

# Exhibit 6

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

# Exhibit 7



**Chat (1)**

**Events**  
1 past event [See All](#)

Facebook Developer Garage  
Palo...  
Aquarius Theater  
Thursday, May 29 at 4:30pm

**Favorite Pages**  
6 of 11 Pages [See All](#)

Create a Page for My Business

Report Page

Share

Facebook Platform [Like](#)

[Wall](#) [Info](#) [f8 Live](#) [Blog](#) [Video](#) [Photos](#)

Facebook Platform + Others Facebook Platform Just Others



**Facebook Platform** Mark Zuckerberg on the new privacy controls



**Mark Zuckerberg on 'Making Control Simple' [HD]**

Facebook founder and CEO Mark Zuckerberg discusses changes to make privacy controls simpler to use. Read more details in his blog at <http://blog.facebook.com/blog.php?post=391922327130>.

Length: 3:17

Yesterday at 12:26pm · Share

75 people like this.

[View all 30 comments](#)



**Hadley King** add please  
4 hours ago · Flag



**Abdelkader Hechachna** بسم الله الرحمن الرحيم  
يسر مندوب أكاديمية الفرحة لعلوم الأسرة البريطانية عن متعة  
المعرب العربي الكبير عبد القادر حشاشنة أن يدعوكم للمشاركة في  
التراسة عبر الإنترنت أو بالمراسلة في تخصص علوم الأسرة و  
للحصول على تحفيضي  
لا تنسى طلب حسم عبد القادر من الإدارة مباشرة

...أكاديمية الفرحة لعلوم الأسرة الإماراتية البريطانية بأقسامها الثلاث

See More  
4 hours ago · Flag



**Facebook Platform** You can read the latest on today's privacy announcements here:

Create an Ad

Give a Gift



The "Princess Tiara" gift is available now in the Gift Shop.

More Ads

Chat (1)



facebook  
scribd.com  
Scribd is a way to easily put your documents online.

Yesterday at 11:37am · Share

81 people like this.

View all 13 comments



**Pander Bear** @Cody come with me if you want to live  
Yesterday at 3:15pm · Flag



**DrPeter** Veniez Subject: Bring DISABLED ACCOUNTS back & STOP RANDOM ACCOUNT Closures!

1) DrPeter Veniez account,  
drveniez@cpmdq.com,  
facebook\_uid:1397244598...

See More  
Yesterday at 8:31pm · Flag



### Facebook Platform

#### Building Simplified Platform Experiences for Users

We announced a redesign of our Privacy Settings page today to make it simpler for people to control how public or private they want to be through Facebook. These changes, along with the updates we released at f8, give your users better visibility and choice when they authorize y

source: Official Facebook Developer Blog  
link: Full Article...

Yesterday at 11:19am via NetworkedBlogs · Share

45 people like this.

View all 7 comments



**DrPeter** Veniez Subject: Bring DISABLED ACCOUNTS back & STOP RANDOM ACCOUNT Closures!

1) DrPeter Veniez account,  
drveniez@cpmdq.com,  
facebook\_uid:1397244598...

See More  
Yesterday at 8:37pm · Flag



**Wilda Naysyilla** Full ngomong pa cih gx ngerb?  
7 hours ago · Flag



### Facebook Platform

#### Developer Blog Images



Yesterday at 10:53am · Share

51 people like this.

View all 21 comments



**Conny Tengqvist** More to come ;)  
Yesterday at 1:10pm · Flag



**DrPeter** Veniez Subject: Bring DISABLED ACCOUNTS back & STOP RANDOM ACCOUNT Closures!

1) DrPeter Veniez account,  
drveniez@cpmdq.com,  
facebook\_uid:1397244598...

See More  
Yesterday at 8:31pm · Flag



### Facebook Platform

Wondering if you should add the Like button to your site? Check out these tips from Search Engine Land:

**How To Put The Facebook "Like" Button On A Site**  
seind.com

Last month, Facebook dropped the news about their "Open Graph" or new Facebook Platform that brings content into Facebook - and of course expands

Tuesday at 6:51pm · Share

Chat (1)

77 people like this.

View all 16 comments



**DrPeter** Veniez Subject: Bring DISABLED ACCOUNTS back & STOP RANDOM ACCOUNT Closures!

1) DrPeter Veniez account, drveniez@cpmdq.com, facebook\_uid:1397244598...

See More Yesterday at 8:36pm · Flag



**Babette Herschler** I would love un unlike button AND PLEASE close this group NOW [http://www.facebook.com/home.php?sk=if#/group.php?g\\_id=119761284727895](http://www.facebook.com/home.php?sk=if#/group.php?g_id=119761284727895) 10 hours ago · Flag



**Facebook Platform** Congratulations to fbFund company NutshellMail, which was acquired by Constant Contact today!



**Email Marketer Constant Contact Acquires NutshellMail** [www.insidefacebook.com](http://www.insidefacebook.com)

Email marketing first: Constant Contact announced today that it had acquired NutshellMail, an fbFund REV company, which created condensed email alerts from social networks for users.

Monday at 11:41am · Share

53 people like this.

View all 44 comments



**Facebook Platform** We're enjoying seeing more and more iPad apps integrated with Facebook. Emoti, the app that lets you create emoticons for Facebook status updates, is one of the latest to launch.



**Emoti HD for iPhone, iPod touch, and iPad on the iTunes App Store**

[itunes.apple.com](http://itunes.apple.com)

Learn more, read reviews, and download Emoti HD by nodconcept, LLC. on the iTunes App Store.

May 21 at 1:59pm · Share

82 people like this.

View all 12 comments



**Yasmeli Pemaleta** piiiiiiiiiii si imbentan mariquera Yesterday at 7:03pm · Flag



**DrPeter** Veniez Subject: Bring DISABLED ACCOUNTS back & STOP RANDOM ACCOUNT Closures!

1) DrPeter Veniez account, drveniez@cpmdq.com, facebook\_uid:1397244598...

See More Yesterday at 8:31pm · Flag



**Facebook Platform** Bizarre Creations announced today that racing game Blur will be integrated with Facebook. Which console game would you like to see integrated with Facebook?



