

1 Karen Beth Young  
 2 PO Box 2335  
 3 San Jose, California  
 4 95109  
 5 mskbyoung@aol.com  
 6 301-991-1937

**FILED**  
 AUG 23 2010  
 RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
 CALIFORNIA NORTHERN DISTRICT  
 SAN JOSE DIVISION

Karen Beth Young

**Plaintiff**


V.

Facebook, Inc.

**Defendant**

) Case No.: 10-cv-03579-PVT  
 )  
 ) **Motion For Order To Preserve Evidence**  
 ) **And Supporting Papers**  
 )  
 )  
 )  
 )  
 )

Date: August 23, 2010  
 Magistrate Judge: Patricia V. Trumbull  
 District Judge: Jeremy Fogel  
 Motion to be heard: As soon as possible per  
 District Court calendar

  
 Karen Beth Young

1  
2 **INTRODUCTION**

3 On August 16, 2010 Karen Beth Young filed a NOTICE OF EX PARTE APPLICATION FOR RENEWED  
4 MOTION with the Superior Court of California regarding the critical need for the preservation of evidence in this  
5 case. The defendant was notified of this application to be made on Monday morning. All of the paperwork for this  
6 motion was served on the defendant Facebook, Inc. the previous Friday August 13, 2010 at approximately 9:10 am  
7 for the defendant to read and plaintiff was in contact with defense attorney Julio Avalos regarding this issue. After  
8 receiving a copy of this motion/paperwork, defendant Facebook, Inc. filed a NOTICE OF REMOVAL to the United  
9 States District Court. Following, plaintiff was told that attending Monday's hearing would be a "moot point" by  
10 Attorney Avalos as the Superior Court of California would no longer have control to rule on this matter. Plaintiff  
11 advised defense council of her intentions to professionally continue with the hearing as she had also notified the  
12 court via email letter delivery to the Superior Court mail room. Monday morning in an ex parte hearing, Judge  
13 Elfving advised plaintiff that the Superior Court did not have the authority to rule on the matter anymore as the case  
14 was removed to District Court by defendant. Plaintiff was aware this ruling would take place given the filing events  
15 and thanked the court for its time. Attorney Avalos advised plaintiff that neither himself, Attorney Gray or Attorney  
16 Chatterjee would be present. Additionally, he stated that another attorney from Orrick would be present. Plaintiff  
17 met with defense attorneys Theresa Sutton and Morvarid Metanat on Monday morning. Plaintiff also provided  
18 council with an additional copy of a complete set of paperwork for the motion to be heard at that time. Plaintiff has  
19 modified renewed motion and requests the immediate and complete preservation of essential evidence in this case.  
20 The ex parte request submitted by the defendant to have this matter vacated or, in the alternative modified is entirely  
21 unacceptable as their depictions presented to the court are prejudicial to the case and misleading to the court.

22 **HISTORY**

23 Facebook's council did not have an opportunity to be present in original ex parte proceeding because of difficulties  
24 they had with administrative procedures. Plaintiff agrees this was not fair to defendant Facebook, Inc. as it is  
25 important for first and fourteenth amendment rights to be protected in this country. Plaintiff agrees with courts  
26 action to vacate at the time due to this misunderstanding. However, the fundamental issue of the hurt plaintiff has  
27 sustained and upset plaintiff has experienced with the aforementioned, "DEAR LORD THIS YEAR YOU TOOK  
28 MY FAVORITE ACTOR PATRICK SWAYZE. YOU TOOK MY FAVORITE ACTRESS FARAH FAWCETT.

