

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

RS

for the

Northern District of California

CV 11 80 290MISC

In re: DMCA Subpoena directed to

Plaintiff

v.

Facebook, Inc.

Defendant

Civil Action No. 1:11-cv-07870

(If the action is pending in another district, state where:

Northern District of Illinois)

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

To: Facebook, Inc. 1601 South California Avenue, Palo Alto, California, 94303

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: All records of whatever kind revealing or leading to information revealing a) the actual identity, actual address, and contact information of the Facebook user using the name "Pablo La Sickie" on October 24, 2011; b) all email addresses and IP addresses ever used by that user in connection with Facebook, and c) the email address and IP address used by that user in connection with Facebook on October 24, 2011.

Table with 2 columns: Place (J. D. Obenberger and Associates, 70 West Madison Street, Suite 400, Chicago, Illinois 60602) and Date and Time (11/30/2011 3:00 pm)

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.

Table with 2 columns: Place and Date and Time (empty)

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: 11-21-11 RICHARD W. WIEKING

CLERK OF COURT Signature of Clerk or Deputy Clerk GLORIA ACEVEDO

OR Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) J. D. Obenberger, who issues or requests this subpoena, are:

J. D. Obenberger J. D. Obenberger and Associates, 70 West Madison Street, Suite 400, Chicago, Illinois, 60602 obiwan@xxxlaw.net, (312) 558-6420

Civil Action No. 1:11-cv-07870

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:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

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

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

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

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

State of Illinois)
) ss
County of Cook)

AFFIDAVIT

I, J. D. Obenberger, being first duly sworn upon oath, state as follows:

1. I maintain an account on Facebook. I am personally familiar with the matters stated in this affidavit, I am competent to testify to them, and I will so testify if called upon to do so.

2. I own a certain photograph named 333804_294880043875433_100000603190834_1147337_365701048_o, which I personally created on October 23, 2011. A Facebook account holder, whose actual identity is unknown to me but who identified himself as Pablo La Sickie, copied that photograph and republished it and used it for his own purposes—all without my permission—by posting it on the Facebook website at: <http://www.facebook.com/pages/El-bandito-dawg-es-stupido/151724161589043?sk=wall&filter=1> on the same date. No one other than me was authorized to allow that user or anyone else to copy or otherwise use that photograph, so the unknown user posted it on Facebook without authorization.

3. Attached hereto as Exhibit A is a true and correct printed copy of the notice which I sent by to Facebook, Inc. on October 24, 2011, pursuant to Section 512(c) (3)(A) of Title 17 of the United States Code, using the interactive web page which Facebook has established for that purpose. That notice resulted in the prompt removal of the infringing images from the website hosted by Facebook.

4. Facebook, Inc. is the type of Internet Service Provider which must respond to the subpoena tendered herewith since the infringing copy or copies of my photograph were posted to a website hosted by Facebook. On information and belief, Facebook, Inc. has information sufficient to identify the persons and entities responsible for infringing my copyright, which information is critical to determining who is responsible for the copyright infringement which occurred when unauthorized copy or copies of my photograph were posted at the Internet location specified in Exhibit A.

5. I expect that I will seek redress for copyright infringement against the persons and entities responsible for posting the infringing copy or copies of my photograph, but I have not yet done so because the identity of the infringer or infringers cannot be determined except through the subpoena tendered herewith.

6. The purpose of the subpoena tendered herewith—prepared, requested, and issued pursuant to Section 512(h) of Title 17 of the United States Code—is to obtain information establishing or leading to the establishment of the identity and location of the persons and entities responsible for the unauthorized republication of the photograph

referred to in paragraph 2 of this affidavit. I seek all of the information to be disclosed pursuant to this subpoena solely for the purpose of protecting my own exclusive rights under the Copyright Act of 1976, as amended, and I seek said information for no other purpose.

Further affiant sayeth naught.

Pursuant to Section 1746 of Title 28 of the United States Code, I declare under penalty of perjury that the foregoing statements are true and correct.


