

Exhibit A

Gray, Thomas

From: Gray, Thomas
Sent: Thursday, January 22, 2009 12:14 PM
To: 'Smith, Steve'
Cc: 'Walker, William'
Subject: RE: Facebook v. SVZ - Discovery Motions and LR 6-3 motion

Just not sure that we need to go through the trouble (for us and the court) of drafting and filing a stipulation. As you mention, you have already essentially agreed as to the PJx part with respect to StudiVZ. You can simply state in your opposition that you don't oppose as to that part of the motion. We can both concentrate on the other 3/4's - where we clearly will disagree.

From: Smith, Steve [mailto:ssmith@ggfirm.com]
Sent: Thursday, January 22, 2009 12:01 PM
To: Gray, Thomas
Cc: Walker, William
Subject: RE: Facebook v. SVZ - Discovery Motions and LR 6-3 motion

OK, but I am a little confused as to what there is to disagree about. I am giving you 1/4 of what you want (and it is the biggest quarter) without asking for anything in return. I don't get what the possible downside is to you or your client. Can you explain? Maybe I am being dense. Do you think I am somehow being clever because I do not see it.

From: Gray, Thomas [mailto:tgray@orrick.com]
Sent: Thursday, January 22, 2009 11:55 AM
To: Smith, Steve
Cc: Walker, William
Subject: RE: Facebook v. SVZ - Discovery Motions and LR 6-3 motion

Sorry, Steve. I have been stuck in meetings most of the morning. Also, I think my client has been tied up. I have not been able to discuss your proposal below with him. While I am not sure that we will be able to agree, I do want to discuss it with my client first. Therefore, I think we can table this for one more day to get a stipulation on file - if possible. If I talk with my client and it does not look like we will reach an agreement, then we may try to file the LR 6-3 today (if there is enough time) or tomorrow.

Tom

From: Smith, Steve [mailto:ssmith@ggfirm.com]
Sent: Thursday, January 22, 2009 10:59 AM
To: Smith, Steve; Gray, Thomas
Cc: Walker, William
Subject: RE: Facebook v. SVZ - Discovery Motions and LR 6-3 motion

Tom:

I do not mean to be impatient, but I am supposed to leave the office early today. If we are going to prepare and file a stipulation today (which is the day you said you wanted to file your motion to enlarge time), I wanted to get that done by early this afternoon.

So, if you are around, can you let me know?

1/23/2009

Steve

From: Smith, Steve
Sent: Thursday, January 22, 2009 8:14 AM
To: 'Gray, Thomas'
Cc: Walker, William
Subject: RE: Facebook v. SVZ - Discovery Motions and LR 6-3 motion

No, I am not agreeing to produce any further discovery, unless you have decided to agree to my positions from our meet and confer. I have not seen your motion to compel yet. But based on our meet and confer conversations I am virtually certain we will be opposing it in whole or large part.

But, I recognize that it is only fair for FB to have the opportunity to have that motion heard. I guess I could argue that FB was not diligent in filing a motion to compel to be heard before its opposition was due, but I really don't think that is true. We were meeting and conferring. Other than your cancellation of the depositions, which I am never going to understand, I believe that you, Annette and Warrington were meeting and conferring in good faith. So I think I would be wrong to insist that you not even be given the opportunity to have your motion to compel heard. I guess I could take the position that I will not agree to enlarge time unless and until I see what you are moving to compel, specifically, but I am aware of at least some of our disagreements and I think you are entitled to have those disagreements heard without being pre-barred from even attempting to include whatever, if anything, you are allowed to discover after that motion is heard. Don't get me wrong – I will oppose that motion because I think FB is seeking documents, facts and deposition testimony that relates solely to the merits, but I am OK with you having your day in court on the issue.

The other reason I am offering this is because I told Annette and Warrington that I would not object to FB's attempts to depose Bemmann and Dhariani. I recognize that because defendants do not control these witnesses and cannot force/persuade them to attend a deposition, FB must go through the Hague Evidence Convention to depose them. I told Annette and Warrington before you took over I would not seek to prevent them from doing so. So, for example, if they needed to file something with the court let's say to get letters rogatory or some other type of process, I agreed not to object.

I initially thought you had given up on that because you have not really mentioned it since coming on board. But then I read your opposition. Given your focus on Dhariani and Bemmann, and given that all of that evidence is hearsay, I assume that FB is still attempting to depose both of these witnesses. I basically think you are entitled to more time to try to do so.

Just so you do not get overly suspicious of my "nice guy" motives -- I am not being nice. I just think you have a good chance of winning your motion to enlarge time as to studiVZ as to personal jurisdiction only for the reasons stated above (especially since you will probably now quote what I just wrote in your motion anyway) and I think studiVZ's position regarding lack of personal jurisdiction becomes stronger if you are given the opportunity to move to compel and/or depose Dhariani and Bemmann and you fail to come up with any better evidence than you currently have.

