

1 GIBSON, DUNN & CRUTCHER LLP
 JOSHUA A. JESSEN, SBN 222831
 2 JJessen@gibsondunn.com
 JEANA BISNAR MAUTE, SBN 290573
 3 JBisnarMaute@gibsondunn.com
 ASHLEY M. ROGERS, SBN 286252
 4 ARogers@gibsondunn.com
 1881 Page Mill Road
 5 Palo Alto, California 94304
 Telephone: (650) 849-5300
 6 Facsimile: (650) 849-5333

7 GIBSON, DUNN & CRUTCHER LLP
 GAIL E. LEES, SBN 90363
 8 GLees@gibsondunn.com
 CHRISTOPHER CHORBA, SBN 216692
 9 CChorba@gibsondunn.com
 333 South Grand Avenue
 10 Los Angeles, California 90071
 Telephone: (213) 229-7000
 11 Facsimile: (213) 229-7520

12 Attorneys for Defendant
 FACEBOOK, INC.

13
 14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 OAKLAND DIVISION

17 MATTHEW CAMPBELL, MICHAEL
 HURLEY, and DAVID SHADPOUR,

18 Plaintiffs,

19 v.

20 FACEBOOK, INC.,

21 Defendant.

Case No. C 13-05996 PJH (MEJ)

PUTATIVE CLASS ACTION

**DECLARATION OF JOSHUA A. JESSEN
 IN SUPPORT OF DEFENDANT
 FACEBOOK, INC.'S RESPONSE TO
 PLAINTIFFS' REQUEST FOR
 TELEPHONIC DISCOVERY
 CONFERENCE**

1 I, Joshua A. Jessen, declare as follows:

2 1. I am an attorney at law licensed to practice before all the Courts of the State of
3 California and this Court. I am a partner with the law firm of Gibson, Dunn & Crutcher LLP, counsel
4 of record for Defendant Facebook, Inc. (“Facebook”) in this case. I submit this Declaration in
5 support of Facebook’s Response to Plaintiffs’ Request for Telephonic Discovery Conference. I have
6 personal knowledge of the matters stated herein and, if called as a witness, could and would testify
7 competently thereto.

8 2. Attached hereto as **Exhibit A** is a true and correct copy of the e-mail exchanges
9 between Plaintiffs’ counsel, David Rudolph, and me, which Mr. Rudolph partially attached to his
10 declaration. Unlike the version Mr. Rudolph attached to his declaration, however, this version
11 contains three e-mails he omitted, including Mr. Rudolph’s e-mail of June 2 first attaching a draft
12 deposition notice for Facebook employee Alex Himel and noting that “you indicated that Facebook
13 *may* agree to make Mr. Himel available the week of June 15” (emphasis added), as well as my
14 response of June 3, which stated that “I did inform you during our [June 1] meet and confer that we
15 were checking into Mr. Himel’s availability for the week of June 15. Unfortunately, he is not
16 available for deposition that week. He is, however, available on July 8. Let me know if that works.”
17 This version of Exhibit A also includes the e-mail Mr. Rudolph sent me this morning at 10:57 a.m.,
18 rejecting my suggestion from the previous evening that the parties have a telephone call to attempt to
19 resolve the issue without involving the Court. One minute after he sent that e-mail, and before I
20 could send a response, Plaintiffs filed their Request for Telephonic Discovery Conference. Attached
21 hereto as **Exhibit B** is a true and correct copy of the Notice of Electronic Filing showing the 10:58
22 a.m. filing.

23 3. When the parties previously submitted a letter brief to the Court (on the issue of
24 Plaintiffs’ responses to Facebook’s contention interrogatories), Mr. Rudolph proposed a 2-week
25 schedule for exchanging the parties’ respective positions and filing the letter brief, which Facebook
26 (despite proposing a shorter schedule) accepted and the parties followed. Attached hereto as **Exhibit**
27 **C** is a true and correct copy of Mr. Rudolph’s proposal for the 2-week briefing schedule and our
28 acceptance.

1 4. Earlier this week, on June 2, I sent Mr. Rudolph the background section for a letter
2 brief seeking to compel a deposition and discovery responses from one of the three named Plaintiffs,
3 David Shadpour, who has not produced any documents in this case and whose deposition I first
4 requested approximately seven weeks ago (on April 16). In my e-mail, I proposed a 2-week briefing
5 schedule “[f]ollowing the timing of the schedule from the last letter brief,” which Mr. Rudolph
6 accepted. Attached hereto as **Exhibit D** is a true and correct copy of that e-mail exchange.

