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 12 FACEBOOK, INC.

13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**
 15 **SAN JOSE DIVISION**

17 FACEBOOK, INC., a Delaware
 18 corporation,

19 Plaintiff,

20 v.

21 JEREMI FISHER; PHILIP POREMBSKI;
 RYAN SHIMEALL; and JOHN DOES 1-
 22 25, individuals; and CHOKO SYSTEMS
 LLC; HARM, INC.; PP WEB SERVICES
 23 LLC; iMEDIA ONLINE SERVICES LLC;
 and JOHN DOES 26-50, corporations,

24 Defendants.
 25

Case No. C-09-05842-JF

**PLAINTIFF FACEBOOK INC.'S
 ADMINISTRATIVE REQUEST FOR ORDER
 DIRECTING RELEASE OF COMPUTER**

1 Pursuant to Local Rule 7-11, Facebook, Inc. ("Facebook") seeks an order directing the
2 Sacramento County Sheriff's Department to release the computer described in Sacramento
3 County Sheriff's Department Report No. NE 2010-0093641 ("Subject Computer") to Facebook
4 for the purposes of engaging an independent third party to make a mirror image of the Subject
5 Computer's hard drive and to delivery that mirror image to Facebook. After such imaging,
6 Facebook shall return the Subject Computer to the Sacramento County Sheriff Department.
7

8 **MEMORANDUM IN SUPPORT OF ADMINISTRATIVE REQUEST**

9 **I. BACKGROUND**

10 On June 14, 2010, this Court entered an Order Granting Plaintiff Facebook's
11 Administrative Request for Leave to Conduct Discovery Prior to Rule 26 Conference. Electronic
12 Docket Entry ("DE") No. 56. The Court issued the Order pursuant to Plaintiff Facebook's
13 Administrative Request Pursuant to Local Rule 7-11 for Leave to Conduct Discovery Prior to
14 Rule 26 Conference and the Declaration of Joseph P. Cutler in support thereof. DE 53, 54.

15 The Order included the following:

16 [P]laintiff Facebook has shown good cause to conduct discovery prior to the Rule
17 26 conference. The need for the expedited discovery outweighs any prejudice to
18 defendants.... Finally, plaintiff Facebook served this motion on all defendants and no
19 response has been filed whatsoever.

20 Pursuant to Rules 34 and 45, plaintiff Facebook may engage an independent third
21 party to make a mirror image of the hard drive of the laptop computer (either on-site a the
22 Sacramento Sheriff's Department or at the offices of the independent third party) and
23 promptly return the original laptop computer to the custody of the Sacramento Sheriff's
24 Department.

25 DE 56 at 2. The Order also allowed Facebook to issue a subpoena for police reports and witness
26 statements related to the recover of the Subject Computer and to conduct a deposition of the
27 witness who located the Subject Computer. Id.

1 On June 18, 2010, counsel for Facebook served a subpoena including a complete copy of
2 the Order on the Sacramento County Sheriff Department seeking the discovery permitted by the
3 Order. Declaration of Ryan Mrazik in Support of Administrative Request for Order Directing
4 Release of Computer ("Mrazik Decl."), Exhibit A. On that same day, Captain Scott Jones, Legal
5 Advisor and Assistant to the Sheriff, sent an email that objected to the subpoena on the grounds
6 that there was not "proper legal authority" for the Sheriff's office to release the hard drive.
7 Mrazik Decl. Ex. B.

8 After meeting and conferring telephonically and by email, Captain Jones stated that the
9 Sheriff's office simply required an "order for [the Sheriff's Office] to turn [the Subject Computer]
10 over (or a copy) to [Facebook]." Mrazik Decl., Ex. C. Captain Jones also stated that the
11 Sacramento County Sheriff Department Report No. 2010-0093641, which the Sheriff's Office
12 disclosed pursuant to the subpoena, provided sufficient detail as to the facts to enable Facebook to
13 obtain such an order directing release of the Subject Computer's hard drive to Facebook. Id.

14 Sacramento County Sheriff's Department Report No. NE 2010-0093641 describes that the
15 subject tower computer was found discarded next to a dumpster and that it contained (1) viruses
16 that, when sent out, steal Facebook and other user names, passwords, and other types of
17 information and (2) email addresses and other user identifying information linking the Subject
18 Computer to Defendant Philip Porembski. Mrazik Declaration, Exhibit D at 1, 3, 7.

19 II. REQUEST FOR ORDER

20 Rule 34 states that "[a] party may serve on any other party a request within the scope of
21 Rule 26(b)." Fed. R. Civ. P. 34(a). Rule 26(b) states that "[p]arties may obtain discovery
22 regarding any nonprivileged matter that is relevant to any party's claim or defense."
23 Fed. R. Civ. P. 26(b). Facebook has already received an Order from this Court allowing it to
24 engage an independent third party to make a mirror image of the hard drive of the Subject
25 Computer and to return the computer to the custody of the Sacramento Sheriff's Department.
26 Dkt. No. 53 at 2. The Court Order also permitted the independent third party to provide the
27 mirror image of the computer's hard drive to Facebook. Id. Finally, the Order allowed Facebook
28

1 to issue a subpoena for police reports and witness statements related to the recover of the Subject
2 Computer and to conduct a deposition of the witness who located the Subject Computer

3 In an effort to accommodate the Sherrif Department's stated objection to complying with
4 the subpoena issued by Facebook, Facebook now requests that this Court issue an order directing
5 the Sacramento County Sheriff's Department to release the Subject Computer to Facebook for the
6 purposes of engaging an independent third party to make a mirror image of the Subject
7 Computer's hard drive and to deliver the mirror image to Facebook. After such imaging,
8 Facebook shall return the Subject Computer to the custody of the Sacramento County Sheriff
9 Department.

10 CONCLUSION

11 For the reasons set forth above, Facebook respectfully requests that the Court promptly
12 grant this motion for leave for expedited third-party discovery.

13 DATED: June 28, 2010

PERKINS COIE LLP

14 By: /s/ James R. McCullagh

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CERTIFICATE OF SERVICE

I certify that on June 28, 2010, I sent the foregoing ADMINISTRATIVE REQUEST PURSUANT TO LOCAL RULE 7-11 FOR ORDER DIRECTING RELEASE OF COMPUTER, which was filed with the Clerk of the Court using the CM/ECF system, via U.S. Mail and electronic mail to the following Defendants:

Jeremi Fisher
Choko Systems LLC
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Akron, New York 14001
chokosystems@gmail.com

Philip Poremsbki
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Ryan Shimeall
iMedia Online Services LLC
10299 Julian Court
Westminster, Colorado 80031
ryanlinx@yahoo.com

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

DATED this 28th day of June 2010.

By: /s/ James R. McCullagh
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