So to clarify, my proposal is as follows:

1. You and I sign a stipulation and proposed order, and file it with the court, agreeing to move the hearing on the personal jurisdiction portion only of the studiVZ motion to dismiss to X date (which we need to discuss because I am not sure how much time you are asking for);
2. We explain in that stipulation that the parties are not in agreement as to moving the hearing date of the Holtzbrinck motion to dismiss or the portion of the studiVZ motion that relates to forum non conveniens -- that defendants want the hearing date maintained as to those issues and that FB wants the dates moves as to those issues -- and that FB is filing concurrently (or will be filing soon) a motion to enlarge time seeking to do exactly that, which defendants will oppose within the time called for under the local rules.
3. You file that motion to enlarge time. I oppose. The court rules.

1/23/2009

Is that clear?

Steve

From: Gray, Thomas [mailto:tgray@orrick.com]
Sent: Thursday, January 22, 2009 6:22 AM
To: Smith, Steve
Subject: Re: Facebook v. SVZ - Discovery Motions and LR 6-3 motion

Not exactly sure what you are proposing wrt SVZ? Are you also agreeing to produce discovery re PJx?

Tom

Please excuse any typos or odd words, my BlackBerry's SureType keypad isn't always that intuitive.

From: Smith, Steve
To: Gray, Thomas
Sent: Wed Jan 21 17:36:49 2009
Subject: RE: Facebook v. SVZ - Discovery Motions and LR 6-3 motion

I thought about the motion to enlarge time issue and spoke with my client and this is what I propose.

We will stipulate to enlarge time on the studiVZ motion as to personal jurisdiction. You get another opposition on that by stipulation. I am not going to oppose that portion of your motion anyway. What's in it for me? I can avoid having to write a reply on that issue for next Friday only to throw it in the trash once the court grants that part of your motion, which I am not opposing.

You file your motion to enlarge time as to anything else: (1) Holtzbrinck personal jurisdiction, (2) Holtzbrinck forum and/or (3) studiVZ forum. I oppose that motion. That way you do not need to waste time in your motion discussing studiVZ personal jurisdiction. The court then rules on 1, 2 and 3, but no matter what happens on 1, 2 and 3, you have the additional time on studiVZ personal jurisdiction.

Deal?

From: Gray, Thomas [mailto:tgray@orrick.com]
Sent: Wednesday, January 21, 2009 5:06 PM
To: Smith, Steve
Subject: RE: Facebook v. SVZ - Discovery Motions and LR 6-3 motion

Steve,

Further to our discussion yesterday and the email below. It looks promising for me to change a few things on March 2 and 3. Therefore, I think we can plan for noticing the various discovery motions for March 3 before Judge Lloyd. I will let you know right away if my arrangements do not work and we need to go with March 10. However, unless you hear otherwise, assume we are on for March 3.

As for the motion to enlarge time, I don't think we will be able to work out some alternative. Facebook believes it is entitled to discovery for both the personal jurisdiction and forum non conveniens motions as to all parties. I know you and your clients disagree. Unfortunately, we will need to let Judge Fogel or Judge Lloyd rule on the issue. We will file the Local Rule 6-3 motion tomorrow.

Tom

1/23/2009

From: Smith, Steve [mailto:ssmith@ggfirm.com]
Sent: Tuesday, January 20, 2009 2:18 PM
To: Gray, Thomas
Subject: RE: Facebook v. SVZ - Discovery Motions and LR 6-3 motion

yes


From: Gray, Thomas [mailto:tgray@orrick.com]
Sent: Tuesday, January 20, 2009 2:01 PM
To: Smith, Steve
Subject: RE: Facebook v. SVZ - Discovery Motions and LR 6-3 motion

One thing that I left out that is implied, is that neither party is filing their respective discovery motions today. We will either file on the appropriate date for the March 3 hearing or for the March 10 hearing.

Tom

From: Smith, Steve [mailto:ssmith@ggfirm.com]
Sent: Tuesday, January 20, 2009 1:49 PM
To: Gray, Thomas
Cc: Avalos, Julio
Subject: RE: Facebook v. SVZ - Discovery Motions and LR 6-3 motion

I agree with all of it.



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From: Gray, Thomas [mailto:tgray@orrick.com]
Sent: Tuesday, January 20, 2009 1:39 PM
To: Smith, Steve
Cc: Avalos, Julio
Subject: Facebook v. SVZ - Discovery Motions and LR 6-3 motion

Steve,

I write to confirm our discussion of a few minutes ago.

As for the discovery motions (FB's motion to compel and for sanctions and Defendants' motion for sanctions), we agree that we should try coordinate the filing of such motions for the same day before Judge Lloyd. Since you are unavailable on Feb 24th, we are considering March 3. I need to see if I can re-arrange my schedule to have the hearing on March 3 and will let you know in the next 48 hours or so. If March 3 does not work, we will go with March 10.

As for the LR 6-3 motion to enlarge time, I will think about whether there is some way to go forward with part of the motion first and the remainder at a later date. You will check about whether we can bi-furcate the motion by parties (Holtzbrinck first and then SVZ later) - but you have not checked with your client about this yet. If an agreement cannot be reached, Facebook will file the motion to enlarge time under LR 6-3 either tomorrow or Thurs.

The discovery motion schedule and the LR 6-3 motion are independent issues. They are not tied together and we can reach an agreement with the discovery motions and not reach an agreement with the LR 6-3 motion.

Please let me know ASAP if you disagree or need to clarify any of this.

Thanks.

Tom

"EMF <orrick.com>" made the following annotations.

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