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March 9, 2010

**BY E-FILE AND HAND DELIVERY**

**PUBLIC VERSION  
MARCH 16, 2010**

The Honorable Leonard P. Stark  
U.S. District Court for the District of Delaware  
Wilmington, DE 19801-3556

Re: Leader Technologies, Inc. v. Facebook, Inc., C. A. No. 08-862-JJP(LPS)

Dear Judge Stark:

Leader Technologies, Inc. ("Leader") respectfully requests the Court to order Facebook to provide a complete production of technical documents.<sup>1</sup> To date, Facebook has only provided a "snap shot" of its technical documentation regarding the Facebook Website.

**REDACTED**

Additionally, Facebook has failed to produce the technical documentation listed in Exhibit A, attached hereto. Leader only learned of these deficiencies in Facebook's document production after taking several depositions of Facebook's current and former employees.

**Facebook's Refusal to Supplement Its Document Production**

Last fall, other than source code, Facebook produced a total of 398 pages of non-public technical documents.

**REDACTED**

When Leader asked Facebook to produce updated copies of these documents, as well as all revision history documents<sup>2</sup> that appear to be missing, Facebook flatly refused. See Ex. D.

<sup>1</sup> Exhibits B-F are various correspondences illustrating the parties' meet and confer efforts which are in addition to several in-person meet and confers, the last of which lasted approximately two hours on March 8, 2010.

<sup>2</sup>

**REDACTED**

Facebook's refusal to produce these various versions of specific technical documents is highly prejudicial to Leader for several reasons. As a preliminary matter, Leader apparently only has outdated technical documents and incomplete technical information regarding the Facebook Website, the accused product. Leader is entitled to have the most up to date information regarding the accused product and information regarding changes since the issuance of the asserted patent in 2006, in order to present Leader's infringement case to the Court and jury. Furthermore, the technical documentation is written in English. Source code, on the other hand, is written in programming language that an average jury is not likely to be able to read, interpret and understand. When determining the issue of infringement, Leader needs to be able to give the jury documents written in English describing the functionality of the Facebook Website, supported by the source code. Also, it is unlikely that the jury is going to be provided with a copy of the source code to review for its deliberations. Thus, Facebook's failure to produce this relevant technical information has the potential to severely prejudice Leader's ability to present its infringement case against Facebook at trial.

Furthermore, purposely withholding such information, which Facebook admits is relevant as it has already produced versions of the same information regarding the accused product, is a violation of the Court's September 4, 2009 Order to produce all relevant technical documentation, as well as a failure to comply with Facebook's ongoing obligation to supplement its discovery under Rule 26(e) of the FRCP. Accordingly, Facebook should be compelled to produce the updated versions and the revision history of its technical documents.

#### REDACTE D

This search must be not just of the title of the documents, but should include the body and text of such documents and include all versions of such documents. Leader believes that such a search and production of documents will yield the technical documentation that should have been produced in the first place.<sup>3</sup>

#### Facebook's Refusal to Produce Relevant Technical Documents Identified During Deposition

On September 4, 2009, the Court ordered that "Facebook shall provide Leader with *all* such relevant technical documents no later than September 29, 2009." Because Leader was concerned that Facebook's production of 398 pages of technical documents was incomplete, Leader brought a motion to compel all responsive technical documents pursuant to the Court's Order. During the briefing before the Court, Facebook "repeatedly assured LTI that it has *everything relevant* that a diligent search yielded." See D.I. 134 (Facebook's 10/22/09 Letter to the Court). Based on Facebook's representations, the Court denied Leader's motion to compel for additional technical documents basing its ruling on "repeated representations from Facebook that they have provided the responsive technical documents." See 10/23/09 Hearing Transcript at 18:7-18. However, the Court also stated that, "[i]f you find there is more, that would show that Facebook did not comply with its discovery obligations, they are going to have to produce them then, and maybe you will be moving for sanctions." *Id.*

Now, several former and current Facebook employees have testified that Facebook's representations to the Court were indeed false. The specific documents which have been identified by Facebook's former and current employees that have not been produced are listed in

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<sup>3</sup> Leader originally served discovery requests, asking for documents relating to certain features on the Facebook Website, such as Photos, Groups and Events. During meet and confer discussions, Facebook represented that they did not know what these feature names referred to and requested Leader to identify source code modules that Facebook should search for technical documents.

