

EXHIBIT A

From: [Jessen, Joshua A.](#)
To: [Rudolph, David T.](#); [Chorba, Christopher](#)
Cc: [Sobol, Michael W.](#); [Hank Bates \(hbates@cbplaw.com\)](mailto:hbates@cbplaw.com)
Subject: RE: Deposition date for Alex Himel
Date: Thursday, June 04, 2015 6:02:06 PM

David –

Facebook is not “refusing” to make Mr. Himel available for deposition before July 2. Mr. Himel is not in fact available for a deposition before July 8. If he were, we would have offered that date. Mr. Himel is a senior Facebook employee who manages a team of dozens of people and does not have requisite availability for a deposition before then.

We have repeatedly pointed out that, even under the existing schedule, Plaintiffs will have ample time to address anything Mr. Himel says in a July 8 deposition in a supplement to their motion or in their reply brief (due July 27). We also have offered to extend the briefing schedule. The schedule you propose below is generally fine, though may need to be tweaked slightly in light of vacation schedules.

We’re happy to chat with you, Michael, Hank, or whomever tomorrow to resolve this issue. There is a reasonable solution here (we have offered several), and I believe Magistrate Judge James would expect the parties to resolve this simple issue without court intervention. Alternatively, if you insist on involving the court now, you have our consent to e-mail Magistrate Judge James’ clerk (copying us) to request a brief telephonic conference on this issue anytime tomorrow afternoon, Monday after 2 p.m., or Tuesday before Noon.

Thanks,

Josh

Joshua A. Jessen

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From: Rudolph, David T. [mailto:drudolph@lchb.com]
Sent: Thursday, June 04, 2015 4:23 PM
To: Jessen, Joshua A.; Chorba, Christopher
Cc: Sobol, Michael W.; Hank Bates (hbates@cbplaw.com)
Subject: RE: Deposition date for Alex Himel

Josh,

The parties and the Court already conferred and determined what the briefing schedule for Plaintiffs’ motion will be. As you are aware, the parties’ respective motions are due October 14, and

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pushing back resolution of the source code issue a number of weeks could potentially impact the entire case schedule. Facebook's refusal to produce Mr. Himel for deposition prior to the due date for Plaintiffs' motion to compel is unacceptable and Plaintiffs will be seeking to compel his deposition.

Facebook already proposed, and Plaintiffs accepted, a schedule for the briefing related to Mr. Shadpour. That issue is totally unrelated to the deposition date for Mr. Himel, and there is no reason for the parties to arrange "reciprocal" briefing on these issues, and your suggestion is a clear attempt to delay resolution of this issue by the Court. Because Plaintiffs are seeking the deposition of Mr. Himel the week of June 15, the letter brief must be filed no later than early next week in order to allow the Court sufficient time to rule. If, as your email suggests, Facebook is unwilling to agree to a schedule that allows for that, pursuant paragraph 3 of Judge James' Discovery Standing Order, Plaintiffs will seek a telephonic conference with Judge James to resolve this issue.

As a compromise to the briefing schedule I proposed yesterday, which contemplated the parties exchanging positions today and filing the letter brief tomorrow (which Facebook rejected), we propose the following schedule: the parties will exchange positions tomorrow at 5pm, the parties will exchange any revisions to their positions on Monday at 5pm, and the letter brief will be filed on Tuesday. If Facebook will not agree to this schedule, pursuant to Judge James' standing order, please provide us three times tomorrow, Monday, and Tuesday you are available for a telephonic conference with Judge James.

Finally, Plaintiffs intend to propose, in the event the Court declines to grant Plaintiffs' motion to compel, an alternative briefing schedule pushing all dates associated with the motion back three weeks (i.e. motion to compel due 7/23, opposition due 8/10, reply due 8/17, hearing 9/3). Please confirm Facebook stipulates to this alternative schedule in the event the Court declines to grant Plaintiffs' motion.

Please let us know this afternoon.

Thank you.

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From: Jessen, Joshua A. [<mailto:JJessen@gibsondunn.com>]
Sent: Thursday, June 04, 2015 2:09 PM
To: Rudolph, David T.; Chorba, Christopher
Cc: Sobol, Michael W.; Hank Bates (hbates@cbplaw.com)
Subject: RE: Deposition date for Alex Himel

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David –

We gave you his first date of availability for a deposition, which is July 8. As I mentioned, we are willing to modify the briefing schedule such that Plaintiffs' motion would not be due until after Mr. Himel's deposition. Let me know.

Thanks,

Joshua A. Jessen

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From: Rudolph, David T. [<mailto:drudolph@lchb.com>]
Sent: Thursday, June 04, 2015 11:44 AM
To: Jessen, Joshua A.; Chorba, Christopher
Cc: Sobol, Michael W.; Hank Bates (hbates@cbplaw.com)
Subject: RE: Deposition date for Alex Himel

Josh, you've stated twice Mr. Himel is not available for deposition during "the week of June 15." Is Mr. Himel available the following week, on June 22 or 23? Please let us know this afternoon.

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From: Jessen, Joshua A. [<mailto:JJessen@gibsondunn.com>]
Sent: Thursday, June 04, 2015 10:59 AM
To: Rudolph, David T.; Chorba, Christopher
Cc: Sobol, Michael W.; Hank Bates (hbates@cbplaw.com)
Subject: RE: Deposition date for Alex Himel

David –

Thank you for your e-mail.

As I indicated during our meet-and-confer, to the extent Plaintiffs decide to move to compel after reviewing the information we provided this week, we are willing to allow Plaintiffs to file a supplement to their motion to compel after they depose Mr. Himel, and of course Plaintiffs' reply brief is not due until July 27, which provides ample time to present information learned in a July 8 deposition to the Court. We also are amenable to a continuance of the briefing schedule, so that

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Plaintiffs' motion would not due until sometime after Mr. Himel's deposition. Let me know if either of these works.

Unfortunately, Mr. Himel is not available for deposition during the week of June 15. Bothering the Court with this issue under these circumstances, especially when your concern can be addressed by a continuance of the briefing schedule (or simply by raising any information from Mr. Himel's deposition in a supplement or in Plaintiffs' reply), would be a tremendous waste.

If Plaintiffs nonetheless proceed down that path, we can discuss a bilateral briefing schedule for both our letter brief regarding Mr. Shadpour and your letter brief regarding Mr. Himel. Obviously we're not going to have disparate timing standards apply to those two briefs.

Thanks,

Joshua A. Jessen

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From: Rudolph, David T. [<mailto:drudolph@lchb.com>]
Sent: Wednesday, June 03, 2015 4:45 PM
To: Jessen, Joshua A.; Chorba, Christopher
Cc: Sobol, Michael W.; Hank Bates (hbates@cbplaw.com)
Subject: RE: Deposition date for Alex Himel

Josh,

As we discussed during the in-person meet and confer, Plaintiffs require the deposition of Mr. Himel prior to the July 2 due date for their motion to compel, and July 8 is obviously unacceptable. We intend to seek an order from the Court compelling Mr. Himel's deposition the week of June 15, and attach a Background section of the joint letter brief. Given the nature of this request we will seek expedited resolution of this issue by the Court. Accordingly, we propose the parties exchange positions at 5pm tomorrow, with the motion to be filed on Friday—given the nature of the relief Plaintiffs are seeking we cannot wait 7 days to exchange positions as was the case with the prior letter brief. Please confirm Facebooks agrees to this schedule.

Plaintiffs will take Mr. Liu's deposition on June 30.

Thank you.

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