**Blur(TM) Features Innovative In-Game Facebook(R) Integration -- SANTA MONICA, Calif., May 21 /PRNews** [www.prnewswire.com](http://www.prnewswire.com)

Blur(TM) Features Innovative In-Game Facebook(R) Integration. Bizarre Creations' Powered-up Racer Allows Players to Connect with Friends Through Facebook Straight from the Game's Unique 'Share' Functionality.

May 21 at 10:57am · Share

50 people like this.

View all 27 comments



**Ben Miller** Ich wuette garnicht, dass Du eine Matle In der Wanne hast.

Chat (1)

Monday at 11:01am · Flag



**DrPeter** **Venez** Subject: Bring DISABLED ACCOUNTS back & STOP RANDOM ACCOUNT Closures!

1) DrPeter Venez account, driveniez@cpmdq.com, facebook\_uid:1397244598...

See More  
Yesterday at 8:36pm · Flag



**Facebook Platform** We "like" Eminem's use of the Like button for his new single "Not Afraid" — close to 110,000 likes on a single object! Check it out.



**Not Afraid**  
bit.ly

May 20 at 3:35pm · Share

147 people like this.

View all 22 comments



**Ali Abraham** education technology from 1965 to now we have great sciencs on the world technically put from 1999 to technology very great know of the history put crsis hey economy put any the speaking on technology all joined by technology real more thing production technology many maybe joined economy world put technology is very exceland ...

See More  
Yesterday at 8:43am · Flag



**DrPeter** **Venez** Subject: Bring DISABLED ACCOUNTS back & STOP RANDOM ACCOUNT Closures!

1) DrPeter Venez account, driveniez@cpmdq.com, facebook\_uid:1397244598...

See More  
Yesterday at 8:36pm · Flag



**Facebook Platform**



**Facebook Developer News May 19, 2010**

We're excited to announce some new features we've released recently: the ability to get your stream stories translated and programmatically control migrations and block users on Facebook Pages. Getting Your Stream Stories Translated We've heard many requests for this and are ha source: Official Facebook Developer Blog link: Full Article...

May 19 at 9:19pm via NetworkedBlogs · Share

56 people like this.

View all 43 comments



**Facebook Platform**



**After f8: Personalized Social Plugins Now on 100,000+ Sites**

Facebook Platform's tools enable you to capture the power of the social graph. On Facebook, we've seen how much more people engage with different content — such as photos, events, and games — when their friends are involved. Now, our social plugins offer you a toolkit of social source: Official Facebook Developer Blog link: Full Article...

May 11 at 9:42am via NetworkedBlogs · Share

76 people like this.

View all 51 comments



**Facebook Platform**

**How to use the new Facebook social plugins for your business**

The latest social tools — including the Like button, Recommendations and Activity Feed — from Facebook enable you to make your site more personalized for visitors with just a few lines of code. Within the first week of availability, more than 50,000 sites have added social plugins. ...

May 4 at 12:30pm · Share



Chat (1)

112 people like this.

View all 40 comments



**Facebook Platform**



**After f8: Implementing the Open Graph Protocol around the Web**  
We shared an update last week about the products launched at f8 and that over 50,000 websites have already implemented the new social plugins to become more personalized. We created the Open Graph protocol in support of social plugins as part of our efforts to help realize the v  
source: Official Facebook Developer Blog  
link: Full Article...

May 3 at 4:15pm via NetworkedBlogs · Share

80 people like this.

View all 23 comments



**Natasha Aslam** I agree with Syeda. STOP this racist action or All of us will leave facebook!  
May 16 at 11:24pm · Flag



**Banu Aşık** Yerli Yabancı En Popüler Klip ve Parçaların Doğru Adresindediniz.Peki Ya Sayfamızın Hayranı Olup Müzik Keyfini Bizimle Yaşamaya Ne Dersiniz? =>  
<http://www.facebook.com/muzikshop>  
May 20 at 1:02am · Flag



**Facebook Platform**



**Improving the Platform Experience and Policy Transparency**  
As stewards of the rapidly growing Facebook Platform, we're committed to creating an ecosystem that developers find compelling and encourages them to build engaging applications. We believe a strong user experience — that's both appealing and trustworthy — is an integral part of  
source: Official Facebook Developer Blog  
link: Full Article...

April 30 at 6:07pm via NetworkedBlogs · Share

58 people like this.

View all 33 comments

Older Posts

# Exhibit 8

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

# Exhibit 9

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

# Exhibit 10

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES, )  
INC., )  
 )  
Plaintiff, )  
 ) C.A. No. 08-862-JJF-LPS  
v. )  
 )  
FACEBOOK, INC., a )  
Delaware corporation, )  
 )  
Defendant. )

April 9, 2010  
3:03 p.m.  
Teleconference

BEFORE: THE HONORABLE LEONARD P. STARK  
United States District Court Magistrate

APPEARANCES:

POTTER, ANDERSON & CORROON, LLP  
BY: JONATHAN A. CHOA, ESQ.

-and-

KING & SPALDING, LLP  
BY: PAUL ANDRE, ESQ.  
BY: LISA KOBIALKA, ESQ.

Counsel for Plaintiff

1                   So the documents that we could  
2 identify that would show that there was a  
3 demonstration of the Leader to Leader product,  
4 we could probably get that done in a matter of a  
5 few days.

6                   And these documents they've had  
7 for at least eight months and in many cases over  
8 a year. And once again, this is an unasserted  
9 claim that they're talking about. This is not  
10 our burden here.

11                   This is something that they have  
12 never alleged. They talk about the Ohio Police  
13 Department.

14                   The reason they know about the  
15 Ohio Police Department is because we provided  
16 the underlying document, which we said, We're  
17 going to give a demonstration to the Ohio Police  
18 Department on this day. They have that already  
19 and they've had that for eight months to a year.

20                   THE COURT: All right. Well,  
21 here's what we're going to do. This is  
22 definitely a messy situation.