7 5. It was on June 3 that Mr. Rudolph informed me that Plaintiffs would be seeking to
8 compel a deposition of Mr. Himel during the week of June 15 (despite his unavailability then) and
9 proposed that, in contrast to the past 2-week schedules he had proposed and agreed to, the parties
10 exchange positions for Plaintiffs’ letter brief within 24 hours and file that brief one day later (on June
11 5).

12 6. On April 16, 2015, I sent Plaintiffs’ counsel an e-mail (a true and correct copy of
13 which is attached hereto as **Exhibit E**), attaching draft deposition notices for the three named
14 Plaintiffs in this case, proposing dates for depositions in mid-May, and stating that “[p]ursuant to
15 Civil Local Rule 30-1, we will confer with you regarding scheduling before finalizing and serving
16 these notices.” It was not until the June 1 meet-and-confer conference that Plaintiffs even offered a
17 date for Plaintiff Michael Hurley, and the first date Mr. Rudolph offered was July 9—which is 84
18 days after I first requested a date for his deposition and is after the date Mr. Himel is first available
19 for deposition (July 8).

20 I declare under penalty of perjury under the laws of the United States of America that the
21 foregoing is true and correct and that this declaration was executed on June 5, 2015 in Irvine,
22 California.

23
24 Dated: June 5, 2015

_____/s/
Joshua A. Jessen

Exhibit A

Jessen, Joshua A.

From: Rudolph, David T. <drudolph@lchb.com>
Sent: Friday, June 05, 2015 10:57 AM
To: Jessen, Joshua A.; Chorba, Christopher
Cc: Sobol, Michael W.; Hank Bates (hbates@cbplaw.com)
Subject: RE: Deposition date for Alex Himel

Josh,

Thank you for providing us with the times you are available for a telephonic conference with Judge James. Pursuant to paragraph 3 of Judge James' Discovery Standing Order, we will be filing a written request seeking the conference.

**Lieff
Cabraser
Heimann &
Bernstein**
Attorneys at Law

David T. Rudolph
Of Counsel
drudolph@lchb.com
t 415.956.1000
f 415.956.1008
Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
www.lieffcabraser.com

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

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

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

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 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.

**Lieff
Cabrer
Heimann &
Bernstein**
Attorneys at Law

David T. Rudolph
Of Counsel
drudolph@lchb.com
t 415.956.1000
f 415.956.1008
Lieff Cabrer Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
www.lieffcabrer.com

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

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

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
3161 Michelson Drive, Irvine, CA 92612-4412 1881 Page Mill Road, Palo Alto, CA 94304-1211
Tel +1 949.451.4114 • Fax +1 949.475.4741 Tel + 650.849.5375
JJessen@gibsondunn.com • www.gibsondunn.com

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.

**Lieff
Cabraser
Heimann &
Bernstein**
Attorneys at Law

David T. Rudolph
Of Counsel
drudolph@lchb.com
t 415.956.1000
f 415.956.1008
Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
www.lieffcabraser.com

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 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

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
3161 Michelson Drive, Irvine, CA 92612-4412 1881 Page Mill Road, Palo Alto, CA 94304-1211
Tel +1 949.451.4114 • Fax +1 949.475.4741 Tel + 650.849.5375
JJessen@gibsondunn.com • www.gibsondunn.com

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.

**Lieff
Cabrer
Heimann &
Bernstein**
Attorneys at Law

David T. Rudolph
Of Counsel
drudolph@lchb.com
t 415.956.1000
f 415.956.1008
Lieff Cabrer Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
www.lieffcabrer.com

From: Jessen, Joshua A. [<mailto:JJessen@gibsondunn.com>]
Sent: Wednesday, June 03, 2015 11:57 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. I did inform you during our meet and confer that we were checking into Mr. Himel's availability for the week of June 15. Unfortunately, he is not available for deposition that week. He is, however, available on July 8. Let me know if that works. As I mentioned, we will be making him available for deposition only once.

