

AO 88A (Rev. 06/09) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT
for the
NORTHERN DISTRICT OF CALIFORNIA

LEADER TECHNOLOGIES, INC.,
a Delaware corporation
Plaintiff
v.
FACEBOOK, INC.
a Delaware corporation
Defendant
Civil Action No. 1:08-CV-00862-JJF
(If the action is pending in another district, state where:
District of Delaware)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:
Ackrell Capital LLC
38 Keys Avenue, Suite 200
San Francisco, CA 94129

[X] 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:
See Exhibit A

Table with 2 columns: Place (Cooley Godward Kronish LLP, 101 California Street, 5th Floor, San Francisco, CA 94111) and Date and Time (January 14, 2010, 10:00 a.m.)

The deposition will be recorded by this method: Stenographic means, may also include videotape and through the instant visual display of the testimony (i.e., LiveNote)

[] 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:

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.

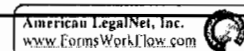
Date: December 30, 2009
CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR
[Signature]
Attorney's signature
Elizabeth L. Stameshkin

The name, address, e-mail, and telephone number of the attorney representing (name of party) Facebook, Inc., who issues or requests this subpoena, are:

Elizabeth L. Stameshkin, lstameshkin@cooley.com
101 California Street, 5th Floor, San Francisco, CA 94111
(415) 693-2151



Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____; or

I returned the subpoena unexecuted because _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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).

EXHIBIT A TO SUBPOENA TO ACKRELL CAPITAL LLC

I. DEFINITIONS AND INSTRUCTIONS

A. "You" shall mean ACKRELL CAPITAL LLC and any and all past or present officers, directors, partner, employees, divisions, predecessors, parents, subsidiaries, agents, representatives or other persons or entities acting or purporting to act for, or on behalf of ACKRELL CAPITAL LLC.

B. "Documents" means all writings, recordings, and photographs, including the original, all drafts, and any and each copy bearing notations or marks not found on the original or draft, of any written, recorded or graphic matter, however produced or reproduced, including, but not limited to, any typed or printed matter, microfilm, photographs, maps, correspondence, electronic correspondence, letters, interoffice communications, diaries, calendars, memoranda insurance policies, contracts, checks, statements of account, receipts, summaries, notes, papers, files, books, records, telegrams, messages, reports, tables, graphs, computer printouts, tape recordings, charts, logs, ledgers, surveys, blue prints, engineering or architectural drawings or diagrams, studies, manuals, consultants' or experts' reports, resumes, exhibits, notices, instructions, minutes, purchase orders, financial records, accounting records, tax records, county or tax worksheets, magnetic tapes, and any other data compilations from which the information can be obtained or translated. The term "Documents" also includes all electronic media on which responsive information is stored or recorded, including, but not limited to, all computer databases, indexes, and e-mails.

C. "Communication" means any contact, oral or documentary, formal or informal, at any place or under any circumstances whatsoever whereby information of any nature is transmitted or transferred, including, without limitation, a single person seeing or hearing any information by any means.

D. "Person" means any natural person.

E. "Entity" means any business, legal, or governmental entity or association or any other cognizable entity, including, without limitation, companies, corporations, proprietorships, partnerships, joint ventures, common interest groups, consortia, clubs, associations, foundations, endeavors, ventures, firms, concerns, organizations, institutes, enterprises, alliances, government agencies or instrumentalities, and societies.

F. "November 23, 2009 Subpoena" means the subpoena for production of documents issued to You on November 23, 2009 in the lawsuit styled *Leader Technologies, Inc. v. Facebook, Inc.*, Case No. 08-862-JJF (D. Del.).

G. Defendant Facebook, Inc., by and through its counsel, will take the deposition upon oral examination pursuant to Rules 30(b)(6) and 45 of the Federal Rules of Civil Procedure and as directed in the United States District Court subpoena attached hereto. The deposition will be conducted before an officer authorized by law to administer oaths and will be recorded by stenographic and video means. The deposition will proceed from day to day, weekends and federal holidays excluded, until completed. Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, You shall designate one or more knowledgeable officers, directors, or managing agents, or other persons who consent to testify on Your behalf, concerning the Deposition Topics listed below. Your designee(s) shall be capable of authenticating or identifying all Documents produced in response to the November 23, 2009 Subpoena pursuant to Federal Rule of Evidence 901.

H. Pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, You will be under a duty to supplement or correct Your disclosure or response if: (i) You learn that the information You disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the party issuing the subpoena during the discovery process or in writing or (ii) if ordered by the Court.

II. DEPOSITION TOPICS

1. Any Communications between You and Leader Technologies, Inc. and/or Michael McKibben and/or James Sobwick and/or Computer Wizards Consulting Inc. and/or

anyone acting on Leader Technologies, Inc.'s or Michael McKibben's or James Sobwick's or Computer Wizards Consulting Inc.'s behalf.

2. Any Communications between You and Leader Technologies, Inc. and/or Michael McKibben and/or James Sobwick and/or Computer Wizards Consulting Inc. and/or anyone acting on Leader Technologies, Inc.'s or Michael McKibben's or James Sobwick's or Computer Wizards Consulting Inc.'s behalf relating to, referring to, or regarding Facebook, Inc.

3. Any Communications between You and any other entity regarding Leader Technologies, Inc. and/or Michael McKibben and/or James Sobwick and/or Computer Wizards Consulting Inc. and/or anyone acting on Leader Technologies, Inc.'s or Michael McKibben's or James Sobwick's or Computer Wizards Consulting Inc.'s behalf.

4. U.S. Patent No. 7,139,761 and/or any litigation considered or commenced involving U.S. Patent No. 7,139,761, and related Communications between you and any other person or entity.

5. Any actual or purported prior art to U.S. Patent No. 7,139,761, including all patents, publications, written descriptions, products or other prior art.

6. The validity and/or invalidity of U.S. Patent No. 7,139,761, and related Communications between You and any other person or entity.

7. Any alleged infringement by any person or entity of U.S. Patent No. 7,139,761, including, but not limited to, any infringement analyses.

8. The identity of any persons or entities alleged by Leader Technologies, Inc., Michael McKibben, James Sobwick or You to infringe U.S. Patent No. 7,139,761.

9. Any contemplated litigation for infringement of U.S. Patent No. 7,139,761 against Facebook, Inc. and/or the website available at facebook.com, including, but not limited to, any infringement analyses or damages estimates, and related Communications between You and any other person or entity.

10. Any acquisition, assignment, or encumbrance of any right by You in U.S. Patent No. 7,139,761.

11. Any license(s) granted under U.S. Patent No. 7,139,761 and/or offers to grant a license under said patent, including but not limited to any license fees obtained in connection with said patent.

12. Any requested, actual or potential investment by You in Leader Technologies, Inc., and related Communications between You and any other person or entity.

13. Any reason You did or did not invest in Leader Technologies, Inc., and related Communications between You and any other person or entity.

14. Any funding for litigation involving U.S. Patent No. 7,139,761.

15. Any proposed, potential, or actual agreements or contracts between You and Leader Technologies, Inc., including but not limited to negotiations, offers to contract, side letters or side agreements, bids, proposals, purchase orders, draft or final agreements, and related Communications.

16. The Documents produced in response to the November 23, 2009 Subpoena, including authentication from an authorized custodian of records.

17. The steps taken by You to search for, collect, identify, and produce all Documents responsive to the November 23, 2009 Subpoena.

18. Any policy You have in place regarding retention of documents.