23                   What we're going to do is I'm  
24 ordering -- first off, I'm denying the request



1 to exclude all of these late produced NDAs. I  
2 don't see a basis today to act so broadly and  
3 say that they are excluded from any use in the  
4 remainder of this case.

5 But I am going to direct and am  
6 hereby directing that Leader produce to Facebook  
7 by the end of the day Tuesday information or  
8 evidence sufficient to identify and to establish  
9 the back up, I guess, the representation that  
10 Mr. Andre has made here that out of the 2,338  
11 recently produced non-disclosure agreements, no  
12 more than something on the order of 12 of them  
13 relate to a display or demonstration of the  
14 technology.

15 I'm also ordering that if Facebook  
16 wants to take an additional deposition of  
17 Mr. McKibben with respect to the recently  
18 produced NDAs, they are permitted to do that.  
19 And they may want to wait until after they get  
20 this further information on Tuesday.

21 Finally, I'm ordering that if  
22 Facebook is going to attempt to assert as a  
23 defense the basis of a public display, or  
24 demonstration or on-sale bar, they should

1 supplement their interrogatory responses to make  
2 that assertion clear. And they should do that  
3 within ten days of today if they are going to do  
4 that.

5 Beyond that, I'm going to hope  
6 that the parties can work out the remainder of  
7 what to do about this issue. And if not, then  
8 you'll bring it back to me.

9 Let me move on to the final issue  
10 which has to do with the aerata sheet in  
11 relation to a deposition of Mr. Jeffrey Lamb.  
12 Let me hear from Facebook on that, please.

13 MR. CAPONI: Your Honor, Steve  
14 Caponi. I'm going to handle this argument.

15 The issue, Your Honor, is pretty  
16 straight forward. Mr. Lamb was a co-inventor,  
17 one of the inventors on the technology at issue  
18 here.

19 And one of the core issues in this  
20 case is LTI, its effort to have the patent  
21 relate back to the provisional application. And  
22 as Your Honor knows, one of the touchstones of  
23 that is you've got to make sure that everything  
24 that's in your -- the issued patent can be found

1 deposition should be ordered.

2 Your Honor has jurisdiction over  
3 Mr. Andre and his firm. They were admitted pro  
4 hac in that case. That is why in Delaware cases  
5 lawyers that participate in depositions need to  
6 be pro haced in Delaware, so this Court can  
7 control the counsel and the conduct of those  
8 depositions.

9 And here, if, you know, even if we  
10 take the most favorable light, look at the most  
11 favorable light, if Mr. Lamb made a substantive  
12 change, we clearly should have another  
13 opportunity to depose him if the change is  
14 permitted. And it should not be done at  
15 Facebook's expense.

16 THE COURT: Okay.

17 MR. CAPONI: Thank you, Your  
18 Honor.

19 THE COURT: All right. Thank you,  
20 counsel.

21 On this one, I am not going to  
22 strike the errata sheet. I think that -- well,  
23 first, let me say our review of the errata sheet  
24 makes it appear to us that the changes are not

1 substantive and are more in the nature of  
2 clarifying.

3 So it seems that even under the  
4 Delaware standard and the Delaware cases that  
5 have been cited, it looks to us like these  
6 changes are merely clarifying and it would be  
7 appropriate.

8 With that said, I certainly  
9 understand the desire to take a further limited  
10 deposition of Mr. Lamb to understand that they  
11 are clarifying and not substantive. But I am  
12 not clear, as I sit here, whether, in fact, I  
13 have the authority, the jurisdictional authority  
14 or otherwise to order a nonparty resident of  
15 another state to appear for a further  
16 deposition.

17 So I'm not, at this point,  
18 ordering that Mr. Lamb be produced for a further  
19 deposition. If relief to that effect is sought  
20 in the Southern District of Ohio, certainly I  
21 have no problem with that Court being advised  
22 that I think it would be appropriate that he sit  
23 for an additional deposition to explain further  
24 the basis for the clarifications on the errata

1 State of Delaware )  
2 New Castle County )

3

4

5

CERTIFICATE OF REPORTER

6

7

I, Heather M. Triozzi, Registered

8

Professional Reporter, Certified Shorthand Reporter,

9

and Notary Public, do hereby certify that the

10

foregoing record, Pages 1 to 54 inclusive, is a true

11

and accurate transcript of my stenographic notes

12

taken on April 9, 2010, in the above-captioned

13

matter.

14

15

IN WITNESS WHEREOF, I have hereunto set my

16

hand and seal this 13th day of April, 2010, at

17

Wilmington.

18

19

20

21

\_\_\_\_\_  
Heather M. Triozzi, RPR, CSR  
Cert. No. 184-PS

22

23

24

# Exhibit 11

UNITED STATES DISTRICT COURT
for the
Northern District of Ohio

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

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:
Jeffrey R. Lamb
5012 Baycroft Drive
Hilliard, OH 43026-7108

[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:

Table with 2 columns: Place (McGinnes & Associates, 5701 N. High Street, 3rd Floor, Columbus, OH 43085) and Date and Time (May 12, 2010 at 9:00 a.m.)

The deposition will be recorded by this method: Stenographic means; may also include videotape and 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: April 23, 2010

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Handwritten signature of Elizabeth Stameshkin

Attorney's signature

Elizabeth Stameshkin

The name, address, e-mail, and telephone number of the attorney representing (name of party) Facebook, Inc. Elizabeth Stameshkin, Cooley LLP, 3000 El Camino Real, 5 Palo Alto Square, Palo Alto, CA 94306, mkeyes@cooley.com, (650) 843-5000, who issues or requests this subpoena, are:

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).



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES, INC., a Delaware corporation,	)	
	)	
Plaintiff,	)	C. A. No. 08-862-JJF
	)	
v.	)	
	)	
FACEBOOK, INC., a Delaware corporation,	)	
	)	
Defendant.	)	

**STIPULATED PROTECTIVE ORDER**

WHEREAS, discovery in the above entitled litigation may involve the disclosure of confidential trade secret, technical know-how, or other confidential or proprietary research, development, commercial, personal, financial information or information furnished in confidence by a third party (hereinafter individually and collectively referred to as "confidential material") relating to the subject matter of this litigation, regardless of how generated;

WHEREAS, the parties desire to limit the extent of disclosure and use of such confidential material, and to protect such confidential material from unauthorized use and further disclosure, and wish to insure that no advantage is gained by any party through the use of such confidential material which could not have been learned without the discovery in this litigation.