1 YOU TOOK MY FAVORITE SINGER MICHAEL JACKSON. I JUST WANTED YOU TO KNOW THAT MY  
2 FAVORITE PRESIDENT IS BARACK OBAMA. AMEN” death page is and always has been critical to my health  
3 and well being. This page and the petition to remove the page website are uncategorically and entirely relevant to  
4 every aspect of this case. Facebook should have to preserve page evidence that is relevant to discovery past,  
5 present, and future. The past actions are founded in deeper meaning. Plaintiff has never been officially addressed in  
6 regard to the account information deletion by defendant. The “DEAR LORD” death page is an example of flawed  
7 business practices by defendant. Their attempt to claim that managing it is a burden because it has too much activity  
8 is ludicrous. The page should not exist, and no one should have or continue to be exposed to it. Defendant states,  
9 “The order requires such preservation regardless of whether the information has anything whatsoever to do with  
10 plaintiffs complaint.” Plaintiff will be calling expert testimony to address that issue. Plaintiffs state of being prior to  
11 being exposed to that page was different then during, after or now. Attorney Avalos’ statement that it is “almost  
12 certainly irrelevant” is grossly wrong. His further depiction that “plaintiff would have no right to obtain through  
13 discovery” is grossly wrong. Attorney Avalos has no medical professional experience and is not qualified to act like  
14 he is an expert witness or professional in the field of medicine or any general health. Further discovery rules should  
15 be enforced to include evidence that will show what plaintiff read and reacted to over a period of time. When the  
16 page was first advertised plaintiff went to the site to view it. Plaintiff will never forget the way it made her feel and  
17 how upset she became. At that time, she scrolled down the page to older posts for several hours. She was shocked  
18 at what she was reading and she couldn’t believe that type of behavior was occurring. Plaintiff became more upset  
19 as she tried to say how it bothered her and she’s only grown firmer and deeper concerned about issues. Pictures and  
20 posts were disgusting, horrific, threatening, intimidating, pornographic etc. Plaintiff felt her body get flush and  
21 anxiety set in. That feeling and upset has never resolved itself. It is a part of plaintiffs thinking everyday and she  
22 does not want it to be. This information is very important. The 90 day reference was spoken from the perspective  
23 of her deleted account reference. While plaintiff believes there should be a longer hold on pages, plaintiffs account  
24 information was her concern and focus with the 90 day time frame. Facebook advertises in their Privacy Policy,  
25 Section 7 – Backup Copies – “Removed and deleted information may persist in backup copies for up to 90 days, but  
26 will not be available to others.” Plaintiffs representation was not wrong, it was not inappropriate. It was a general  
27 statement at the time and a concern which is entirely relevant and essential at trial. Defendants attempt to conceal  
28 information relating to the prayer for death page is wrong on every level.

1 **II. BACKGROUND OF RELEVANT FACTS**

2 **A. PLAINTIFF'S COMPLAINT AGAINST FACEBOOK**

3 Defendant states, "Although the "Factual History" recited in the complaint is not altogether clear it appears that  
4 plaintiff's grievances against Facebook center around her "Bipolar Emotional Disability" and Facebooks alleged  
5 failure to accommodate this condition." This depiction does not portray the feelings, position or center of the  
6 complaint. Plaintiff's bipolar, mental illness, bipolar mental illness, bipolar mental state etc. is something that  
7 Attorney Avalos and all of the representing counsel for defendant are ignorant to. They are falsely portraying  
8 themselves as medical or legal medical professionals which they are not. Their continued disregard for the well  
9 being of plaintiff based on their own ignorance is prejudicial to this case and misleading to the court. Plaintiff has  
10 listed six causes of action all of which the center resides in blatant disregard for fundamental policies, practices, and  
11 responsibilities by the defendant. The plaintiff has and continues to suffer from this. The center of this is the  
12 intersection of poor business practices founded in lack of understanding and basic concern by defendant.  
13

14 **B. PLAINTIFF'S EX PARTE APPLICATION**

15 Plaintiff restates it's need for previous requests attributed to the "DEAR LORD" death page, the "Petition to  
16 remove" page, as well as the retention of plaintiffs instant messages. There are not an abundance of these with an  
17 approximation of less than 100. This is not burdensome and is detrimental to the thought and flow of what plaintiff  
18 was dealing with. All of this information shows a state of upset and is intertwined with plaintiff's friendships.

19 **C. THE AUGUST 9, 2010 HEARING ON PLAINTIFF'S EX PARTE APPLICATION**

20 Plaintiff arrived after defendant and was standing in line behind defendant at the security entrance. One person was  
21 in between both parties however, plaintiff did not know that Attorney Avalos and Attorney Metanat where there on  
22 behalf of Facebook. Plaintiff thought they might be defense counsel. Plaintiff went to clerk after defendant and  
23 then proceeded upstairs to courtroom 2. Plaintiff witnessed defendants sitting next to the closed doors and if called  
24 to testify will confirm defense counsels good intentions to show up for court. Plaintiff never received any prior  
25 written messages from the defense stating whether or not they would be there. Nor did plaintiff receive any email or  
26 phone calls. Plaintiff sat down diagonal to defendant approximately 50 feet away after seeing the closed doors and  
27 then proceeding to the side of the courtroom to check in. Plaintiff did not need directions or a sign. Plaintiff did not  
28 get any assistance or offers of assistance from anyone. Plaintiff was called into the office and witnessed defendants

1 sitting outside the courtroom when she left. The plaintiff had made a general 90 day statement that was based on  
2 concern for Karen Beth Young account information.

3 **D. FACEBOOK'S NOTICE TO PLAINTIFF OF THIS EX PARTE PROCEEDING**

4 Defendant's Avalos and Gray called plaintiff and left a message regarding hearing request. Defendant's message  
5 left plaintiff thinking she would be meeting with Attorney Avalos and Gray for the motion. Attorney's Avalos and  
6 Chatterjee were present for the motion. Plaintiff called both attorneys Avalos and Gray to let them know she  
7 received their message. Plaintiff also sent both attorneys an email as an additional professional courtesy. All  
8 communication cited opposition to the parties request in its entirety.