#### REDACTED

Such gamesmanship during discovery was intended to divert Leader away from the obtaining the appropriate discovery.

Exhibit A. While Facebook is still contemplating whether it will produce these documents,<sup>4</sup> Leader believes that all of these documents should have been produced much earlier in this case because they are subject to the Court's September 4, 2009 Order requiring the production of "all relevant technical documents." Indeed, Leader did not have the benefit of these documents during the deposition discovery it has taken.

REDACTED

For the same reasons discussed above, Facebook's failure to produce these documents is prejudicial to Leader. The very purpose of these documents is to teach engineers and lay persons how the Facebook website operates at a high level. Unlike source code, these documents will be marked as exhibits during trial and allowed back with a jury during deliberations. By allowing Facebook to forego its discovery obligations, Leader will be unfairly prejudiced by not being able to use these highly relevant documents during trial.

Facebook apparently believes it is entitled to withhold these documents solely because it has produced two snapshots of its source code. However, Facebook's position is contrary to at least one case in which the Court recognized that the production of source code does not forego a Defendant's obligation to produce technical documents.<sup>5</sup> The reason is simple; source code is not written in plain English. While source code is highly relevant to a technical expert's evaluation of an accused product, it does little to help a jury understand the function of the product. To aid the jury, documents written in plain English must be presented and entered into evidence. Otherwise, the jury is left with two competing experts. In short, without the production of technical documents, Leader's presentation of its case to the jury is significantly and unjustly hindered.

During a recent meet and confer, Facebook took the position that the Court's Order eliminated its obligations to respond to Leader's Request for Production.

REDACTED

Facebook's position is contrary to the Court's Order which unambiguously requires the production of "all relevant technical documents" and nothing in the Court's Order relieves Facebook's obligation to comply with the FRCP.

Accordingly, Leader requests an order compelling Facebook to produce all responsive documents within 7 days and an award of sanctions for its repeated failure to produce documents.

<sup>4</sup> Leader has met and conferred with Facebook several times regarding the documents listed in Exhibit A. To date, it is not clear which, if any, of the documents listed in Exhibit A Facebook will produce.

<sup>5</sup> Facebook has complained that several of the categories of documents are too vague. However, Facebook's assertion is belied by the fact that each of the categories of documents was specifically discussed in the deposition of its former and current employees. Furthermore, these documents are responsive to Leader's Request for Production Nos. 4-8, 18, 23-31, 33-43, 54-59 and 64-65. In particular, Leader's Request for Production No. 26 explicitly requests "specifications, presentations, schematics" and "pictorial representations."

<sup>6</sup> See *McKesson Info. Solutions LLC v. Epic Sys. Corp.*, 495 F.Supp.2d 1329, 1334 (N.D. Ga. 2007)(holding "because the source code alone is not sufficient to reasonably show the operation of the MyChart@ software, something more is required to be produced...").

The Honorable Leonard P. Stark  
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Respectfully,

*/s/ Philip A. Rovner*

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PAR /mes/956389

Enc.

cc: Steven L. Caponi, Esq. – By E-File and E-mail  
Heidi L. Keefe, Esq. – By E-mail  
Paul J. Andre, Esq. – By E-mail

# Exhibit A

**THIS EXHIBIT HAS BEEN  
REDACTED IN ITS ENTIRETY**

# Exhibit A-1

**THIS EXHIBIT HAS BEEN  
REDACTED IN ITS ENTIRETY**



# Exhibit A-2

**THIS EXHIBIT HAS BEEN  
REDACTED IN ITS ENTIRETY**

# Exhibit A-3

**THIS EXHIBIT HAS BEEN  
REDACTED IN ITS ENTIRETY**

# Exhibit A-4

**THIS EXHIBIT HAS BEEN  
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# Exhibit B

**THIS EXHIBIT HAS BEEN  
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# Exhibit C

**THIS EXHIBIT HAS BEEN  
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# Exhibit D

**THIS EXHIBIT HAS BEEN  
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# Exhibit E

**THIS EXHIBIT HAS BEEN  
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# Exhibit F

**THIS EXHIBIT HAS BEEN  
REDACTED IN ITS ENTIRETY**