

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

| | | |
|------------------------------|---|---------------------------------|
| LEADER TECHNOLOGIES, INC., a |) | |
| Delaware corporation, |) | |
| |) | Civil Action No. 08-862-JJF/LPS |
| Plaintiff-Counterdefendant, |) | |
| |) | |
| v. |) | |
| |) | |
| FACEBOOK, INC., |) | |
| a Delaware corporation, |) | |
| |) | |
| Defendant-Counterclaimant. |) | |

**NOTICE OF DEPOSITION AND SUBPOENA DIRECTED TO
KAREL BALOUN**

PLEASE TAKE NOTICE that, pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiff Leader Technologies, Inc. (“Leader”) has served the attached subpoena *ad testificandum* and *duces tecum* on Karel Baloun in the form appended hereto. Leader will take the deposition of Mr. Baloun as set forth in this notice. The deposition will be taken on January 27, 2010 beginning at 9:00 a.m., at King & Spalding LLP, 333 Twin Dolphin Drive, Suite 400, Redwood Shores, California, 94065, or at such other time and place as mutually agreed upon by the parties. The deposition will continue until completed as provided in the Federal Rules of Civil Procedure.

NOTICE IS FURTHER GIVEN that the deposition will be recorded stenographically and/or by videotape. You are invited to attend and cross-examine.

POTTER ANDERSON & CORROON LLP

OF COUNSEL:

Paul J. André
Lisa Kobialka
James Hannah
King & Spalding, LLP
333 Twin Dolphin Drive
Suite 400
Redwood Shores, California 94065-6109
(650) 590-7100

Dated: January 14, 2010
949590

By: /s/ Philip A. Rovner
Philip A. Rovner (#3215)
Hercules Plaza
P.O. Box 951
Wilmington, DE 19899
(302) 984-6000
provner@potteranderson.com

*Attorneys for Plaintiff
Leader Technologies, Inc.*

UNITED STATES DISTRICT COURT

for the

Northern District of California

LEADER TECHNOLOGIES, INC.

Plaintiff

v.

FACEBOOK, INC.

Defendant

Civil Action No. 08-862

(If the action is pending in another district, state where:

District of Delaware

SUBPOENA TO TESTIFY AT A DEPOSITION OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To: KAREL BALOUN 3314 WOODVIEW DRIVE, LAFAYETTE, CA 94549

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: Place (KING & SPALDING LLP, 333 TWIN DOLPHIN DR., STE 400, REDWOOD SHORES, CA 94065) and Date and Time (01/27/2010 09:00)

The deposition will be recorded by this method: STENOGRAPHICALLY AND/OR BY VIDEOTAPE

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

SEE ATTACHED SCHEDULE A

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 01/08/2010

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) PLAINTIFF LEADER TECHNOLOGIES, INC., who issues or requests this subpoena, are: JAMES HANNAH, ESQ., KING & SPALDING LLP, 333 TWIN DOLPHIN DR., STE 400 REDWOOD SHORES, CA 94065 (650) 590-0726

SCHEDULE A

Definitions

1. The terms "Plaintiff" and "Leader" shall mean Plaintiff Leader Technologies, Inc., its present and former directors, officers, employees, parent organization(s), subsidiary organization(s), predecessors in interests, successors in interest, divisions, servants, agents, attorneys, consultants, partners, associates, investigators, representatives, accountants, financial advisors, distributors and any other person acting on its behalf, pursuant to its authority or subject to its control.
2. The terms "Facebook," "The Facebook", and "Defendant" shall mean Defendant Facebook, Inc. ("Facebook"), its present and former directors, officers, employees, parent organization(s), subsidiary organization(s), predecessors in interests, successors in interests, divisions, servants, agents, attorneys, consultants, partners, associates, investigators, representatives, accountants, financial advisors, distributors and any other person acting on its behalf, pursuant to its authority or subject to its control.
3. The terms "you," or "your," shall mean the deponent.
4. The terms "person(s)" and "entit(y, ies)" shall mean, without limitation, any natural person, or association, firm, partnership, corporation or any other form of legal entity, unless the context indicates otherwise.
5. The terms "'761 Patent" and "Patent-in-Suit" shall mean United States Patent No. 7,139,761 entitled "Dynamic Association of Electronically Stored Information with Iterative Workflow Changes," the application leading to this patent and any related patent application, including any WIPO, EPO or other foreign counterpart application or patents, any continuations, continuations in part, divisionals, reissues, reexaminations, extensions or parents thereof.

