselves in
25 the signature block as “counsel for _____.” *The letter should be electronically-filed in*
26 *the official file along with the discovery-dispute requests and responses, as well as any timely*
27 *letter cancelling the hearing if settlement is reached.* (Please note that with all communications
28 with the Court by e-filing, *a hard copy must be lodged* in the Court’s mail box in the Clerk’s

1 Office on the sixteenth floor no later than noon of the following day.) The Court will then
2 advise the parties whether a response, written motion or a telephone conference or court hearing
3 will be required. After the telephone conference or hearing, counsel should submit their
4 proposed order (agreed as to form) by e-filing it. This paragraph applies only to cases wherein
5 discovery is being supervised by the district judge rather than by a magistrate judge or special
6 master.

7 **DISCLOSURES**

8 26. Apart from discovery, Rule 26 requires certain automatic disclosures and requires
9 them to be made in a timely manner. Under Rule 37(c), untimely-disclosed materials may not be
10 used at trial or on summary judgment unless the delay in disclosure is “harmless” or unless
11 “substantial justification” for the delay is shown.

12 **COMMUNICATIONS WITH CHAMBERS**

13 27. Please do not send any letters to the Court (except for requests for discovery
14 conferences, short cover letters for dismissals, orders agreed-upon as to form, or chambers
15 copies of electronically-filed documents). When corresponding with the Court by letter, always
16 identify whom you represent. Please do not fax or messenger anything to chambers without
17 advance permission specific to the item. Please e-file all submissions to the Court and make sure
18 a hard copy is lodged in the Court’s mail box in the Clerk’s Office on the sixteenth floor no later
19 than noon of the following day.

20 28. You may contact the courtroom deputy, Dawn Toland (on the sixteenth floor in
21 the Clerk’s Office), at 415-522-2020 with appropriate inquiries. Except for the letters described
22 above, please do not attempt to make contact by telephone or any other *ex parte* means with
23 chambers staff.

24 **CROSS REFERENCE TO OTHER STANDING ORDERS AND GUIDELINES**

25 29. The Court has separate standing guidelines for preparation for the final pretrial
26 conference and trial. In securities cases, the Court has a standing order concerning early notice
27
28

1 to class members. They are always available for review at the website for the United States
2 District Court for the Northern District of California at www.cand.uscourts.gov.

3
4
5 Dated: November 20, 2008.



6 WILLIAM ALSUP
7 UNITED STATES DISTRICT JUDGE
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

United States District Court
For the Northern District of California

**PLAINTIFF'S AND K2xL's
EXHIBIT E**

UNITED STATES DISTRICT COURT

for the

Northern District of Georgia

DANIEL M. MILLER)	
<i>Plaintiff</i>)	
v.)	Civil Action No. 10-CV-00264 WHA
FACEBOOK, INC., and YAO WEI YEO)	
<i>Defendant</i>)	(If the action is pending in another district, state where: Northern District of California)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: K2XL, LLC
2079 Kinsmon Drive, Marietta GA 30062

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: Please see Attachment A

Place: Morris Manning & Martin 1600 Atlanta Financial Center 3343 Peachtree, NE, Atlanta, GA 30326-1044	Date and Time: 11/22/2010 10:00 am
---	---

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

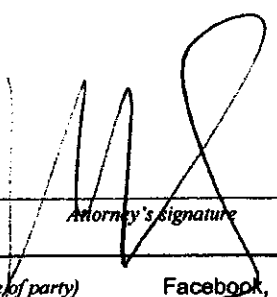
The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 11/10/2010

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk



Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Facebook, Inc.
Julio C. Avalos, Orrick Herrington & Sutcliffe LLP, who issues or requests this subpoena, are:
1000 Marsh Road, Menlo Park, CA 94025
Tel: (650) 289.7184

Civil Action No. 10-CV-00264 WHA

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

ATTACHMENT A

ATTACHMENT "A"

Definitions

A. "ANY" shall be understood to include and encompass "ALL." As used herein, the singular shall always include the plural and the present tense shall also include the past tense. The words "AND" as well as "OR" shall be construed disjunctively or conjunctively as necessary to bring within the scope of this request ALL DOCUMENTS or things that might otherwise be construed to be outside its scope.

B. The terms "PERSON" and "PERSONS" mean both natural persons and legal entities, including without limitation, corporations, companies, firms, partnerships, joint ventures, proprietorships, associations, and governmental bodies or agencies. Unless noted otherwise, references to any person, entity or party herein include its, his, or her agents, attorneys, employees, employers, officers, directors, or others acting on or purporting to act on behalf of said person, entity, or party.

C. "EVIDENCE" or any variant thereof, including but not limited to "EVIDENCING," when used in connection with any document, shall be understood to apply if the document directly or indirectly mentions, discusses, constitutes, concerns, supports contradicts, relates to, refers to, or in any other way deals with the subject matter described in the request in which the term appears.

