

EXHIBIT A

IN THE DISTRICT OF THE UNITED STATES OF AMERICA
FOR THE SOUTHERN DISTRICT OF ILLINOIS

_____)	
E.K.D., by her next friend)	
Melissa K. Dawes, and C.M.D.,)	
by his next friend Jennifer E.)	
DeYong, individually and on)	
behalf of all others similarly)	
situated,)	
)	
Plaintiff(s),)	
)	
vs.)	Case No. 11-461-GPM-SCW
)	
FACEBOOK, INC.,)	
)	
Defendant(s).)	
_____)	

TELEPHONIC STATUS CONFERENCE

BE IT REMEMBERED AND CERTIFIED that heretofore on **11/22/2011**, the same being one of the regular judicial days in and for the United States District Court for the Southern District of Illinois, Honorable Stephen C. Willims, United States District Judge, presiding, the following proceedings were recorded by mechanical stenography; transcript produced by computer.

APPEARANCES:

FOR PLAINTIFF: Aaron M. Zigler of Korein Tillery - St. Louis, 505 N. 7th Street, Suite 3600, St. Louis, MO 63101

FOR DEFENDANT: Matthew D Brown of Cooley LLP 101 California Street, Fifth Floor, San Francisco, CA 94111 **and Charles J. Swartwout** of Boyle Brasher LLC - Belleville, 5000 West Main Street, Post Office Box 23560, Belleville, IL 62223-0560

REPORTED BY: Molly N. Clayton, RPR, Official Reporter for United States District Court, SDIL, 750 Missouri Ave., East St. Louis, Illinois 62201, (618)482-9226,
molly_clayton@ilsd.uscourts.gov

1 November 29th and we will --

2 MR. BROWN: Your Honor?

3 THE COURT: Yes.

4 MR. BROWN: Could I just raise one additional thing?
5 I apologize.

6 THE COURT: Absolutely. No. No, that's fine. That's
7 fine.

8 MR. BROWN: The one issue that I sort of have raised
9 with Mr. Zigler, we have -- we have sort of asked for -- to get
10 the user IDs and the like for the named plaintiffs. And to
11 give you just a little bit of background on that, up until now,
12 I mean, including right now, the named plaintiffs have only
13 been identified in the complaint and any other communications
14 by their initials.

15 So we literally have never received any sort of
16 confirmation on exactly who the named plaintiffs are that are
17 on the other side this litigation. And what we had asked in
18 our discovery request, which the responses aren't due yet,
19 we've asked for information regarding the Facebook user IDs.
20 Every Facebook user is given just like a unique ID number.

21 THE COURT: Mmm hmm.

22 MR. BROWN: And so I've asked for the user ID, any
23 special kind of user name that the named plaintiffs used, and
24 their e-mail address that they used to create the account or
25 that's on the account, just so we have like the most

1 fundamental fact, which is, exactly who are the plaintiffs, and
2 so we can start going back and confirming that they're actually
3 Facebook users and we know what accounts we're talking about
4 and how they've used the site and whatnot.

5 So it's a -- it's a pretty fundamental piece of
6 information, and we literally are at the -- at the point in the
7 litigation now where we -- where we just still don't know
8 exactly, haven't been able to confirm who the identities are of
9 named plaintiffs.

10 So I would appreciate getting that information, even
11 in advance of the discovery responses. And I just wanted to
12 raise the issue since we had this status conference today.
13 It's something that I've asked for from Mr. Zigler, but I'm not
14 exactly sure what his position is on it.

15 *THE COURT:* Mr. Zigler?

16 *MR. ZIGLER:* Well, your Honor, I'll start with saying
17 this isn't an easy issue. Mr. Brown is correct in that he has
18 asked us informally for that and formally in our -- in his
19 discovery requests.

20 With respect to confirmation about, you know, how the
21 kids use their Facebook page and other issues, I mean, that's
22 going to come with our response to discovery. You know, he's
23 asked for everything under the sun. So we will have responses
24 to the discovery request that will more than confirm the kids'
25 use of Facebook.

1 As for his request for the user IDs, although it seems
2 innocuous to us, I've been doing some research on the issue
3 because my concern is not that the intent is to, you know, just
4 define information relevant to the case, but instead to use
5 Facebook's vast wealth of knowledge about everybody to go far
6 beyond the relevance of the case and come up with quite a bit
7 more than that.

