

EXHIBIT D - REDACTED

Sacramento County Sheriff's Department
 North Division (East Area)
 5510 Garfield Ave
 Sacramento, CA 95841

Report No: NE 2010-0093641
 Report Date: 05/28/2010

SUMMARY

Associate Type Information Report
 Watch Summary
 Occurrence Date Wed 05/26/2010 @ 16:45 Initial Status: Pended
 Occurrence address
 Reported Date Fri 05/28/2010 @ 18:45

VIOLATIONS

Code Section	Description	Category	Attempt
ZZ INFORMATION	INFORMATION		No

SYNOPSIS OF CRIME

Complainant found a computer next to the trash dumpster in his apartment complex, took it home, and was able to access the harddrive. On the hard drive he found multiple viruses, which when sent out are activated, steal Facebook, and screen names and passwords. Additionally the complainant found an e-mail address, did research online and discovered and that the computer possibly belongs to an individual who is currently involved in a federal lawsuit with Facebook regarding phishing and spamming. The computer was collected as evidence and booked into the evidence room.

ACTIVITY STATUS

Status Date: 5/28/2010 Status: Pended case
 Status Set By: Hunt, Bruce
 Comment:

PARTICIPANTS

Witness Ricef Male White DOB: 10/9 XREF: 3089797
 Operator License Number
 Locations Home address Home phone
 Employer Full time Health Net

METHOD/CRIME FACTORS

MO Alarm system Not applicable
 Surroundings Residential
 Place of activity Parking lot
 Structure Not applicable
 IBR Location Type Residential, single family house
 Bias Motivation None
 Suspected of Using Used computer equipment

VEHICLES

There is no vehicle associated with this report.

PROPERTY

There is no property associated with this report.

EVIDENCE

There is no evidence associated with this report.

INVOLVED PERSONNEL

<i>Involvement</i>	<i>Employee</i>	<i>Badge</i>	<i>Division</i>
Approving Officer	Dean Pai	52	NE
Narrative Officer	Bruce Hunt	1110	NE
Reporting Officer	Bruce Hunt	1110	NE
Transcriber	Lin Katsules		CD

DIST	SECT	SUB	SACRAMENTO SHERIFF'S DEPARTMENT CONTINUATION REPORT		PAGE 3 OF 4	REPORT NUMBER 2010-0093641
LOCATION OF INCIDENT			DATE 05/26/2010	DAY OF WEEK Wed	TIME 16:45	
AUTHORITY / SECTION 22 INFORMATION - INFORMATION						
COMPLAINANT/VICTIM (LIST FIRST VICTIM IF MORE THAN ONE)						

1734 Hours, 05/28/10 (Friday): I, Deputy B. Hunt #1110 (Unit 27D1), was dispatched to a found property call.

The text for the call stated the complainant found a computer discarded next to a dumpster, took it home to use it, and on it found viruses that you can send out which collects Facebook names and passwords and other types of information. The complainant works for a computer software company in the private sector and would like SSD to pick up the computer.

1738 Hours: I arrived and contacted the complainant, [REDACTED] RICE. He related that he had found a computer tower by the trash dumpster and had taken it home to see if he could salvage it.

RICE used a disk to bypass the locked password on the hard drive and gained access. On the hard drive, he found various computer programs for the purpose of breaking in and sending viruses out to collect people's Facebook screen names and passwords. RICE had prepared a handwritten statement and gave it to me. (See attached statement).

RICE handed me a document he printed off of the internet from ZDnet. The title of the document says

"Facebook sues man for allegedly phishing and spamming and lists their names".

One of the names involved in the law suit was a Phillip POREMBSKI. RICE told me he had found an email address on the hard drive; phil420@gmail.com. Additionally, Per POREMBSKI's profile on Facebook, it shows the same email address and he lives in Gold River, CA.

The second document RICE gave me was also printed off of the internet from Justia.com and it indicated that there is currently a lawsuit; Facebook, Inc. vs. FISHER et al. The plaintiff (Facebook) is suing defendants including a Phillip POREMBSKI (case #5:2009 cv 05842) filed December 14, 2009 in the California Northern District Federal Court, San Jose Office. The judge handling the case is Honorable Judge Jeremy Fogel.