D. "REFER TO" or "RELATE TO" as used herein mean pertaining to, relevant to, material to, evidencing, affecting, comprising, discussing, dealing with, considering or otherwise concerning in any manner whatsoever the subject matter of the inquiry.

E. As used herein, the term "DOCUMENT" means the original and each non-identical copy of any written, printed, typed, recorded, computerized, electronic, taped, graphic, or other matter, in whatever form, whether in final or draft, including but not limited to all materials that constitute "writings" or "recordings" or "photographs" within the broadest meaning of Rule 45 of the Federal Rules of Civil Procedure. The word "Document" includes, without

limitation, printed matter, electronic mail, materials stored on computer hard drives, diskettes, tapes, any other computer media, recorded voice mail messages and any other information stored magnetically, optically or electronically.

F. "COMMUNICATION" as used herein means any contact, oral or documentary, formal or informal, at any place or under any circumstances whatsoever whereby information of any nature is transmitted or transferred, including without limitation, any note, memorandum or other record thereof, or a single person seeing or hearing any information by any means.

G. "K2XL," "YOU," "YOUR," or "YOURSELF," means the limited liability company operating the website <http://k2xl.com/> and purportedly owning, hosting, or developing the video game applications contained thereon, its past and present parents, subsidiaries, affiliates, predecessors, divisions, officers, directors, trustees, employees, staff members, agents, counsel, representatives, consultants, AND ALL PERSONS acting or purporting to act on its behalf

H. "MILLER" or "PLAINTIFF" means PLAINTIFF Daniel M. Miller, and all of his agents, representatives, accountants, investigators, consultants, attorneys, predecessors, or successors in interest, and anyone else acting OR purporting to act on his behalf.

I. "FACEBOOK" means, without limitation, Facebook, Inc. (formerly TheFacebook, Inc.), its past and present parents, subsidiaries, affiliates, predecessors, divisions, officers, directors, trustees, employees, staff members, agents, counsel, representatives, consultants, AND ALL PERSONS acting or purporting to act on its behalf.

J. "YEO" means DEFENDANT Yao Wei Yeo, and all of his agents, representatives, accountants, investigators, consultants, attorneys, predecessors, or successors in interest, and anyone else acting OR purporting to act on his behalf.

K. "BOOMSHINE" means the Flash game application at issue in this litigation and upon which MILLER alleges copyright infringement against YEO and FACEBOOK, as identified in PLAINTIFF'S Complaint.

L. "CHAINRXN" means the Flash game application alleged to have infringed BOOMSHINE's copyright, as identified in PLAINTIFF'S Complaint.

Instructions

A. In responding to the following requests, you are required to provide ALL DOCUMENTS that are available to YOU or within YOUR control, including DOCUMENTS in the possession of YOUR attorneys, investigators, employees, agents, representatives, and guardians or any other person acting on YOUR behalf, and not merely DOCUMENTS from YOUR own personal files.

B. If YOU object to any of the requests, YOU must state the grounds for any objection(s). If YOU object to only part of a request, YOU must state the objection and the grounds for any objection(s) and respond to the remainder of the request.

C. If YOU object to the production of any document on the grounds that it is protected from disclosure by the attorney-client privilege, work-product doctrine, or any other privilege, YOU are requested to identify each document for which the privilege is claimed and give ALL information required by applicable case law, including but not limited to the following:

- a. the name of the writer, sender, or initiator of each copy of the document;
- b. the name of the recipient, addressee, or party to whom any copy of the document was sent;
- c. the date of each copy of the document, if any, or an estimate of its date;
- d. a statement of the basis for the claim of privilege; and
- e. description of the document sufficient for the Court to rule on the applicability and appropriateness of the claimed privilege.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1

ALL COMMUNICATIONS AND DOCUMENTS relating, referring or evidencing the development, creation OR origin of BOOMSHINE.

REQUEST FOR PRODUCTION NO. 2

A copy of ALL versions of source code related to BOOMSHINE.

REQUEST FOR PRODUCTION NO. 3

A copy of ALL executable files of ALL versions of BOOMSHINE.

REQUEST FOR PRODUCTION NO. 4

ALL DOCUMENTS submitted to the Copyright Office that RELATE TO BOOMSHINE, including the application(s) for its copyright registration, any pending application, any submitted deposits, as well as all correspondence with, or notes of telephone conferences with, the Copyright Office concerning such applications OR registrations.

REQUEST FOR PRODUCTION NO. 5

ALL DOCUMENTS evidencing, reflecting, or relating to ANY COMMUNICATIONS between YOU and YEO.

REQUEST FOR PRODUCTION NO. 6

ALL COMMUNICATIONS AND DOCUMENTS RELATED TO CHAINRXN.