6. The term "document" shall mean all "writings" and "recordings" as those terms are defined in Fed. R. Civ. P. 34(a) and Fed. R. Evid. 1001 as well as any writing or recording of any type, whether written, printed, transcribed, recorded (mechanically or electronically) or reproduced by hand, including, but not limited to, all letters, correspondence, facsimiles, e-mail, telegrams, transcriptions and records of telephone conversations, memoranda, notes, records, reports, statements, minutes, communications, slide presentations, microfilm, microfiche, tape recordings, videotapes, photographs, studies, policy manuals and statements, books, plans, analyses, computer records, computer log files, runs, programs, software and any code(s) necessary to comprehend the same, test results, notebooks, diaries, agreements, contracts, purchase orders, invoices, advertisements, marketing materials, offer letters, beta site testing agreements, third party or joint development agreements, bills, statements and any other written, printed, typed, recorded or graphic matter, however produced or recorded, including copies and drafts of same, and any handwritten or typewritten notes of any kind thereon or attached thereto. The term "document" shall also include all technical documents, defined as source code, specifications, schematics, flow charts, artwork, drawing, pictures, pictorial representations, formulas, troubleshooting guides, service bulletins, technical bulletins, production specification sheets, white papers, operator manuals, operation manuals, instruction manuals and all other documents sufficient to show the operation of any aspects or elements of your products which includes all past and present releases, revisions, versions and upgrades.

7. The term "communication" shall mean every manner or method of disclosure, transfer or exchange of information, whether orally or by document, and whether face to face, by telephone, mail, e-mail, facsimile, personal delivery or through another medium, including, but

not limited to, discussions, conversations, negotiations, conferences, meetings, speeches, memoranda, letters, correspondence, notes, statements or questions.

8. The terms “concerning” and “concern” mean constituting, relating to, mentioning, discussing, evidencing, involving, depicting, describing, listing, consisting of, forming the basis of, commenting on, supporting, analyzing, forwarding, demonstrating, referring to, connected with, relying upon or in any way related to the indicated person, entity, event, document or product.

9. The terms “relating to,” “relate to,” “refer to” and “referring to” mean referring to, alluding to, responding to, concerning, connected with, commenting on, in respect of, about, regarding, discussing, showing, identifying, describing, mentioning, reflecting, analyzing, comprising, constituting, evidencing, supporting, refuting, contradicting, memorializing, pertaining to, bearing upon or illuminating the subject matter into which inquiry is made.

10. The words “and” and “or” shall be construed conjunctively or disjunctively in a manner making the request inclusive rather than exclusive.

11. The singular of any word or phrase shall include the plural of such word or phrase, and the plural of any word or phrase shall include the singular of such word or phrase.

12. The term “all” shall mean “any and all” and the term “any” shall mean “any and all.”

Types of Documents

1. Any and all documents relating to your involvement in the development of Facebook.
2. Any and all documents relating to Mark Zuckerberg's involvement in the development Facebook.
3. Any and all documents relating to any business relationship between you and Mark Zuckerberg and/or Facebook.
4. Any and all communication between you and Mark Zuckerberg concerning the development of Facebook.
5. Any and all communication describing the Facebook source code and platform.
6. All source code relating to Facebook.
7. Any and all documents relating to the origins and/or development of Facebook.
8. Any and all documents relating to Leader, Michael McKibben, and/or the '761 patent.

| | | | | | |
|--|--|---|------------------------|--------------|-------------------------------|
| Attorney or Party without Attorney: KING & SPALDING 333 TWIN DOLPHIN DRIVE, SUITE 400 REDWOOD SHORES, CA 94065 Telephone No: 650-590-0700 FAX No: 650-590-1900 | | | For Court Use Only | | |
| Attorney for: Plaintiff | | Ref. No. or File No.: LEADER VS. FACEBOOK | | | |
| Insert name of Court, and Judicial District and Branch Court: United States District Court, Northern District Of California | | | | | |
| Plaintiff: LEADER TECHNOLOGIES, INC. Defendant: FACEBOOK, INC. | | | | | |
| PROOF OF SERVICE SUBPOENA TO TESTIFY | | Hearing Date: Wed, Jan. 27, 2010 | Time: 9:00AM | Dep/Div: | Case Number: 08-862 |

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the SUBPOENA TO TESTIFY AT A DEPOSITION OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION:
SCHEDULE A DEFINITIONS
3. a. Party served: **KAREL BALOUN**
4. Address where the party was served: **3314 WOODVIEW DRIVE
LAFAYETTE, CA 94549**
5. I served the party:
 - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on: Sat., Jan. 09, 2010 (2) at: 11:33AM
 - b. I received this subpoena for service on: **Friday, January 08, 2010**

6. Witness fees were offered or demanded, and paid: **\$86.00**

7. Person Who Served Papers:
a. **SCOTT KING**



1541 Bayshore Hwy. GENERAL@AALEGALSERVICE.COM
 Burlingame, CA 94010-1602 Fax (650) 697-4640
 (650) 697-9431

Recoverable Cost Per CCP 1033.5(a)(4)(B)

- d. The Fee for Service was:
- e. I am: (3) registered California process server
 - (i) Independent Contractor
 - (ii) Registration No.: **533**
 - (iii) County: **Contra Costa**

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: Tue, Jan. 12, 2010

[Handwritten Signature]

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CERTIFICATE OF SERVICE

I, Philip A. Rovner, hereby certify that on January 14, 2010, the within document was filed with the Clerk of the Court using CM/ECF which will send notification of such filing(s) to the following; that the document was served on the following counsel as indicated; and that the document is available for viewing and downloading from CM/ECF.

BY CM-ECF

Thomas P. Preston, Esq.
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