I went to the website Justia.com and located additional documents. On the website there was a copy of a Restraining Order filed in the United States District Court of Northern California, San Jose Division. The document shows the plaintiff's attorneys' are: Brian HENNESSEY bar #226721 out of Menlo Park, CA, an attorney Joseph CUTLER, and a law firm Perkins Cloie out of Seattle, WA with a telephone number of (206)359-8000.

I attempted to reach Brian HENNESSEY, but got his voicemail.

I contacted Perkins Cloie law firm in Washington State. I spoke with Joseph CUTLER who indeed stated that he was an attorney that represents Facebook in this matter. I verified that there was a federal civil law suit currently going on and that POREMBSKI was indeed one of the defendants.

I advised him that I had located a computer that may be possibly contain evidence related to his lawsuit and it possibly once belonged to one of the defendants; Phillip POREMBSKI. I advised him

REPORTING OFFICER Hunt	BADGE 1110	DIVISION	APPROVED BY Pal	BADGE 52	DATE AND TIME OF REPORT Fri 05/28/2010 18:45
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DIST	SECT	SUB	SACRAMENTO SHERIFF'S DEPARTMENT CONTINUATION REPORT		PAGE 4 OF 4	REPORT NUMBER 2010-0093641
LOCATION OF INCIDENT			DATE 05/26/2010	DAY OF WEEK Wed	TIME 16:45	
AUTHORITY / SECTION 22 INFORMATION - INFORMATION						
COMPLAINANT/VICTIM (LIST FIRST VICTIM IF MORE THAN ONE)						

that it had been found abandoned in an apartment trash dumpster and turned over to law enforcement by a concerned citizen.

CUTLER stated that the computer potentially has thousands and thousands of screen names and passwords to Facebook client's accounts and possibly other sensitive information of similar nature.

I provided him with the Sheriff's Department report number and advised him that if he needed additional information, he will need to obtain a subpoena to get a copy of this report and the computer if it is something Federal Court Judge feels is necessary to their case.

The computer was booked into the Sheriff's North East evidence room as evidence pending the determination of the relevance to the federal case.

FEDERAL COURT CASE INFO:

Facebook, Inc. v. Fisher et al

Plaintiff: Facebook, Inc.
Defendants: Jeremi Fisher, Philip Porembski, Ryan Shimeall, Choko Systems LLC, Harm, Inc., PP Web Services LLC and iMedia Online Services LLC

Case Number: 5:2009cv05842
Filed: December 14, 2009

Court: California Northern District Court
Office: San Jose Office [[Court Info](#)]
County: Santa Clara
Presiding Judge: Hon. Jeremy Fogel
Referring Judge: Magistrate Judge Patricia V. Trumbull

Court house info:

California Northern District Court
San Jose Divisional Office
2112 Robert F. Peckham Federal
Bldg and United States Courthouse
280 South First Street
San Jose, CA 95113-3002
Phone: 408-535-5364

REPORTING OFFICER Hunt	BADGE 1110	DIVISION	APPROVED BY Pai	BADGE 52	DATE AND TIME OF REPORT Fri 05/28/2010 18:45
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**SACRAMENTO COUNTY SHERIFF'S DEPARTMENT
PROPERTY RECEIPT/REPORT**

2010-97241
REPORT NUMBER

SEIZED BY SEARCH
WARRANT NO.

ASSET FORFEITURE # OF SUSPECTS

MARK ONE BOX ONLY →

RECOVERED STOLEN

EVIDENCE

CONTRABAND & SEE REMARKS

SAFE KEEPING

FOUND

FILL IN ALL INFORMATION FOR SAFEKEEPING REPORTS

REPORTING DATE: 8-10 DAY: 11 TIME: 12:00 CONNECTED REPORT(S) NUMBER AND TYPE: AUTHORITY AND SECTION:

V NAME (LAST FIRST MIDDLE):
DOB: AGE: SEX: RACE:

NAME (LAST FIRST MIDDLE):
DOB: AGE: SEX: RACE:

ITEM NO'S	QUANTITY	NAME OF ITEM (DESCRIBE - SERIAL NO., SIZE, COLOR, MARKINGS, ETC.) WHERE AND HOW WAS PROPERTY RECOVERED: SAFEKEEPING AND FOUND PROPERTY REQUIRE A COMPLETE SYNOPSIS (NO CRIME REPORT REQUIRED UNLESS OTHERWISE DICTATED BY POLICY)	PROPERTY WAREHOUSE USE ONLY
101-1	ONE	Computer monitor 16" monitor Serial # T P 2 B 106 00574 note to 812 * Computer involved in a Federal * Civil lawsuit Facebook vs Fisher Case # 9:2009 cv 05842 C.D. Northern District of S. JOR. Divisional Dist. 408-538-5364	
		* Pull Report for Details *	