9 **III. ARGUMENT**

10 Facebook needs to accept responsibility for a page on its website that violates Facebooks advertised and contracted  
11 rights and responsibilities, policies etc. The responsibility to address this is unquestionable. Defendants reference  
12 that it has "nothing whatsoever to do with plaintiff's complaint" promotes profit from page clicks over legal  
13 obligation. It is "reasonably" preserved is not an acceptable statement by the defendant as they have not shown that  
14 they truly understand the definition of reasonable to begin with. Defendant should be required to state what they  
15 feel is reasonable and why. This in addition to what would be reasonable for a Facebook user either with or without  
16 a disability. Defendant quote of "No threat of destruction of relevant evidence exists" is completely wrong because  
17 they support not addressing a very rudimentary problem that perpetuated an ongoing upset with plaintiff. They are  
18 ignorant to this because their professional expertise is technical not general health related. Not to mention, mental  
19 health or the human psyche. Trauma comes in many different forms and defendants lack of ability to care about its  
20 impact shows negligence and poor faith. The "Ends of Justice" have greater and more caring roots. The facts of  
21 defense counsel in relation to their advertised accolades is extremely commendable. Plaintiff admires their  
22 dedication and hard work that has done many good things according to what is posted. But, the defense is not  
23 qualified to evaluate and pass judgment on plaintiffs state of being and state of concern. Plaintiff was taken back by  
24 the areas of specialty highlighted by all four defense counsel. Julio Avalos advertises, "Mr. Avalos's practice  
25 focuses on emerging 21<sup>st</sup> century litigation issues in the areas of trademark, copyright, online compliance, privacy  
26 and branding."His experience is technical with computer matters. Thomas Gray states on his profile "He focuses  
27 on intellectual property litigation with an emphasis on trade secret litigation and counseling." "Mr. Gray  
28 has extensive experience litigating and trying complex matters involving trade secrets, patents,

1 trademarks, license agreements and other commercial disputes." Also, Morvarid Metanat lists, "Her  
2 practice focuses on patent, copyright, trademark and trade secret litigation. As a student  
3 in the summer session she did some work with homeless prevention and youths. Neel Chatterjee lists,  
4 "Mr. Chatterjee is nationally recognized for his experience in patent litigation, Internet liability litigation,  
5 trade secrets litigation, and technology transactions litigation." None of these people are expert  
6 witnesses or qualified in medicine and have no professional experience dealing with intimate personal  
7 health related topics. Their actions are more harmful than good and completely disregard the right of life,  
8 liberty and the pursuit of happiness. They can not fully comprehend justice at their level in regard to  
9 plaintiff's circumstances. They list no affiliations with the National Institute of Health, No affiliations with  
10 mental health advocacy, no affiliations with bipolar disorder, no affiliations with National Alliance on  
11 Mental Illness, no affiliations with NAMI, no affiliations with depression, and are completely and officially  
12 computer "geeks." As before, plaintiff understands the computer aspect. But, people are not computers.  
13 People built computers. People have brains, feelings, and flesh. The human factor and human area of  
14 comprehension is lacking in this entire defense team. Plaintiff sought to self help her stress by fixing the  
15 problem with her account the first time. All plaintiff needed was basic communication skills reciprocated.  
16 The defense continues to antagonize the plaintiff and the problem. Plaintiff wants peace of mind and  
17 understanding. Proper resolution of this case in that way is important. There is not one day that plaintiff  
18 doesn't get drowned out by Facebook. Plaintiff goes to Borders Bookstore and sees Facebook all over  
19 the counter, plaintiff turns on the radio to hear Facebook advertising, plaintiff checks her AOL mail to see  
20 Facebook AIM advertising, plaintiff goes to pet store with Chihuahua and sees Facebook dog wear.  
21 Facebook can and should do better. Plaintiff deserves to see that defendant cares about plaintiff's state  
22 and takes her state more seriously from a quality of life standpoint. Plaintiff has no deep, secret plan to  
23 overthrow Facebook, plaintiff has no deep, secret plan of deceit with cancer patients, plaintiff has no  
24 deep, secret hidden agenda. Plaintiff recognizes her mathematical analytical skills combined with a  
25 strong bedded emotion might have prompted the chosen list of heavy weight counsel. Plaintiff can be  
26 very determined and motivated. Plaintiff registered the Cartesian Plane For The Cure with the business  
27 office in Baltimore, Md. as a non-profit. However, plaintiff does not have a business plan or secret profit  
28