With respect to Jaikai Liu, we previously offered his deposition on June 30, July 1, or July 2. I understand from our discussions that you are declining those dates and will seek to compel an earlier deposition. If that's correct, we will release the June 30, July 1, and July 2 dates. Let me know.

Finally, per the parties' agreement, all depositions of Facebook employees will take place at our offices in Palo Alto at 1881 Page Mill Road.

Thanks,

Josh

Joshua A. Jessen

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
3161 Michelson Drive, Irvine, CA 92612-4412 1881 Page Mill Road, Palo Alto, CA 94304-1211
Tel +1 949.451.4114 • Fax +1 949.475.4741 Tel + 650.849.5375
JJessen@gibsondunn.com • www.gibsondunn.com

From: Rudolph, David T. [<mailto:drudolph@lchb.com>]
Sent: Tuesday, June 02, 2015 2:31 PM
To: Jessen, Joshua A.; Chorba, Christopher
Cc: Sobol, Michael W.; Hank Bates (hbates@cbplaw.com)
Subject: Deposition date for Alex Himel

Josh,

Please find attached a draft deposition notice for Alex Himel. As you are aware Plaintiffs intend to depose Mr. Himel in support of their motion to compel source code, due July 2. Yesterday during the meet and confer you indicated Facebook may agree to make Mr. Himel available for deposition the week of June 15, as we requested. Please let us know by no later than close of business tomorrow whether that is the case.

Thank you.

**Lieff
Cabrer
Heimann
&
Bernstein**
Attorneys at Law

David T. Rudolph
Of Counsel
drudolph@lchb.com
t 415.956.1000
f 415.956.1008
Lieff Cabrer Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
www.lieffcabrer.com

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Exhibit B

Jessen, Joshua A.

From: ECF-CAND@cand.uscourts.gov
Sent: Friday, June 05, 2015 10:58 AM
To: efiling@cand.uscourts.gov
Subject: Activity in Case 4:13-cv-05996-PJH Campbell et al v. Facebook Inc. Motion to Appear by Telephone

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

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U.S. District Court

California Northern District

Notice of Electronic Filing

The following transaction was entered by Rudolph, David on 6/5/2015 at 10:58 AM and filed on 6/5/2015

Case Name: Campbell et al v. Facebook Inc.

Case Number: [4:13-cv-05996-PJH](#)

Filer: Matthew Campbell

Michael Hurley

David Shadpour

Document Number: [84](#)

Docket Text:

[MOTION to Appear by Telephone *Plaintiffs' Request for Telephonic Discovery Conference* filed by Matthew Campbell, Michael Hurley, David Shadpour. \(Attachments: # \(1\) Declaration of David T. Rudolph in Support of Plaintiffs' Request for Telephonic Conference, # \(2\) Exhibit A\)\(Rudolph, David\) \(Filed on 6/5/2015\)](#)

4:13-cv-05996-PJH Notice has been electronically mailed to:

Ashley Marie Rogers arogers@gibsondunn.com, kmoody@gibsondunn.com

Christopher Chorba cchorba@gibsondunn.com

David F. Slade dslade@cbplaw.com

David Taylor Rudolph drudolph@lchb.com

James Allen Carney acarney@cbplaw.com, acarney@cbplaw.com

Jeana Marie Bisnar Maute jbisnarmaute@gibsondunn.com

Jeremy A. Lieberman jalieberman@pomlaw.com

Jon A Tostrud jtostrud@tostrudlaw.com, acarter@tostrudlaw.com

Joseph Henry Bates , III hbates@cbplaw.com, dslade@cbplaw.com, jcox@cbplaw.com, jgray@cbplaw.com

Joshua Aaron Jessen jjessen@gibsondunn.com, pmclean@gibsondunn.com, vyu@gibsondunn.com

Lionel Z. Glancy info@glancylaw.com, lboyarsky@glancylaw.com, lglancy@glancylaw.com

Melissa Ann Gardner mgardner@lchb.com

Michael W. Sobol msobol@lchb.com, jrudnick@lchb.com, mgordon@lchb.com, tcarnam@lchb.com

Nicholas Diamand ndiamand@lchb.com

Rachel Geman rgeman@lchb.com

4:13-cv-05996-PJH Please see [Local Rule 5-5](#); Notice has NOT been electronically mailed to:

Lesley F. Portney
Pomerantz, LLP
600 Third Avenue,
20th Floor
New York, NY 10016

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:C:\fakepath\PLAINTIFFS REQUEST FOR TELEPHONIC DISCOVERY CONFERENCE.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=6/5/2015] [FileNumber=11708488-0]
[4a4a86cfa89e916215ecd731503057da78626db8b6e8e2881844e5b0aae52807c47f6
96041635296f6662e1a3a2dc2c6a7f944b132816029e9583ea2ab696c9b]]

Document description:Declaration of David T. Rudolph in Support of Plaintiffs' Request for Telephonic Conference

Original filename:C:\fakepath\DECLARATION OF DAVID T. RUDOLPH IN SUPPORT OF PLAINTIFFS REQUEST FOR TELEPHONIC DISCOVERY CONFERENCE.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=6/5/2015] [FileNumber=11708488-1]
[420e765d4c9b38b5e02b501df27da599e5e021154896843039315b2ae425337ed9f18
eb8030c5fce627141eccb2b56a25f9e4aedf60fde3bf70967422d4998a9]]

Document description:Exhibit A

Original filename:C:\fakepath\Ex A.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=6/5/2015] [FileNumber=11708488-2]

[41680750b55e9f1aeabcc2b47ac5a8b6f71798d99b0a485ba6c1979bc942dbc8a5358
b73082219b4ffe9e4e52f31d6d6661b58621e2ef0c1a259332222f16b6d]]

Exhibit C

Jessen, Joshua A.

From: Jessen, Joshua A.
Sent: Tuesday, May 05, 2015 12:36 PM
To: 'Rudolph, David T.'; Sobol, Michael W.; 'dslade@cbplaw.com'; 'acarney@cbplaw.com'; 'hbates@cbplaw.com'; Diamand, Nicholas; Gardner, Melissa
Cc: Chorba, Christopher; Maute, Jeana Bisnar; Rogers, Ashley
Subject: RE: Campbell v. Facebook

OK.

Joshua A. Jessen

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
3161 Michelson Drive, Irvine, CA 92612-4412
Tel +1 949.451.4114 • Fax +1 949.475.4741
JJessen@gibsondunn.com • www.gibsondunn.com

From: Rudolph, David T. [<mailto:drudolph@lchb.com>]
Sent: Monday, May 04, 2015 7:01 PM
To: Jessen, Joshua A.; Sobol, Michael W.; 'dslade@cbplaw.com'; 'acarney@cbplaw.com'; 'hbates@cbplaw.com'; Diamand, Nicholas; Gardner, Melissa
Cc: Chorba, Christopher; Maute, Jeana Bisnar; Rogers, Ashley
Subject: RE: Campbell v. Facebook

Josh,

Thank you for forwarding the proposed joint section of the letter brief. We think Facebook's proposed schedule does not allow the parties sufficient time to respond to the other party's arguments, and propose the following schedule:

- **May 11, 5pm:** parties exchange each side's positions;
- **May 18, 5pm:** parties make revisions in light of the other sides arguments;
- **May 19:** joint letter is filed.

Please let us know whether Facebook agrees to this schedule.

Thanks.

**Lieff
Cabraser
Heimann &
Bernstein**
Attorneys at Law

David T. Rudolph
Of Counsel
drudolph@lchb.com
t 415.956.1000
f 415.956.1008
Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
www.lieffcabraser.com

From: Jessen, Joshua A. [<mailto:JJessen@gibsondunn.com>]
Sent: Friday, May 01, 2015 4:41 PM

To: Rudolph, David T.; Sobol, Michael W.; 'dslade@cbplaw.com'; 'acarney@cbplaw.com'; 'hbates@cbplaw.com';
Diamand, Nicholas; Gardner, Melissa
Cc: Chorba, Christopher; Maute, Jeana Bisnar; Rogers, Ashley
Subject: Campbell v. Facebook

Counsel –

Pursuant to Magistrate Judge James' Discovery Standing Order, we intend to seek full and complete responses to the following interrogatories by way of a joint, 5-page letter: Rogs 9-13 (Campbell), Rogs 9-11 (Shadpour), and Rogs 9-12 (Hurley).

We are attaching the proposed required joint section "setting forth the unresolved dispute, any pertinent factual background, and requested relief."

