

EXHIBIT A

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

FACEBOOK, INC., a Delaware corporation,

Plaintiff,

v.

Civil Action No. C-09-05842-JF

[NOTE: If action is pending in district other than district of issuance, state district under case number]

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

Defendants.

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

TO: Sheriff John McGinness Sacramento County Sheriff Department 711 G Street, Sacramento, CA 95814

[X] 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: See Exhibit A attached hereto. Also see Exhibit B, Order Granting Request for Leave to Conduct Discovery.

Table with 2 columns: PLACE (Sacramento Sheriff's Department) and DATE AND TIME (July 9, 2010)

[] 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

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: _____ CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR

Handwritten signature of Joseph P. Culler, Attorney's signature, Joseph P. Culler

The name, address, e-mail, and telephone number of the attorney representing (*name of party*) _____
Plaintiff Facebook, Inc., who issues or requests this
subpoena, are:

Joseph P. Culler, Perkins Coie LLP, 1201 Third Avenue, Suite 4800, Seattle, WA 98101
(206) 359-6104; email: jcutler@perkinscoie.com

EXHIBIT A

- 1. Access to the computer described in Sacramento Sherriff Report Number 2010-93641, which was previously owned by Philip Porembski and PP Web Services. ("Subject Computer"). The Subject Computer will be returned to the Sacramento Sheriff's department upon completion of imaging of the hard drive pursuant to the "Order Granting Plaintiff Facebook's Administrative Request For Leave to Conduct Discovery Prior to Rule 26 Conference", which is attached hereto as Exhibit B.**

- 2. A copy of Sacramento Sheriff Report Number 2010-93641 and all other information or documents related to the Report or recovery of the Subject Computer.**

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).

EXHIBIT B

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FACEBOOK, INC.,)	Case No.: C 09-05842 JF (PVT)
)	
Plaintiff,)	ORDER GRANTING PLAINTIFF
v.)	FACEBOOK'S ADMINISTRATIVE
)	REQUEST FOR LEAVE TO CONDUCT
JEREMI FISHER, ET AL.,)	DISCOVERY PRIOR TO RULE 26
)	CONFERENCE
Defendants.)	
<hr/>		[Docket No. 53]

Pursuant to Local Rule 7-11, plaintiff Facebook, Inc. moves for leave to conduct discovery prior to the Rule 26 conference. ("plaintiff" or "Facebook"). Specifically, plaintiff Facebook moves to authorize issuance of a subpoena to take possession of an abandoned computer laptop previously owned by defendants Porembski and PP Web Services as well as police reports and witness statements related to the recovery of the computer laptop.

Defendants had previously stipulated to injunctive relief. *See, e.g.*, Stipulated Order and Preliminary Injunction entered on January 6, 2010 (by plaintiff and defendants Jeremi Fisher and Choko Systems LLC) (Docket No. 29); Stipulated Order and Preliminary Injunction entered on January 6, 2010 (by plaintiff and defendants Ryan Shimeall and iMedia Online Services LLC) (Docket No. 30); and Stipulated Order and Preliminary Injunction entered on January 8, 2010 (by plaintiff and defendants Philip Porembski and PP Web Services LLC) (Docket No. 33). However, defendants failed to answer, or otherwise respond to, the operative complaint and plaintiff Facebook

1 later obtained default against the defendants. Clerk's Notice of Entry of Default dated April 26,
2 2010 (as to all defendants) (Docket No. 51). In addition, defendants have not opposed, or otherwise
3 responded to, this motion.

4 Having reviewed the papers and considered the arguments of counsel,

5 IT IS HEREBY ORDERED that plaintiff Facebook's motion for leave to conduct discovery
6 prior to the Rule 26 conference is granted.

7 Here, plaintiff Facebook has shown good cause to conduct discovery prior to the Rule 26
8 conference. The need for the expedited discovery outweighs any prejudice to defendants. As an
9 initial matter, the clerk entered default against all the defendants in the above-captioned action after
10 they failed to answer, or otherwise respond to, the operative complaint. And the laptop computer
11 was allegedly abandoned by defendants Porembski and PP Web Services LLC. Finally, plaintiff
12 Facebook served this motion on all defendants and no response has been filed whatsoever.

13 Pursuant to Rules 34 and 45, plaintiff Facebook may engage an independent third party to
14 make a mirror image of the hard drive of the laptop computer (either on-site at the Sacramento
15 Sheriff's Department or at the offices the independent third party) and promptly return the original
16 laptop computer to the custody of the Sacramento Sheriff's Department. Fed. R. Civ. P. 34 (request
17 to inspect or copy electronically stored information). The independent third party may then provide
18 the mirror image of the hard drive of the laptop computer to plaintiff Facebook.

19 Plaintiff Facebook may also conduct other third-party discovery, including issuing a
20 subpoena for police reports and witness statements related to the recovery of the aforementioned
21 laptop computer and conducting a deposition of the witness who located the abandoned laptop
22 computer.

23 IT IS SO ORDERED.

24 Dated: June 14, 2010

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26 PATRICIA V. TRUMBULL
27 United States Magistrate Judge
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