NOW, THEREFORE, HAVING BEEN STIPULATED AND AGREED by and between the parties, through their respective counsel, subject to the approval of the Court, the parties request that the following Protective Order pursuant to Fed. R. Civ. P. 26(c) be entered,

**IT IS HEREBY ORDERED THAT:**

1. This Protective Order shall apply to all information, documents, electronic documents, electronically stored information, things, exhibits, discovery responses and testimony designated in good faith as constituting or containing confidential material by parties and non-parties in this litigation. Any confidential material produced by a party or non-party in this litigation may be designated by such party or non-party as (1) CONFIDENTIAL, (2) HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY, or (3) HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE under the terms of this Protective Order.

2. For the purposes of this Protective Order, confidential material designated as CONFIDENTIAL shall be information or tangible things that the producing party believes in good faith qualifies for protection under standards developed under Rule 26(c) of the Federal Rules of Civil Procedure as non-public confidential and/or proprietary information, whether personal or business related. Absent a specific order by this Court, once designated as CONFIDENTIAL such designated confidential material shall be used by the parties solely in connection with this litigation, and not for any business, competitive, or governmental purpose or function, and such information shall not be disclosed to anyone except as provided herein.

3. Confidential material designated as HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY shall be information that the producing party believes in good faith is extremely sensitive confidential information that if disclosed to another party or non-party would create a substantial adverse impact on the producing party's business, financial condition, ability to compete, standing in the industry or any other risk of injury that could not be avoided by less restrictive means. Such material includes, without limitation: technical or product information not released to the public; confidential business information, including but not limited to market

studies and analyses, future projections, strategies, forecasts, business plans, and information concerning business decisions or negotiations; company financial information and projections in any form that have not been made available to the public; license agreements and other contractual relationships with third parties; identification of current, former, or potential customers and vendors; materials relating to ongoing research and development efforts and future products; technical materials used solely for internal purposes in connection with development, production, engineering, or sales training; source code; and non-public correspondence and documents relating to the prosecution of any patent applications or any other proceeding before the United States Patent and Trademark Office or any foreign patent office. Absent a specific order by this Court, once designated as HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY, such designated material shall be used by the parties solely in connection with this litigation, and not for any business, competitive, or governmental purpose or function, and such material shall not be disclosed to anyone except as provided herein.

4. The scope of this Protective Order shall be understood to encompass not only those items or things which encompass CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE information, but also any information derived therefrom and all excerpts and summaries thereof, as well as testimony and oral conversation related thereto.

5. Each party or nonparty that designates confidential material for protection under this Protective Order must limit any such designation to specific material that qualifies under the appropriate standards. The designation of confidential material as CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY or HIGHLY CONFIDENTIAL –

ATTORNEYS' EYES ONLY – SOURCE CODE for purposes of this Protective Order shall be made in the following manner by the party or non-party seeking protection:

a. in the case of documents, electronic documents, exhibits, briefs, memoranda, interrogatory responses, responses to requests for admission, things or other materials (apart from documents and things made available for inspection, depositions, pretrial or trial testimony) by affixing the legend CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE, as appropriate, to every page of any document containing designated material at the time such documents are produced or such information is disclosed, or as soon thereafter as the party or non-party seeking protection becomes aware of the confidential nature of the material disclosed and sought to be protected;

b. for documents and things made available for inspection, all documents shall be considered HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY. Upon request for copying and production by the inspecting party, the producing party shall designate such documents with the appropriate confidentiality marking;

c. in the case of depositions, pretrial and trial testimony: (i) by a statement by counsel on the record during such deposition, pretrial or trial proceeding that the entire transcript or a portion thereof shall be designated as CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE, as appropriate, hereunder; or (ii) by written notice of such designation sent by counsel to all parties within thirty (30) calendar days after receipt of the transcript of the testimony. The parties shall treat all deposition,

pretrial and trial testimony as **HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY** hereunder until the expiration of thirty (30) calendar days after the receipt of the transcript. Unless so designated, there shall be no duty to treat the transcript as confidential after the expiration of the 30-day period, unless otherwise stipulated or ordered. The parties may modify this procedure for any particular deposition or proceeding through agreement on the record at such deposition or proceeding or otherwise by written stipulation, without further order of the Court.

d. in the case of confidential material designated as **CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY** or **HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE** used during the course of a deposition as a deposition exhibit or otherwise, that portion of the deposition record reflecting such confidential material shall be sealed and stamped with the designated degree of confidentiality, and access thereto shall be limited pursuant to the other terms of this Protective Order; and

e. Each party retains the right to subsequently redesignate documents and to require such documents to be treated in accord with such designations from the date of the redesignation forward.

6. Confidential material designated as **CONFIDENTIAL**, copies of or extracts therefrom, and compilations and summaries thereof, may be disclosed, summarized, described, characterized, otherwise communicated, or made available in whole or in part only to the following persons:

a. Outside counsel for the parties identified as follows:

- (1) For Plaintiff Leader Technologies, Inc.: King & Spalding LLP and Potter, Anderson & Corroon LLP.
- (2) For Defendant Facebook, Inc.: White & Case LLP and Blank Rome LLP.
- (3) As used herein, "outside counsel" shall mean attorneys for the respective firms, including supporting personnel employed by the attorneys, such as paralegals, legal secretaries, legal clerks, and litigation support employees.