I HAVE READ THE REVERSE OF THIS RECEIPT AND ELECT TO:
 EXERCISE MY CLAIM TO ITEMS _____
 WAIVE MY CLAIM TO ITEMS _____
 FILE A FINDERS CLAIM TO ITEMS _____
 SIGNATURE _____

RECOVERED STOLEN PROPERTY - TYPE AND VALUE

A. CURRENCY, NOTES, ETC. \$ _____	C. CLOTHING AND FURS \$ _____	H. HOUSEHOLD GOODS \$ _____
B. JEWELRY AND PRECIOUS METALS \$ _____	E. OFFICE EQUIPMENT \$ _____	I. CONSUMABLE GOODS \$ _____
	F. TV'S, RADIOS, STEREO'S, ETC. \$ _____	J. LIVESTOCK \$ _____
	G. FIREARMS \$ _____	K. MISCELLANEOUS \$ _____

NAME OF OFFICER TAKING PROPERTY (PRINT): _____ BADGE NO.: 1110 DIV: N/A NAME OF SUPERVISOR (PRINT): _____ PAGE OF _____

COMPLETE REVERSE SIDE OF COPY WHEN BOOKING PROPERTY TO: RECORDS - FORWARD REPORT TO: DATE BOOKED: TIME BOOKED:

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wednesday around 445 pm found computer ⁱⁿ dumpster of apartments.

brought computer home powered up and found computer in working condition.

operating system is Windows XP

only login was Administrator protected by a password

thursday night used Hiren's Boot CD, specifically Kon-Boot to bypass administrator password.

created another administrator user called "new" - blank password

changed administrator password to 123.45 11 pm

logged into administrator ~~was~~ shortly after

Quickly noticed several suspicious files:

vb program for automatically logging into myspace
hundreds of email addresses with associated passwords

"spam contact" in australia

several "bot" programs used for DDOS, and spam

RDP sessions contained about 15 IP addresses with
user name "WEX"

several adult themed websites

mIRC user

Phil/harm	phil@msain.org
phil420@gmail.com	AKA WEX

majority of last modified dates were 7/24/2007

one file accessed in 2009

no ~~user~~ browser history

no m/RE logs

one folder called "cat & me" contains several pictures
~~with~~.

Searched phil420@gmail.com in facebook. Profile belongs
to Phillip Porembski located in Gold River, CA.

Searched Philip Porembski in google search engine.

1st hit is a case number for facebook vs

Jeremi Fisher, Philip Porembski, Ryan Shineall,
Chico Systems LLC, Harm, Inc PP Web Services,
and iMedia Online.

Case # 5:2009cv05842

December 14, 2009

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10-93641

Facebook sues men for allegedly phishing, spamming

Elinor Mills, CNET News.com on December 17th, 2009

Facebook has sued three men, alleging they used phishing techniques to get access to Facebook user accounts and then sent spam from the compromised accounts.

The lawsuit was filed Monday in a federal court in San Jose, California, and named as defendants Jeremi Fisher, Philip Porembski, Ryan Shimeall and the companies associated with them, Choko Systems, Harm, and iMedia Online Services, according to a Facebook statement late on Tuesday. The defendants could not be reached for comment.

The defendants are accused of launching at least four spam campaigns over the last couple of years, the latest in the last three months being responsible for nearly three-fourth of all spam on the site, according to the suit. The latest "escalated attack" included spam offering a colon cleanser, fake messages purporting to show a video of the recipient and offers for recipients to make money through a fake "Google Campaign." Clicking on the spam typically sends a user through various marketing sites before landing them on a page that prompts for their Facebook log in information.

It is unclear exactly how Facebook user log in information, used to send spam to friends, was obtained.

Facebook has spent US\$5,000 combating the spam, according to the suit.

The lawsuit makes claims under the Can-Spam (Controlling the Assault of Non-Solicited Pornography and Marketing) Act, the Computer Fraud and Abuse Act, the California Anti-Phishing Act and the California Computer Data Access and Fraud Act, according to Facebook.