We propose exchanging each side's position one week from today (Friday, May 8) at 5 p.m., with each side then being permitted to make any revisions in light of the other side's arguments by 5 p.m. on Tuesday, May 12. The joint letter would then be filed on Wednesday, May 13.

Please let us know if this is agreeable.

Given the 5-page limit and the required background section, each side will have approximately 2 pages to make its arguments.

Finally, the fact that we are seeking relief on these interrogatories should not be interpreted to mean that we will not be seeking full and complete responses to our other interrogatories (for which we understand you are serving supplemental responses on May 4).

Thanks,

Josh
Joshua A. Jessen

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
3161 Michelson Drive, Irvine, CA 92612-4412 1881 Page Mill Road, Palo Alto, CA 94304-1211
Tel +1 949.451.4114 • Fax +1 949.475.4741 Tel + 650.849.5375
JJessen@gibsondunn.com • www.gibsondunn.com

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Exhibit D

Jessen, Joshua A.

From: Rudolph, David T. <drudolph@lchb.com>
Sent: Wednesday, June 03, 2015 4:56 PM
To: Jessen, Joshua A.
Cc: Sobol, Michael W.; Chorba, Christopher; Hank Bates (hbates@cbplaw.com)
Subject: RE: Campbell v. Facebook

Josh, the proposed schedule below is acceptable for this letter brief.

**Lieff
Cabraser
Heimann &
Bernstein**
Attorneys at Law

David T. Rudolph
Of Counsel
drudolph@lchb.com
t 415.956.1000
f 415.956.1008
Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
www.lieffcabraser.com

From: Jessen, Joshua A. [<mailto:JJessen@gibsondunn.com>]
Sent: Tuesday, June 02, 2015 1:00 PM
To: Rudolph, David T.
Cc: Sobol, Michael W.; Chorba, Christopher
Subject: Campbell v. Facebook

Hi David –

Following up on our meeting yesterday, we plan to ask Magistrate Judge James to order that Mr. Shadpour produce himself for deposition and respond to all outstanding discovery requests (including making a document production) by way of a joint, 5-page letter.

We are attaching the proposed required joint section “setting forth the unresolved dispute, any pertinent factual background, and requested relief.”

Following the timing of the schedule from the last letter brief, we propose the following schedule:

- **June 9, 5pm:** parties exchange positions;
- **June 16, 5pm:** parties make revisions in light of the other sides arguments;
- **June 17:** joint letter is filed.

Please let us know if this is agreeable.

Given the 5-page limit and the required background section, each side will have approximately 2 pages to make its arguments.

Best,

Josh
Joshua A. Jessen

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

3161 Michelson Drive, Irvine, CA 92612-4412

Tel +1 949.451.4114 • Fax +1 949.475.4741

JJessen@gibsondunn.com • www.gibsondunn.com

1881 Page Mill Road, Palo Alto, CA 94304-1211

Tel + 650.849.5375

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Exhibit E

Jessen, Joshua A.

From: Jessen, Joshua A.
Sent: Thursday, April 16, 2015 3:24 PM
To: Sobol, Michael W.; Rudolph, David T. (drudolph@lchb.com); Hank Bates (hbates@cbplaw.com); Allen Carney (acarney@cbplaw.com) (acarney@cbplaw.com)
Cc: Chorba, Christopher; Maute, Jeana Bisnar
Subject: Campbell v. Facebook -- Meet and Confer re Plaintiffs' Deposition Dates
Attachments: 101857061_1 (Campbell Depo. Notice - Shadpour).DOCX; 101857060_1 (Campbell Depo. Notice - Hurley).DOCX; 101857059_1 (Campbell Depo. Notice - Campbell).DOCX

Counsel –

We are attaching draft deposition notices for each of the named Plaintiffs. Pursuant to Civil Local Rule 30-1, we will confer with you regarding scheduling before finalizing and serving these notices.

We propose the following dates:

May 11 – Campbell
May 13 – Hurley
May 15 – Shadpour

If these dates don't work, please provide us with alternative dates during the first few weeks of May.

Thanks,

Joshua A. Jessen

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
3161 Michelson Drive, Irvine, CA 92612-4412 1881 Page Mill Road, Palo Alto, CA 94304-1211
Tel +1 949.451.4114 • Fax +1 949.475.4741 Tel + 650.849.5375
JJessen@gibsondunn.com • www.gibsondunn.com