- b. no more than one officer, director or employee from each party whose assistance is needed by counsel for the purposes of this litigation;
- c. consultants and experts as defined in and pursuant to the provisions of paragraph 9 herein;
- d. the Court and those employed by the Court, pursuant to paragraph 11 herein;
- e. court reporters, videographers, outside copying, interpreters or translators, employed in connection with this litigation;
- f. graphics or design services retained by counsel for a party for purposes of preparing demonstrative or other exhibits for deposition, trial, or other court proceedings in this litigation;
- g. non-technical jury or trial consulting services retained by counsel for a party;
- h. the author(s) and all recipients of the document or the original source of the information; and

i. any other person upon order of the Court or upon written consent of the party producing.

j. Subject to the other provisions of this Protective Order, individuals that fall under Paragraphs 6(b), 6(c), 6(f), 6(g) and 6(i), may not be given access to any information or material designated as "Confidential" unless they first complete and sign a copy of an undertaking in the form attached hereto as Exhibit A confirming their understanding and agreement to abide by the terms of this Protective Order and to submit to the jurisdiction of this Court for matters related to the above-entitled action, including enforcement of this Protective Order.

7. Confidential material designated as HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY, copies or extracts therefrom, and compilations and summaries thereof, may be disclosed, summarized, described, characterized, otherwise communicated or made available in whole or in part only to the following persons:

- a. parties' outside counsel of record in this litigation, as defined in subparagraph 6(a) above;
- b. consultants and experts as defined in and pursuant to the provisions of paragraph 9 herein;
- c. the Court and those employed by the Court, pursuant to paragraph 11 herein;
- d. court reporters, videographers, outside copying, interpreters or translators, employed in connection with this litigation;



e. graphics or design services retained by counsel for a party for purposes of preparing demonstrative or other exhibits for deposition, trial, or other court proceedings in this litigation;

f. non-technical jury or trial consulting services retained by counsel for a party;

g. the author(s) and all recipients of the document or the original source of the information; and

h. any other person only upon order of the Court or upon written consent of the party producing.

i. Subject to the other provisions of this Protective Order, individuals that fall under Paragraphs 7(b), 7(e), 7(f) and 7(h), may not be given access to any information or material designated as "Highly Confidential - Attorneys' Eyes Only" unless they first complete and sign a copy of an undertaking in the form attached hereto as Exhibit A confirming their understanding and agreement to abide by the terms of this Protective Order and to submit to the jurisdiction of this Court for matters related to the above-entitled action, including enforcement of this Protective Order.

8. PROTECTION OF SOURCE CODE - Documents or other things that contain a party's or non-party's source code, or the substance thereof, shall be designated HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY -- SOURCE CODE and shall be subject to all protections applicable to materials designated HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY, and the following additional protections:

a. After reasonable notice to the receiving party, a single electronic copy of source code or executable code shall be made available for inspection on a non-

networked, standalone computer at an office of the producing party's California-based counsel at mutually agreeable times during normal business hours. The non-networked, standalone computer shall be password protected and supplied by the party producing the source code.

b. Access to the standalone computer shall be permitted, after notice to the provider and an opportunity to object, to two (2) outside counsel representing the receiving party and two (2) experts retained by the receiving party, all of whom have been approved under Paragraph 9 of this Protective Order.

c. Forty-eight (48) hours prior to the scheduled time for the receiving party's outside counsel or expert to review source code at the office of a producing party's counsel, the receiving party shall be entitled to a specific identification (by name, version number, and date of release) of the source code being made available for inspection, if reasonably available. If specific identification is not reasonably available at such time, the producing party shall provide notice to the receiving party that specific identification is not reasonably available and explain the reason(s) why specific identification is not reasonably available.

d. The source code provider shall provide a manifest of the contents of the standalone computer. This manifest, which will be supplied in both printed and electronic form, will list the name and location of every source and executable file on the standalone computer made available by the producing party.

e. The standalone computer shall include software utilities which will allow counsel and experts to view, search, and analyze the source code. At a minimum, these utilities should provide the ability to (a) view and search (by line-number) any source

file, (b) search for a given pattern of text through a number of files, and (c) compare two files and display their differences.

f. No portion of the source code may be copied or printed without the agreement of the producing party or further order of the Court. Nothing in this paragraph shall prevent a person accessing the source code pursuant to subsection (b) above from taking handwritten notes while reviewing the source code, provided the reviewing party affixes the legend HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE to every page of all such notes and maintains such notes in accordance with the HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE designation.

g. Outside counsel for a receiving party shall maintain a Source Code Access Log identifying, each and every time source code is viewed, accessed, or analyzed: (i) the name of each person who viewed, accessed or analyzed the code; (ii) the date and time of such viewing, access, or analysis; and (iii) the length of time of viewing, access, or analysis; and (iv) in the case of an agreement of the parties or Court order permitting copying of any portion of the source code, whether any electronic or hard copies of any portion of the code were created and the portion of the code that was copied, identified by the full path and file name of the file from which the code was copied.

h. The Source Code Access Logs maintained by outside counsel shall be considered privileged and shall not be discoverable except on further order of this Court.

i. Counsel for the producing party shall be entitled to maintain a log detailing (i) the name of each person who has accessed the source code and (ii) the date and time of such access; and (iii) the and length of time of such access.

j. Under no condition may any party disclose, in whole or in part, copies of, or the substance of, the source code of the producing party to any person not allowed to receive it, including any officers, directors, in-house counsel, employees, non-litigation consultants of the receiving party, or any lawyer or patent agent who is prosecuting patent applications for the receiving party before any domestic or foreign patent office.

k. The receiving party shall notify the producing party within twenty-four (24) hours of becoming aware of any loss, theft, or unauthorized copying and/or disclosure of any source code made available under this Paragraph 8.

l. No source code or documents describing source code shall be lodged or filed with the Court except under seal and referencing this Protective Order. If required in connection with any motion or other proceedings, an additional non-networked, stand-alone laptop computer containing the source code shall be provided directly to the Court in chambers.

m. Nothing in this Protective Order shall obligate the parties to produce any source code or particular portion thereof, and this Protective Order is not an act or admission that any portion of a producing party's source code is discoverable or relevant to any issues in this action.