This is the latest legal action the social networking site has taken related to spam. In October, Facebook was awarded US\$71 million in a judgment Thursday against self-described "spam king" Sanford Wallace.

The largest judgment ever under the Can-Spam Act was an US\$873 million award Facebook won in November 2008 against Adam Guerhuez, of Montreal, and his company, Atlantis Blue Capital.

This article was first published as a blog post on CNET News.

URL:<http://www.zdnetasia.com/facebook-sues-men-for-allegedly-phishing-spamming-62060045.htm>

Facebook, Inc. v. Fisher et al

10-93641

Plaintiff: Facebook, Inc.
Defendants: Jeremi Fisher, Philip Poremski, Ryan Shimeall, Choko Systems LLC, Harm, Inc., PP Web Services LLC and iMedia Online Services LLC

Case Number: 5:2009cv05842
Filed: December 14, 2009

Court: California Northern District Court
Office: San Jose Office [Court Info]
County: Santa Clara
Presiding Judge: Hon. Jeremy Fogel
Referring Judge: Magistrate Judge Patricia V. Trumbull

Nature of Suit: Other Statutes - Other Statutory Actions
Cause: 28:1331 Fed. Question: Breach of Contract
Jurisdiction: Federal Question
Jury Demanded By: Plaintiff

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17 Attorneys for Plaintiff
18 FACEBOOK, INC.

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN JOSE DIVISION

22 FACEBOOK, INC., a Delaware
23 corporation,

24 Plaintiff,

25 v.

26 JEREMI FISHER; PHILIP POREMBSKI;
27 RYAN SHIMEALL; and JOHN DOES 1-
28 25, individuals; and CHOKO SYSTEMS
LLC; HARM, INC.; PP WEB SERVICES
LLC, iMEDIA ONLINE SERVICES LLC,
and JOHN DOES 26-50, corporations,

Defendants.

Case No. C 09-05842 JF

**PLAINTIFF FACEBOOK'S NOTICE OF
MOTION AND MOTION FOR
TEMPORARY RESTRAINING ORDER**

Before: Hon. Jeremy Fogel

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NOTICE OF MOTION AND MOTION

TO: DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT pursuant to Federal Rule of Civil Procedure 65, that on a hearing date set by the Court or as soon as possible, Plaintiff Facebook, Inc. ("Facebook") will move, and hereby moves, for a temporary restraining order against Jeremi Fisher, Philip Porembski, Ryan Shimeall, and Choko Systems LLC, Harm, Inc., PP Web Services LLC, and iMedia Online Services LLC (collectively "Defendants"), restraining and enjoining Defendants' ongoing and escalating phishing and spamming campaign against Facebook and its users. Specifically, Facebook moves to enjoin Defendants, and any of their directors, officers, agents, servants, employees, and persons and entities acting in concert with them, from engaging in the following conduct until the Court may consider Plaintiff's motion for preliminary injunction:

1. Initiating or procuring transmission of unsolicited commercial electronic messages ("spam") on or through Facebook's computers, Facebook's website, Facebook's networks, or to Facebook users;
2. Accessing or attempting to access Facebook's website, networks, data, information, user information, profiles, computers, or computer systems;
3. Soliciting, requesting, or taking any action to induce Facebook users to provide identifying information or representing that such solicitation, request, or action is being done with Facebook's authorization or approval;
4. Retaining any copies, electronic or otherwise, of any Facebook information, including user login information or passwords, obtained through illegitimate or unlawful actions;
5. Engaging in any activity that alters, damages, deletes, destroys, disrupts, diminishes the quality of, interferes with the performance of, or impairs the functionality of Facebook's computers, computer system computer network, data, website, or services;
6. Engaging in any unlawful activities alleged in this action;

1 **PLAINTIFF FACEBOOK, INC.'S MEMORANDUM OF POINTS AND AUTHORITIES**
2 **IN SUPPORT OF ITS MOTION FOR TEMPORARY RESTRAINING ORDER**

3 **I. INTRODUCTION**

4 Plaintiff Facebook, Inc. ("Facebook") respectfully moves the Court, pursuant to Federal
5 Rule of Civil Procedure 65, for an order temporarily enjoining Defendants' ongoing and
6 escalating phishing¹ and spamming campaign against Facebook and its users. Defendants Jeremi
7 Fisher, Philip Porembski, and Ryan Shimeall, individually and through various affiliated
8 corporate entities listed as defendants in this case, continue to target and attack Facebook – the
9 world's largest social network, now with more than 350 million members.