8 And although I don't have my research in front of me,
9 Judge, I can tell you that there's some support for the premise
10 that this type of discovery is supposed to take place through
11 the discovery process and not informally through, for lack of a
12 better word, you know, the back channels, the -- I guess the
13 easiest analogy that I can give --

14 *THE COURT:* Wait. What back channels -- what back
15 channels are you talking about?

16 *MR. ZIGLER:* Well --

17 *THE COURT:* Not what we're talking about right now,
18 right?

19 *MR. ZIGLER:* I'm sorry?

20 *THE COURT:* I mean, this -- you are not -- you are not
21 saying that his request for an expedited response is back
22 channels, you are saying that --

23 *MR. ZIGLER:* No. That's not what I'm saying, Judge.

24 *THE COURT:* -- that by getting this information --

25 *MR. ZIGLER:* The use of the user name itself, I might

1 have an objection to that request. To the extent that Facebook
2 intends to -- depending on how Facebook intends to use that.

3 As Mr. Brown just said, you know, they want to do
4 their research to find out how the kids are using the site. I
5 think we have -- I think that that needs to take place within
6 the discovery process. Mr. Brown has sent me a request, which
7 I intend to respond to, which asks relevant information
8 about -- or to the extent that it asks for relevant information
9 about how the kids use the site, I plan to respond to that.

10 But there will be information contained within the
11 kids' Facebook account information that is not relevant to the
12 case. And I don't believe that by participating in the suit
13 the kids have opened up everything that might be determined by
14 Facebook through its access to their accounts that they can
15 determine outside the discovery process.

16 The easiest analogy that I can give, which isn't
17 directly on point because I don't have my research as to this
18 topic in front of me, is essentially the *Petrillo* doctrine in
19 the Illinois State Court, where there -- and I know that that
20 deals with a privilege issue, the doctor-patient privilege.

21 But there, where you sue both a hospital and a doctor,
22 the hospital doesn't get to walk down to the doctor's office
23 and say, Hey, give me the whole patient file on that, on the
24 plaintiff. Instead, the hospital has to send a discovery
25 request to the plaintiff, and the plaintiff gets their own

1 records, reviews it for relevance and other issues, and then
2 they're produced through the discovery process.

3 That's what we think should take place here.

4 *THE COURT:* But does the -- under that, though, the
5 hospital doesn't have to get its own records. That's just when
6 they have to get the doctor's records. And the doctor doesn't
7 need a request to get the hospital -- or his records. He just
8 needs a request to get the hospital's records, right?

9 *MR. ZIGLER:* That's right. And in this case, there is
10 a federal law called the Stored Communications Act, which I
11 wouldn't say it is exactly a privilege. But it asserts, you
12 know, it raises a level of the information that's contained
13 within a account such as the Facebook account, and it prohibits
14 use beyond the authorization of that use.

15 In the doctor-patient example, a hospital, in their
16 own records, has full access to all those records because they
17 use them for whatever purpose. But the hospital is not a
18 carrier of a -- the patient isn't sending an e-mail to their
19 girlfriend using the hospital's records.

20 *THE COURT:* Mmm hmm.

21 *MR. ZIGLER:* So because of that, Congress has passed a
22 law called the Stored Communications Act, which prohibits,
23 usually, third parties from getting into those records except
24 under certain circumstances. Like I said, I'm being caught a
25 little flatfooted here. But the point is, we have got a

1 response to that request, and we would like the time allowed
2 under the rules to respond to that request and not just be put
3 on the spot here in a call.

4 *THE COURT:* Well, I'm not, you know, we have raised a
5 number of things on both sides that the other side wasn't
6 necessarily anticipating. And I'm not going to make a ruling
7 now, I'm just trying to get an idea.

8 First of all, I wasn't sure that this was an issue
9 that you were going to be objecting to. So it's fair for --
10 it's fair for Mr. Brown to raise the issue. It's also fair for
11 you to, as you have done, say, I'm not ready to make a formal
12 objection yet, but there probably is one. And I hear what you
13 are saying. And I don't have a position on this right now
14 without seeing what you have to say about it.

15 So, Mr. Brown, I think we are going to have -- what it
16 sounds like is there may be a formal objection to the request
17 or a request for some limitation on its use. And I'm certainly
18 not in a position to say anything about whether I think these
19 objections may or may not even be meritorious. I don't know.
20 I mean...

21 *MR. BROWN:* Just to be clear, your Honor, right now we
22 have no configuration about who the other party is in this
23 litigation.