J.D. Obenberger

facebook

Search

q

Joe Oberberger Home

DMCA Notice of Copyright Infringement

Name: Joe Oberberger

Mailing Address: JD Oberberger and Associates
70 W Madison St Suite 400
Chicago, IL 60602

Telephone: 312 558 6420

Email: xoodaw@gmail.com

(Note that we routinely provide your contact information to the user that posted the content you are reporting)

Identify the copyrighted work that you claim has been infringed.

Photograph of carved meat on a carving table located at URL <http://www.facebook.com/jelbandito.dawg#1/photo.php?fbid=294880043875433&set=0,121323394627877&type=1&theater>

Identify the content on our site that you claim infringes your copyright.

Hostile, adverse poster presently harassing me with name Pablo La Sidde (which is a false alias identity of another EG account) posted it to compare my cooking to cat manure at <http://www.facebook.com/pages/EJ-bandito-dawg-es-estupido/151724161589043?sk=wall&filter=1>.

Where does the infringing content appear on our site? Please provide URLs to help us locate the content you are reporting.

Hostile, adverse poster presently harassing me with name Pablo La Sidde (which is a false alias identity of another EG account) posted it to compare my cooking to cat manure at <http://www.facebook.com/pages/EJ-bandito-dawg-es-estupido/151724161589043?sk=wall&filter=1>.

Kathy Doerr commented on her own post in EJ Bandito: "You need to friend some people..."

Luke Lirok and Joey Reiner are new friends.

Anita Calk commented on Rafael Czechowski's post on Anita Calk's wall: "Maybe we can do a double date?..."

Theolina Setya Sheethotank commented on her own photo: "Sekring di Pekanbaru"

Serpent Lifetime shared

Anra Bobbarxo

Daniel Kotz

Joe Frisk

Kathy Doerr

Kerry Fields Wolf

Madison Montag

Paul Yusem

Tarra Sexton

Tim Schlenz

MORE ONLINE FRIENDS (12)

Q Search

Done

facebook

Search

Joe Oberberger Home

Identify the content on our site that you claim infringes your copyright.

Hostile, adverse poster presently harassing me with name Pablo La Sicile (which is a false alias identity of another EE account) posted it to compare my cooking to cat manure at <http://www.facebook.com/pages/EI-barndio-dewig-es-estupido/151724161589043?sk=walls&filter=1>.

Where does the infringing content appear on our site? Please provide URLs to help us locate the content you are reporting.

Hostile, adverse poster presently harassing me with name Pablo La Sicile (which is a false alias identity of another EE account) posted it to compare my cooking to cat manure at <http://www.facebook.com/pages/EI-barndio-dewig-es-estupido/151724161589043?sk=walls&filter=1>.

How does the content infringe your rights?*

a false identity with other identities and harasses me and other posters. Just as soon as I spotted this image which he infringed and insulted, he blocked me to cover his tracks. I did create a screen capture of the infringing use of my image.

By submitting this notice, you declare that you have a good faith belief that use of the copyrighted content described above, in the manner you have complained of, is not authorized by the copyright owner, its agent, or the law. You also declare that the information in this notice is accurate. And finally, you declare under penalty of perjury, that you are the owner or authorized to act on behalf of the owner of an exclusive copyright that is allegedly infringed.

I Agree I Disagree

Electronic Signature:

**This question is optional, and is not required by the DMCA. However, providing this information may preempt any potential need for follow-up questions should your notice be unclear.

Facebook © 2011 · English (US)

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- Kathy Doerr commented on her own post in El Barndio: "You need to friend some people..."
 - Luke Lirok and Joey Redner are now friends.
 - Aria Cski commented on Rafal Czedrowski's post on Aria Cski's wall: "Maybe we can do a double date?..."
 - Thelma Setya Shethotank commented on her own photo: "Selxng di pelanbaru"
 - Serpent Libertine shared
 - Aria Bobbaro
 - Daniel Kdtz
 - Joe Frisk
 - Kathy Doerr
 - Kerry Fields Wolf
 - Madison Montag
 - Paul Yusem
 - Tama Sexton
 - Tim Schlenz
- MORE ONLINE FRIENDS (12)
- Q Search