REQUEST FOR PRODUCTION NO. 7

ALL DOCUMENTS relating to any marketing or advertising efforts or campaigns for BOOMSHINE.

REQUEST FOR PRODUCTION NO. 8

DOCUMENTS sufficient to show YOUR monthly AND annual revenue generated by BOOMSHINE.

REQUEST FOR PRODUCTION NO. 9

DOCUMENTS sufficient to show YOUR monthly AND annual profits generated by BOOMSHINE.

REQUEST FOR PRODUCTION NO. 10

ALL DOCUMENTS constituting, concerning, OR relating to ANY assignment or license by YOU of ANY copyright interest related to BOOMSHINE.

REQUEST FOR PRODUCTION NO. 11

ALL COMMUNICATIONS AND DOCUMENTS relating to ANY instance(s) where YOU believed that ANY copyright(s) related to BOOMSHINE was being OR had been infringed.

REQUEST FOR PRODUCTION NO. 12

ALL DOCUMENTS reflecting, associated with, OR that relate TO ANY of MILLER'S responses to FACEBOOK's concurrently-served First Set of Interrogatories to Plaintiff MILLER attached hereto as Exhibit A.

REQUEST FOR PRODUCTION NO. 13

ALL DOCUMENTS relating to, reflecting, or associated with OR supporting ANY of the allegations made in PLAINTIFF'S Seconded Amended Complaint in this action, attached hereto as Exhibit B.

REQUEST FOR PRODUCTION NO. 14

ALL DOCUMENTS relating to, reflecting, or associated with ANY of FACEBOOK's Counter Claims to PLAINTIFF'S Second Amended Complaint in this action, attached hereto as Exhibit C.

REQUEST FOR PRODUCTION NO. 15

ALL DOCUMENTS sufficient to establish the number of BOOMSHINE users since the game's online launch.

REQUEST FOR PRODUCTION NO. 16

DOCUMENTS sufficient to establish ANY AND ALL websites on which BOOMSHINE has appeared OR been hosted on.

REQUEST FOR PRODUCTION NO. 17

DOCUMENTS sufficient to establish ANY AND ALL websites linking to the BOOMSHINE game or application.

REQUEST FOR PRODUCTION NO. 18

ALL DOCUMENTS relating to K2XL including its date of incorporation, officers and founders.

REQUEST FOR PRODUCTION NO. 19

ALL DOCUMENTS relating to K2XL's annual income OR profits.

REQUEST FOR PRODUCTION NO. 20

ALL DOCUMENTS relating to K2XL's advertising OR marketing efforts.

REQUEST FOR PRODUCTION NO. 21

ALL DOCUMENTS sufficient to establish the identity of ANY AND ALL K2XL's employees or officers registered as FACEBOOK users.

REQUEST FOR PRODUCTION NO. 22

ALL DOCUMENTS received from third-parties in response to ANY discovery OR subpoena requests PLAINTIFF served in relation to this action.

REQUEST FOR PRODUCTION NO. 23

ALL DOCUMENTS sufficient to establish the amount of user traffic to the K2XL website.

REQUEST FOR PRODUCTION NO. 24

ALL DOCUMENTS evidencing, reflecting or relating to YOUR knowledge of other games available prior to the development of BOOMSHINE that involved functionality and a user interface similar to BOOMSHINE's including, but not limited to, games in which users/players navigated to OR clicked on any shapes that caused any reaction.

REQUEST FOR PRODUCTION NO. 25

ALL DOCUMENTS evidencing, reflecting, or relating to Defendant Yeo's access to OR use of the BOOMSHINE game.

REQUEST FOR PRODUCTION NO. 26

ALL DOCUMENTS evidencing, reflecting OR relating to the copying by third-parties of the BOOMSHINE game.

REQUEST FOR PRODUCTION NO. 27

ALL DOCUMENTS that REFER or RELATE TO FACEBOOK.

REQUEST FOR PRODUCTION NO. 28

ALL DOCUMENTS that REFER OR RELATE TO YOUR decision NOT to offer BOOMSHINE on the FACEBOOK website.

REQUEST FOR PRODUCTION NO. 29

ALL COMMUNICATIONS AND DOCUMENTS that RELATE OR REFER TO the "Obechi" videogame, including but not limited to the developer responsible for uploading "Obechi" to the FACEBOOK website, when it was first accessible on the FACEBOOK website, and ANY revenues generated by the game.

REQUEST FOR PRODUCTION NO. 30

ALL DOCUMENTS that RELATE OR REFER TO ANY FACEBOOK user accounts used to create OR administer the Obechi videogame.

REQUEST FOR PRODUCTION NO. 31

ALL DOCUMENTS that RELATE OR REFER TO ANY FACEBOOK user information YOU collected from OR through the "Obechi" videogame.