9. For purposes of this Protective Order, a consultant or expert shall be defined as a person who is neither an employee, agent or representative of a party, nor anticipated to become an employee, agent or representative of a party in the near future, who is not involved in the application or prosecution of patents for the party, and who is retained or employed to assist in the preparation for trial in this litigation, whether full or part time, by or at the direction of counsel for a party. The procedure for having a consultant or expert approved for access to

confidential material designated as CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE under this Protective Order shall be as follows:

a. Outside counsel for the receiving party shall (1) provide the consultant or expert with a copy of this Protective Order, (2) explain its terms, and (3) obtain the written agreement of the consultant or expert, in the form of Exhibit A hereto, to comply with and be bound by the terms of this Protective Order. Before providing information designated CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE by a producing party pursuant to this Protective Order to a consultant or expert, the party seeking to disclose the information to a consultant or expert shall identify the consultant or expert to the producing party in writing and provide the producing party with (a) an executed Exhibit A, and (b) a written statement setting forth the consultant's or expert's residence address, business address, employer, job title, curriculum vitae, and past or present association with any party, as well as a list of litigation matters for which the consultant or expert has provided any professional services during the preceding five years;

b. Five (5) court days following the identification specified in the preceding subparagraph, the identifying party may disclose the information designated CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE under this Protective Order to the identified consultant or expert unless the party receives a written objection to the identification, served by facsimile or electronic mail, setting forth

in detail the grounds on which it is based. Failure to object within five (5) days of the identification shall be deemed a waiver of the objection. If an identifying party receives such an objection within five (5) days of the identification, the consultant or expert shall be barred from access to any information designated CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE under this Protective Order for fourteen (14) calendar days commencing with the receipt by the producing party of a copy of the executed Exhibit A and accompanying information required in subparagraph (a) above;

c. If within fourteen (14) calendar days, the parties are unable to resolve their differences and the opposing party moves for a further protective order preventing disclosure of information designated CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE under this Protective Order to the identified consultant or expert, then the confidential material shall not be provided to said consultant or expert except by further order of the Court. Any such motion by the opposing party must describe the circumstances and reasons for objection, setting forth in detail the reasons for which the further protective order is reasonably necessary, assessing the risk of harm that the disclosure would entail, and suggest any additional means that might be used to reduce that risk. The party opposing the disclosure to said consultant or expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the seeking party's need to disclose the confidential material to said consultant or expert.

10. Any person may be examined as a witness at trial or during a deposition concerning any confidential material designated as CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE which that person had lawfully received or authored prior to and apart from this litigation. During examination, any such witness may be shown confidential material designated as CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE by a party that appears on its face, or from other documents or testimony, to have been received from or authored by that witness or communicated to that witness. At any deposition session, upon any inquiry with regard to the content of a document designated CONFIDENTIAL HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY, or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE or when counsel for a person (party or nonparty) deems that the answer to a question may result in the disclosure of CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE information of his or her client within the meaning of this Protective Order, counsel for the person whose CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE information is involved may request that all persons other than the reporter, counsel, and individuals authorized under paragraphs 6, 7, and 9 hereof, leave the deposition room during the confidential portion of the deposition. The failure of such other persons to comply with a request to leave the deposition shall constitute substantial justification for counsel to advise the witness that he or she need not answer the question.

11. Materials designated CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE may be filed with or presented to the Court, or may be included in briefs, memoranda or other papers filed with this Court, but if so, they shall be filed under seal in accordance with the Local Rules of the Court and the United States District Court for the District of Delaware.

12. A party may challenge any other party's designation of confidential materials produced herein as CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE by serving a written objection upon the producing party. A party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed. In the event that a party challenges in writing, at any time during this litigation, the designation of confidential material, the designating party, shall, within fourteen (14) calendar days of such challenge, substantiate the basis for such designation in writing. If a dispute remains, the parties shall first try to resolve such dispute in good faith on an informal basis. If the dispute cannot be resolved, the party challenging the claim of confidentiality may seek appropriate relief from the Court. Each such motion shall identify the challenged material and the basis for the challenge. The burden of establishing that information has been properly designated as CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE is on the party making such designation. Until a dispute over the asserted designation is finally resolved by the parties or the Court, all parties and persons shall treat the confidential material in question as it is designated – CONFIDENTIAL, HIGHLY



CONFIDENTIAL – ATTORNEYS' EYES ONLY or HIGHLY CONFIDENTIAL –  
ATTORNEYS' EYES ONLY – SOURCE CODE.

13. All counsel for the parties who have access to confidential material designated as CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE under this Protective Order acknowledge they are bound by this Protective Order and submit to the jurisdiction of this Court for purposes of enforcing this Protective Order.

14. Entering into, agreeing to, and/or producing or receiving confidential material designated as CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE, or otherwise complying with the terms of this Protective Order shall not:

- a. waive any right to object on any ground to use in evidence of any of the confidential material covered by this Protective Order; or
- b. waive any objection to the disclosure or production of confidential material otherwise available on any ground not addressed in this Protective Order.

15. This Protective Order has no effect upon, and shall not apply to, a party's use or disclosure of its own confidential material for any purpose.

16. Nothing contained herein shall impose any restrictions on the use or disclosure by a party of confidential material designated as CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE obtained lawfully by such party independently of any proceedings in this action, or which:

- a. was already known to such party by lawful means prior to acquisition from, or disclosure by, any other party in this action;
- b. is or becomes publicly known through no fault or act of such party; or
- c. is rightfully received by such party from a third party that has authority to provide such information or material and without restriction as to disclosure.

17. The inadvertent production or disclosure of any privileged, protected work-product, or otherwise protected or exempted information shall not be deemed a waiver or impairment of any claim of privilege or protection as to the inadvertently produced material or any related material. The parties agree to handle inadvertently disclosed materials as follows:

- a. For all inadvertently disclosed privileged or work-product materials, the producing party must notify the receiving party promptly upon discovery, in writing, that a document has been inadvertently produced. Upon receiving written notice under this subparagraph from the producing party that privileged and/or work-product material has been inadvertently produced, all such information, and all copies thereof, shall be returned to the producing party within five (5) court days of receipt of such notice and the receiving party shall not use such information for any purpose, except as provided in subparagraph (b) below, except in the case of an order of the Court, so permitting. The receiving party shall also attempt, in good faith, to retrieve and return or destroy all physical and electronic copies of the documents in electronic format.