24 *THE COURT:* Right. I hear you. And, again, I'm not
25 saying that what you are asking for -- it sounds -- on its

1 face, it sounds to me like this is relevant. But that doesn't
2 answer the entire inquiry. You know what I mean? I mean, I
3 just don't know what Mr. Zigler's formal objections are going
4 to be. And they may not -- they may not carry the day. I
5 just -- I just don't know. I mean, yes --

6 *MR. ZIGLER:* Right.

7 *MR. BROWN:* Right.

8 *MR. ZIGLER:* All I'm -- all I'm suggesting is it is a
9 more complex issue than it seems, and we would like the time
10 that we are allotted to prepare our arguments and decide just
11 exactly what our response is. And I can assure the Court and
12 Mr. Brown that the reason that he doesn't know who the minor
13 parties are is because of the federal rules and the requirement
14 that they're only referred to by initial. But that I have
15 diligently viewed the research here, and I can assure you that
16 the minors have Facebook accounts that are active and --

17 *MR. BROWN:* Right. But we need to be able to know
18 which accounts those are so that we can actually start
19 preparing a defense to this case.

20 You know, Mr. Zigler insisted when we were negotiating
21 the schedule that we were supposed to finish our depositions of
22 the named plaintiffs by like mid-January. And there is a
23 disparity between the deadline for those depositions and the
24 depositions of Facebook personnel, which, you know, in
25 retrospect, you know, really, we never really have a schedule

1 that works that way. Normally, it is the same day.

2 And yet our hands are being tied now, where we are
3 supposed to be -- I mean, we are supposed to be somehow
4 preparing for depositions, preparing our defense, literally
5 without knowing who the plaintiffs are that have brought this
6 federal action against us.

7 And I'm not talking about whether it's appropriate to
8 use initials, you know, in a public filing or anything like
9 that. I'm talking about actual information that we need in
10 order to litigate the case. And I've never encountered this
11 position in any of the other cases.

12 And, in fact, in the *Fraleley* case, you know, the
13 plaintiff's counsel provided it on an informal basis, and it
14 was no big deal. So I'm actually surprised to hear that there
15 is any issue about this at all. And I thought it would be more
16 of an issue of just timing, whether it would be now or when
17 they served their discovery responses. But so I just don't see
18 this as being an issue at all, and I don't see how that kind of
19 information could be withheld.

20 *THE COURT:* Well, I don't know. And so I'm surprised
21 by it too, but that doesn't mean anything other than we are not
22 going to decide it today. That's all I'm saying. So if
23 there's -- there may -- it may turn out that Mr. Zigler doesn't
24 make an objection. I don't know.

25 When are the responses due?

1 MR. ZIGLER: Next Wednesday.

2 THE COURT: Okay. So there will be a response made.
3 And if there is an objection, Mr. Brown, the rules are simple.
4 When you get those responses next Wednesday, I'm going to give
5 Mr. Zigler at least the opportunity to, until then, look at
6 this issue and decide whether he's going to make an objection
7 to the production of that information. And if there is an
8 objection, and it is one that you don't agree with, and you
9 have talked to him about it, then we'll set it for hearing.
10 And we will do so expeditiously. You won't have to wait until
11 January to know if you are going to get this.

12 MR. BROWN: Okay.

13 THE COURT: Okay. Anything else we need to take up
14 before -- or today?

15 MR. SWARTWOUT: I just need to order a copy of the
16 transcript, your Honor. This is Charlie Swortwout.

17 THE COURT: Molly is the court reporter here.

18 MR. SWARTWOUT: Okay.

19 THE COURT: Molly Clayton.

20 MR. SWARTWOUT: Thank you.

21 THE COURT: All right. Anything else?

22 MR. ZIGLER: Thank you for your time, Judge.

23 THE COURT: Okay. Thank you.

24 MR. SWARTWOUT: Thank you.

25 THE COURT: Everybody have a good Thanksgiving. We

1 will talk to you next week.

2 MR. BROWN: Thank you, your Honor.

3 THE COURT: All right. Bye, bye.

4 (End of requested transcript)

5 -oOo-

6 REPORTER'S CERTIFICATE

7 I, Molly N. Clayton, RPR, Official Court Reporter for the
8 U.S. District Court, Southern District of Illinois, do hereby
9 certify that I reported with mechanical stenography the
10 proceedings contained in pages 1 - 70; and that the same is a
11 full, true, correct and complete transcript from the record of
12 proceedings in the above-entitled matter.

13 DATED this 25th day of November, 2011.

14 *Molly Clayton, RPR*
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