1 plan. Plaintiff set up non-profit to try to do more for people who asked and has never taken a  
2 penny (.01) from any person or business. The CPFTC non-profit listing idea was just a thought of  
3 something that could possibly help others down the road when plaintiff was less busy. Defendant needs  
4 a new set of counsel that is more receptive and understanding to the true concerns and  
5 feelings of people. Defense is entirely missing the point with the strengths and weaknesses in this case.  
6 Plaintiff will call personal, professional and expert witnesses to address this. Plaintiff is not nor ever has  
7 been interested in Facebook to the degree that defense counsel needs to focus on security. If plaintiffs  
8 actions inadvertently set off computer system red flags then plaintiff has no idea why because her actions  
9 are founded in her friendships and relationships. Plaintiff has sought clarity before and plaintiff continues  
10 to seek clarity with this issue.

11 **A. A MOTION FOR PRESERVATION OF INFORMATION OR MODIFIED PRESERVATION**

12 Facebook can address the need for defendants own violations of its outlined policies. Facebook is a  
13 billion dollar company who affects commerce everyday. People deserve more and people deserve  
14 better. Facebook needs to stand up to its obligations and promote civil, decent leadership in the realm of  
15 social networking. The ends of justice will not ever be seen, let alone served if Facebook doesn't do  
16 more. A proper adjustment and explanation could resolve short and long term problems. Computers are  
17 cold and plastic. People should not be.

18 **B. FACEBOOK AND THE COURT SHOULD DEFINE WHAT THEY BELIEVE IS "REASONABLE"**

19 From the standpoint of members and members with a disability. These two categories should be  
20 distinguished. To leave the term "reasonable" undefined is not justice. One persons view of "reasonable"  
21 can be entirely different from another's. Facebook should be required to present this definition  
22 for court review before information that is entirely relevant is carelessly discarded in order to promote the  
23 appearance of surface values. The court should consider expert testimony, review and understanding in  
24 the subject matter of health. This to include all aspects of physical, emotional, mental or other. The lack  
25 of expert testimony should be a concern to all involved relating to evidence. Defendant claims plaintiff  
26 has no relation to information with posts and page management from the past or potentially with the  
27 future. Defendant is naive to sensitive issues and creates additional harm by minimizing the feelings and  
28 effects associated with this case. Defendant needs to take a step back from the profit, security, and

1 technical angle of their accusations and focus on the ABC's of life. The code of life is paramount.

2 **C. WITNESS LIST**

3 Plaintiff will provide witness testimony from all pages listed in this complaint to include the following that  
4 will be sought: 1) "DEAR LORD" prayer for death page, 2) "Petition to remove" prayer for death page, 3)  
5 Karen Beth Young account and pages, 4) The Tim McGraw family to include Tim McGraw, Henry  
6 McGraw, Cari McGraw, and Mark McGraw, 5) The Tug McGraw Foundation, 6) Team McGraw, 7)  
7 Harvard University professor Tim Dalrymple, 8) Princeton University professor Neta Bahcall, 9) Cornell  
8 University professor Anil Nerode, 10) MIT professor David Vogan. All of these individuals have been  
9 mentors, and page members and friends are more than the quote unquote "Facebook" friend. All  
10 witnesses are related to cancer, mathematics, or science. Additionally, plaintiff will seek expert testimony  
11 in fields to include; General Health, Oncology, Computer Science, Mathematics, Science, Religion, and  
12 Human Relations.

13 **D. RELEVANT EXHIBITS**

14 Exhibit 1 - A to D

15 Exhibit 2 - One of many examples of people who agree with plaintiff

16 Exhibit 3 - Current photographs from death hate page since last hearing

17 Exhibit 4 - Message from Harvard professor to include Harvard article

18 **CONCLUSION:**

19 Plaintiff respectfully requests the court to consider the following in the following order:

- 20 1) Reinstate TRO with full compliance.
- 21 2) All "DEAR LORD" death page activity past, present, and future be preserved.
- 22 3) All "Petition to remove" page information be preserved past, present, and future.
- 23 4) All "DEAR LORD" death page activity be preserved from Day 1 to time of hearing.
- 24 5) All "Petition to remove" page information be preserved from Day 1 to time of hearing.
- 25 6) The court require defendant to define and accept responsibility for "Reasonable"
- 26 7) The court modify "Reasonable" to comply with trained professionals and experts in the health field.
- 27 8) The court extend a time for order in order to further research true and valid concerns at the
- 28



convenience of the court.

9) That the court consider any/all of the above suggestions with combination.

10) Any other assistance available.

DATED: August 23, 2010

Respectfully Submitted,

  
Karen Beth Young

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28