- b. Following initial notice received under subparagraph (a) above, if the receiving party contests the privilege or work-product designation contained in the notice, the receiving party shall give the producing party written notice of the reason for said disagreement. The receiving party shall, within fifteen (15) court days from the initial

notice by the producing party, file a motion seeking an order from the Court compelling the production of the material. The motion shall be filed under seal and shall not assert as a ground for entering such an order the fact or circumstances of the inadvertent production.

c. Upon receiving an initial notice provided in accordance with subparagraph (a) above, any analyses, memoranda or notes (including in electronic form to the extent reasonably practicable) which were internally generated by the receiving party based upon such inadvertently-produced information shall immediately be placed in sealed envelopes, and shall be destroyed in the event that (a) the receiving party does not contest that the information is privileged or work-product material, or (b) the Court rules that the information is privileged, work-product, or otherwise protected. Such analyses, memoranda or notes may only be removed from the sealed envelopes and returned to its intended purpose in the event that (a) the producing party agrees in writing that the information is not privileged or work-product material, or (b) the Court rules that the information is not privileged or otherwise protected from disclosure.

d. Within fifteen (15) court days of receiving an initial notice provided in accordance with subparagraph (a) above, the receiving party shall notify any person to whom it has provided a copy of the inadvertently disclosed material that the document contains privileged or work-product material that was inadvertently disclosed and that all copies of the document should be destroyed.

18. If a party inadvertently produces CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE material without marking it as such, it may be disclosed to others until the

receiving party becomes aware of the error, unless it appears from the face of the document that it contains non-public, confidential, proprietary, commercially sensitive, or trade secret information of the producing party. At such time that the producing party notifies a receiving party that a document or thing was produced without the appropriate confidentiality designation, the producing party shall provide the receiving party with replacement copies of the documents or things bearing the appropriate confidentiality designation. Upon receipt of the replacement copies, the producing party shall return or destroy all copies of the previously produced documents or things within its possession. The receiving party shall notify any person to whom it provided a copy of such document or thing that the document or thing has been designated CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE and, if the person to whom it provided a copy of the document is not authorized under this Protective Order to view CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE material, the receiving party shall request that the person to whom it provided the document or thing return or destroy the document or thing.

19. If a party learns that it has disclosed documents or information, by inadvertence or otherwise, that were designated CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE to any person or in any circumstance not authorized under this Protective Order, that party must immediately (1) notify in writing the designating party of the unauthorized disclosures, (2) use its best efforts to retrieve all copies of the confidential material, (3) inform the person or persons to whom unauthorized disclosures were made of all the terms of this

Protective Order, and (4) request such person or persons complete and sign a copy of the undertaking in the form attached hereto as Exhibit A.

20. It is the present intention of the parties that the provisions of this Protective Order shall govern discovery and other pretrial and trial proceedings in this action. Nonetheless, each of the parties hereto shall be entitled to seek modification of this Protective Order by application to the Court on notice to the other party or non-parties hereto for good cause.

21. The provisions of this Protective Order shall, absent written permission of the producing party or further order of the Court, continue to be binding throughout and after the conclusion of this action, including without limitation any appeals therefrom. Within sixty (60) calendar days after receiving notice of the entry of an order, judgment, or decree finally disposing of this action, including any appeals therefrom, all persons having received confidential material designated as CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE hereunder shall return such material and all copies thereof (including summaries and excerpts) to counsel for the producing party, or shall certify destruction thereof.

22. If any party (a) is subpoenaed in another action, (b) is served with a demand in another action to which it is a party, or (c) is served with any other legal process by one not a party to this litigation, seeking information or material which was produced or designated as CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE by someone other than the designating party, the party shall give prompt actual written notice no more than five (5) court days after receipt of such subpoena, demand, or legal process, to those who produced or designated the confidential material CONFIDENTIAL, HIGHLY CONFIDENTIAL –

ATTORNEYS' EYES ONLY or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE and shall object to its production to the extent permitted by law. Should the person seeking access to the confidential material take action against the party or anyone else covered by this Protective Order to enforce such a subpoena, demand or other legal process, the party shall respond by setting forth the existence of this Protective Order. The designating party shall bear the burdens and the expenses of seeking protection in the court of its confidential material, and nothing in these provisions shall be construed as authorizing or encouraging a party in this action to disobey a lawful directive from another court.

23. The parties agree that all designated documents, information, and material exchanged between the parties and subject to this Protective Order in this action shall be used solely for the prosecution or defense of the claims in this action and shall not be used for any business, commercial, competitive, personal, or other purposes, subject to the other terms of this Protective Order.

24. Nothing in this Protective Order shall prevent outside or inside counsel from giving legal advice based on information that has been designated CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE provided such legal advice shall not reveal the substance of any designated information to a person who is not authorized to receive it.

25. The parties agree to be bound by the terms of this Protective Order pending its entry by the Court, or pending the entry of an alternative that is satisfactory to all parties, and any violation of its terms shall be subject to the same sanctions and penalties as if the Protective Order had been entered by the Court.

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BLANK ROME LLP

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SO ORDERED, this 28 day of April, 2009

Joseph J. Fawcett  
United States District Judge

912878

**Exhibit A**

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

LEADER TECHNOLOGIES, INC., a Delaware corporation,	)	
	)	
Plaintiff,	)	Civil Action No.
	)	
v.	)	
	)	
FACEBOOK, INC., a Delaware corporation,	)	
	)	
Defendant.	)	

**STIPULATED PROTECTIVE ORDER**

**UNDERTAKING OF:** \_\_\_\_\_

1. My home address is:
2. My present employer is and the address of my present employment is:
3. My present occupation or job description is:
4. I have received a copy of the Stipulated Protective Order in this litigation.
5. I have carefully read and understand the provisions of the Stipulated Protective Order in this litigation.
6. I will comply with all of the provisions of the Stipulated Protective Order.
7. I will hold in confidence, will not disclose to anyone not qualified under the Stipulated Protective Order, and will use only for purposes of this litigation, in strict compliance with the terms and conditions of the Stipulated Protective Order, any confidential material which is disclosed to me. I acknowledge that termination of the litigation does not release me from the obligations set out in this paragraph.



