1   Brian Hennessy, State Bar No. 226721
    bhennessy@perkinscoie.com
2   PERKINS COIE LLP
    101 Jefferson Drive
3   Menlo Park, California 94025
    Telephone: 650.838.4300
4   Facsimile: 650.838.4350

5
    James McCullagh, *pro hac vice*
6   *jmccullagh@perkinscoie.com*
    Joseph Cutler, *pro hac vice*
7   *jcutler@perkinscoie.com*
    PERKINS COIE LLP
8   1201 Third Avenue, Suite 4800
    Seattle, Washington 98101
9   Telephone: 206.359.8000
    Facsimile: 206.359.9000
10
11 Attorneys for Plaintiff
      FACEBOOK, INC.
12

13   **UNITED STATES DISTRICT COURT**

14   **NORTHERN DISTRICT OF CALIFORNIA**

15   **SAN JOSE DIVISION**

16

17 FACEBOOK, INC., a Delaware   Case No. C-09-05842-JF
    corporation,
18   **PLAINTIFF FACEBOOK INC.'S MOTION**
                    Plaintiff,   **FOR ADMINISTRATIVE RELIEF FROM**
19   **ORDER SETTING CASE MANAGEMENT**
           v.   **CONFERENCE**
20
    JEREMI FISHER; PHILIP POREMBSKI;
21 RYAN SHIMEALL; and JOHN DOES 1-
    25, individuals; and CHOKO SYSTEMS
22 LLC; HARM, INC.; PP WEB SERVICES
    LLC; iMEDIA ONLINE SERVICES LLC;
23 and JOHN DOES 26-50, corporations,
24   Defendants.
25

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28
    60406-0005/LEGAL18643957.1   1   Motion for Administrative Relief From Order Setting
                                                 Case Management Conference
                                                 Case No. C-09-05842-JF

Pursuant to Local Rules 6-3, 7-1 and 7-11, Facebook, Inc. ("Facebook") makes this Motion for Administrative Relief to vacate the Case Management Conference ("CMC") currently scheduled for July 9, 2010 ("Motion"). Default has been entered against all Defendants and on June 29, 2010, the Court granted Facebook's request to obtain a copy of a hard drive from Defendant's Philip Poerembski's abandoned computer recovered by the Sacramento Sheriff's Department. As a result, Facebook anticipates that it will be prepared to move for entry of default judgment against all defendants on or before August 27, 2010. Facebook, therefore, respectfully requests that the Court vacate the CMC and set August 27, 2010 as the deadline for Facebook to file its Motion for Default Judgment. This Motion is based upon the below Memorandum of Points and Authorities and Declaration of James R. McCullagh ("McCullagh Decl.") filed concurrently herewith.

MEMORANDUM IN OF POINTS AND AUTHORITIES

Facebook filed this lawsuit against Defendants for numerous misuses and abuses of Facebook's website, network and the Facebook Platform, including large-scale phishing[1] and spamming campaigns. Defendants are currently enjoined from conducting any activity on Facebook. Electronic Docket Entry ("DE") 29, 30, 33. After stipulating to injunctive relief, Defendants stopped participating in this litigation and are in default.

Default was entered against each Defendant on April 26, 2010. DE 51. Facebook thereafter learned that the Sacramento Sheriff's Department had recovered a computer abandoned by Defendant Porembski containing information relevant to this litigation. Declaration of James R. McCullagh ("McCullagh Decl.), ¶ 3. On June 4, 2010, Facebook requested permission to conduct third party discovery. DE 53. On June 14, 2010, this Court entered an Order Granting

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[1] "Phishing" describes the attempt to acquire sensitive information such as usernames and passwords by masquerading as a trustworthy entity in an electronic communication.

2

1 Plaintiff Facebook's Administrative Request for Leave to Conduct Discovery Prior to Rule 26

2 Conference. DE 56.

3   On or about June 22, 2010, Facebook issued a subpoena to the Sacramento Sheriff's

4 Department requesting a copy of the abandoned computer's hard drive as well as police reports

5 and witness statements related to the recovery of the abandoned computer. McCullagh Decl. ¶ 4.

6 The Sheriff's Department objected to producing the computer hard drive and requested that

7 Facebook obtain a Court order directing it to release this information to Facebook. McCullagh

8 Decl. ¶ 5.

9   On June 28, 2010, Facebook filed an Administrative Motion seeking a court order as

10 requested by the Sacramento Sheriff's Department. DE 57. The Court granted the request on

11 June 29, 2010. DE 61.

12   A CMC is currently scheduled for July 9, 2010 at 10:30 am. DE 55.

13   In light of Defendants' decision to not participate in this litigation, the previous entry of

14 Default as to all Defendants and the recent order permitting Facebook to obtain a copy of the hard

15 drive from Defendant Porembski's abandoned computer, the only issue left to address at a Case

16 Management Conference is the deadline for Facebook to file its Motion for Default Judgment.

17   Facebook requests that it be allowed a reasonable amount of time to obtain and inspect a

18 copy of Defendant Porembski's computer hard drive, conduct any necessary follow-up discovery,

19 and prepare its Motion for Default Judgment. Facebook believes that it can complete these

20 activities within 60 days and therefore requests that the Court set August 27, 2010 as the deadline

21 for filing its Motion for Default Judgment.

22

23 **CONCLUSION**

24   For the reasons set forth above, Facebook respectfully requests that the Court vacate the

25 CMC currently set for July 9, 2010 and set August 27, 2010 as the deadline for filing its Motion

26 for Default Judgment.

27

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DATED: June 30, 2010

PERKINS COIE LLP

By: /s/ James R. McCullagh
Brian Hennessy (SBN 226721)
bhennessy@perkinscoie.com
James R. McCullagh (*pro hac vice*)
jmccullagh@perkinscoie.com
Joseph Cutler (*pro hac vice*)
jcutler@perkinscoie.com

Attorneys for Plaintiff
Facebook, Inc.

CERTIFICATE OF SERVICE

I certify that on June 30, 2010, I sent the foregoing MOTION FOR ADMINISTRATIVE

RELIEF FROM ORDER SETTING CASE MANAGEMENT CONFERENCE, 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
35 Jackson Street
Akron, New York 14001
chokosystems@gmail.com

Philip Poremsbki
Harm Inc.
PP Web Services LLC
12155 Tributary Point Drive
Apt. 170
Rancho Cordova, California 95670
phil420@gmail.com

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 30th day of June 2010.

By: /s/ James R. McCullagh
Brian Hennessy (SBN 226721)
bhennessy@perkinscoie.com
James R. McCullagh (*pro hac vice*)
jmccullagh@perkinscoie.com
Joseph Cutler (*pro hac vice*)
jcutler@perkinscoie.com

Attorneys for Plaintiff Facebook, Inc.