10 Defendants are currently and actively pursuing a sophisticated and multi-faceted attack:

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 Even now, Defendants continue to
15 phish for Facebook user information and send spam to Facebook users despite explicit warnings
16 from Facebook that their activities violate Facebook's Statement of Rights and Responsibilities
17 ("SRR") or any policies, terms, or guidelines governing the use of the Facebook website,
18 network, and the Facebook Platform, and are illegal.

19 In fact, despite these explicit warnings, Defendants' illegal activities have recently and
20 substantially escalated.

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 Due to Defendants' willful disregard of the law and Facebook's warnings, and the recent
25 escalation in their attacks on Facebook and its users, Facebook seeks injunctive relief to prevent
26 further irreparable damage to it and its users. Absent the Court's intervention, Defendants will be

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

1 able to continue and further escalate their illegal activities unfettered, thereby severely harming
2 Facebook and its users.

3 **II. REQUESTED RELIEF**

4 Plaintiff Facebook moves to enjoin Defendants, and any of their directors, officers, agents,
5 servants, employees, and persons and entities acting in concert with them, from engaging in the
6 following conduct until the Court may consider Plaintiff's motion for preliminary injunction:

- 7 7. Initiating or procuring transmission of unsolicited commercial electronic messages
8 ("spam") on or through Facebook's computers, Facebook's website, Facebook's
9 networks, and/or to Facebook users, including messages in the form of Facebook chat
10 messages, Facebook internal messages, Facebook Wall posts, or any other form of
11 messaging available on or through Facebook or the Facebook Platform;
- 12 8. Accessing or attempting to access Facebook's website, the Facebook Platform,
13 Facebook networks, data, information, user information, profiles, computers,
14 computer systems and/or any offices, properties or facilities owned, operated or
15 occupied by Facebook or its employees;
- 16 9. Soliciting, requesting, or taking any action to induce Facebook users to provide
17 identifying information or representing that such solicitation, request, or action is
18 being done with Facebook's authorization or approval;
- 19 10. Retaining any copies, electronic or otherwise, of any Facebook information, including
20 user login information or passwords, obtained through illegitimate or unlawful actions;
- 21 11. Engaging in any activity that alters, damages, deletes, destroys, disrupts, diminishes
22 the quality of, interferes with the performance of, or impairs the functionality of
23 Facebook's computers, computer system, computer network, data, website or services;
- 24 12. Engaging in any unlawful activities alleged in this action;
- 25 13. Disposing of any assets procured through the activities alleged in the Complaint;
- 26 8. Entering or accessing the physical premises or facilities of Facebook or its counsel; or
- 27
28

1 9. Engaging in any activity that violates Facebook's Statement of Rights and
2 Responsibilities, or any policies, terms, or guidelines governing the use of the
3 Facebook website, network, and the Facebook Platform.

4 Facebook further requests that the Court schedule a preliminary injunction hearing at its earliest
5 convenience.

6 **III. STATEMENT OF FACTS**

7 **A. Facebook Background**

8 Facebook owns and operates the widely popular social networking website located at
9 <http://www.facebook.com>. Declaration of Facebook Employee² ("Facebook Decl.") ¶ 2.
10 Facebook currently has more than 350 million active users. *Id.* Users must register with
11 Facebook, agree to its Statement of Rights and Responsibilities ("SRR"), and obtain a unique
12 username and password before being granted full access to the Facebook website. *Id.* ¶ 4. Only
13 registered users may fully utilize Facebook's services, which include accessing user profiles,
14 inviting other Facebook users to be "friends," sending messages on Facebook, and using
15 applications on Facebook's developer platform. *Id.*

16 Facebook users have complete control over those with whom they interact on Facebook.
17 *Id.* ¶ 6. Facebook users have the ability to control access to their user profiles, including the site's
18 various messaging options. *Id.* Privacy controls and secure communications among Facebook
19 users are vital to the integrity of Facebook's proprietary network as well as to the level of
20 confidence that users have in using Facebook. *Id.* ¶ 7. The privacy controls provided by
21 Facebook, Facebook's security measures, and the resulting secure communications between and
22 among Facebook users are key aspects of Facebook's success. *Id.*

23 Facebook does not tolerate or permit the use of its services or website for sending spam.
24 *Id.* ¶ 8. Facebook's SRR, which bind anyone who uses or accesses Facebook's website, explicitly
25 prohibit any unsolicited or unauthorized advertising, solicitations, promotions, junk mail, spam,
26 chain letters, or pyramid schemes. Compl. Ex. A. Facebook's SRR also prohibit, among other

27 _____
28 ² To protect the identity and safety of the employee who handles Facebook's security matters, he
or she will be referred to herein as "Facebook Employee."

1 things, (1) collecting users' content of information or otherwise accessing Facebook using
2 automated means (such as harvesting, bots, robots, spiders, or scrapers) without Facebook's
3 permission; (2) using Facebook in an unlawful manner or in any other manner that could damage,
4 disable, overburden, or impair the Facebook website; (3) providing false personal information on
5 Facebook or falsely stating or otherwise misrepresenting oneself; (4) accessing another Facebook
6 user's account; (5) sending or otherwise posting spam on Facebook; (6) soliciting Facebook login
7 information from Facebook users; and (7) using Facebook profiles for commercial use. *Id.*

8 **B. Defendants' Unauthorized Activities**

9 Defendants are Facebook users and during all relevant times agreed to abide by
10 Facebook's SRR. Facebook Decl. ¶ 5. At no time have Defendants received permission from
11 Facebook to conduct any commercial activity on Facebook's website. *Id.* ¶ 9.

12 Defendants' attack on Facebook is sophisticated, constantly evolving, and quickly
13 escalating. *Id.* ¶ 10.

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED] *Id.*

18 This escalation is the latest round in a more than yearlong spamming and phishing campaign by
19 Defendants targeted at Facebook and Facebook users. *Id.* ¶¶ 10-11.

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED] The spam will

24 include a message such as "Hey just wanted to share this with you but I made \$854 today with
25 google, so I thought I'd share this with you just visit <http://profitg00glecash.info>." *Id.* ¶ 15.

26 When a Facebook user receives the spam message and clicks on the embedded link, he or she is
27 then rapidly redirected through a series of websites that pay Defendants for the traffic generated
28 from the link in the spam message. Declaration of Joseph P. Cutler ("Cutler Decl.") ¶ 6.

1 Following this redirection, the user's browser lands at a "phishing" website designed to
2 trick the user into divulging [REDACTED]
3 [REDACTED]. Facebook Decl. ¶ 15. Some of Defendants' websites
4 [REDACTED] while others entice users to [REDACTED] with promises
5 of free computers, colon cleansers, money-making schemes, free ringtones, or IQ tests. *Id.* ¶ 16.

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]. Cutler Decl.
9 ¶¶ 4-5, 7; Facebook Decl. ¶ 15. This cycle then repeats, leading to a rapidly expanding and ever-
10 increasing amount of [REDACTED] and spam.

11 Facebook has explicitly warned Defendants that their activity violates Facebook's SRR
12 and that their activity is illegal. Cutler Decl. ¶¶ 2-3. Despite this warning, Defendants' phishing
13 and spamming has not only persisted, but has escalated. Facebook Decl. ¶ 10.

14 IV. ARGUMENT

15 A. Standard for Issuing a Temporary Restraining Order

16 Federal Rule of Civil Procedure 65(b) authorizes temporary restraining orders, which are
17 governed by the same standards that apply to preliminary injunctions. A plaintiff is entitled to
18 preliminary injunctive relief when it demonstrates either (1) a combination of "probable success
19 on the merits" and "the possibility of irreparable injury," or (2) the existence of "serious questions
20 going to the merits," where the "balance of hardships tips sharply in [the plaintiff's] favor."

21 *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1204-05 (9th Cir. 2000) (internal quotation
22 marks and citation omitted).

23 These are not separate tests but a continuum of discretion "in which the required
24 probability of success on the merits decreases as the degree of harm increases." *Nat'l Wildlife*
25 *Fed'n v. Nat'l Marine Fisheries Serv.*, 235 F. Supp. 2d 1143, 1151 (W.D. Wash. 2002) (quoting
26 *Westlands Water Dist. v. Natural Res. Def. Council*, 43 F.3d 457, 459 (9th Cir. 1994)). Also,
27 where the public interest is involved, courts consider whether the public interest favors the
28 plaintiff's requested relief. *Fund for Animals, Inc. v. Lujan*, 962 F.2d 1391, 1400 (9th Cir. 1992).