8. I will return all confidential information which comes into my possession, and documents or things which I have prepared relating thereto, to counsel for the party by whom I am employed or retained in strict accordance with the provisions of the Stipulated Protective Order.

9. I hereby submit to the jurisdiction of this Court for the purposes of enforcement of the Stipulated Protective Order in this litigation.

10. Any accompanying resume or curriculum vitae is a complete and accurate statement to the best of my knowledge, and I acknowledge that in submitting such resume or curriculum vitae I know that the receiving party shall rely thereon.

11. I make the above statements under penalty of perjury.

Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

# Exhibit 12

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO**

LEADER TECHNOLOGIES, INC.,  
a Delaware corporation,

Plaintiff-Counterdefendant,

v.

FACEBOOK, INC.,  
a Delaware corporation,

Defendant-Counterclaimant

) **1:10 MC 00030**  
) Misc. Case No.: **JUDGE OLIVER**  
) Action Currently Pending in the U.S.  
) District Court, D. Del. (Civil Action  
) No. 1:08-cv-00862-JJF  
)  
)  
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**THIRD PARTY JEFFREY LAMB'S MOTION TO QUASH DEPOSITION  
SUBPOENA AND FOR PROTECTIVE ORDER**

## **I. INTRODUCTION**

Third party Jeffrey Lamb ("Mr. Lamb") respectfully requests that this Court quash Facebook, Inc.'s ("Facebook") subpoena issued on April 23, 2010 for a second deposition of Mr. Lamb. On February, 19, 2010, Mr. Lamb provided a full day of testimony after Facebook subpoenaed him for deposition in connection with a patent infringement lawsuit between Facebook and Leader Technologies, Inc. ("Leader"), Mr. Lamb's former employer. Facebook's new subpoena for another deposition of Mr. Lamb is technically deficient, unnecessary and unduly burdensome for a third party to the Leader Action. Declaration of Shane Glynn ("Glynn Decl.") Ex. A. Mr. Lamb therefore requests this Court for an order to quash the most recent subpoena issued on him for deposition and for a protective order under Fed. R. Civ. P. 45(c)(3) and 26(c).

## **II. BACKGROUND**

### **A. The Delaware Action**

Leader filed a patent infringement suit against Facebook for infringement of Leader's U.S. Patent No. 7,139,761 (the "'761 Patent") on November 19, 2008. The case, *Leader Technologies, Inc. v. Facebook, Inc.*, Civil Action No. 08-CV-00862-JJF, is currently pending in United States District Court for the District of Delaware (the "Leader Action"). Expert disclosures have already been exchanged and expert discovery was completed on May 6, 2010. Trial is scheduled for June 28, 2010 and the Delaware Court recently confirmed that trial would take place on June 28, 2010.

### **B. Subpoenas on Mr. Lamb's Deposition**

Mr. Lamb, a resident of the Columbus area, is one of the inventors of the '761 Patent. He presently is the Chief Technology Officer of QStart Labs, LLC, and has not worked for Leader since 2005. During discovery in the Leader Action, which commenced on February 17, 2009

and closed on March 1, 2010, Mr. Lamb was served with two subpoenas. On November 3, 2009, Mr. Lamb was served with a subpoena for documents, to which he served Facebook with a timely response. Glynn Decl. Ex. B, C. Subsequently, on January 27, 2010, Mr. Lamb was served with a subpoena for deposition to take place on February 26, 2010. Glynn Decl., ¶ 6, Ex. D. Thereafter, Mr. Lamb's counsel in good faith with Facebook, negotiated the ultimate time, date and location for Mr. Lamb's deposition.<sup>1</sup> Facebook took Mr. Lamb's deposition for a full day on February 19, 2010, questioning him from approximately 9:45 a.m. until approximately 5:15 p.m. Facebook exhausted all the questions it had for Mr. Lamb, who was a cooperative witness throughout the entire process. In fact, Facebook's counsel ended the deposition by stating "[t]hat's all the questions I have for right now." See Glynn Decl. Ex. E.

During the deposition, Facebook's counsel specifically instructed Mr. Lamb that he would have an opportunity to review his deposition transcript and "make changes or corrections if you need to." See *id.* Accordingly, Mr. Lamb reviewed the written transcript of his deposition. On March 1, 2010, he submitted an errata sheet in good faith that added very minor clarifications to his answers for six questions. See Glynn Decl. Ex. F. Mr. Lamb explained his errata clarifications "[did] not change the substance of my testimony" and that each clarification was made to show that Mr. Lamb was answering the specification question asked and not making a general statement. *Id.* As Mr. Lamb states on his correction sheet, the changes consist largely of adding the word "just" to his answer, to indicate that Mr. Lamb was answering "just" the question asked. *Id.*

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<sup>1</sup> Facebook issued an amended notice for deposition pursuant to Rule 30 of the Federal Rules of Civil Procedure, which provided for the location, date and time of the deposition. The parties, however, subsequently negotiated a different start time for Mr. Lamb's deposition.

**C. Facebook's Improper Attempt to Strike Mr. Lamb's Errata and Deficient Subpoena for a Second Deposition**

After receiving Mr. Lamb's errata sheet, Facebook made a motion before the United States of District Court for the District of Delaware, in which it unsuccessfully attempted to strike Mr. Lamb's errata, or in the alternative, reopen Mr. Lamb's deposition. This request is embodied in an April 7, 2010 letter brief to Magistrate Judge Stark, the magistrate overseeing discovery disputes between Leader and Facebook. At the telephonic hearing for Facebook's motion, Magistrate Stark stated that it "appear[s] to us that the changes are not substantive and are more in the nature of clarifying." See Glynn Decl. Ex. G. In addition, Magistrate Stark indicated that the Delaware courts likely do not have jurisdiction to compel a second deposition of Mr. Lamb, but did note that if the Delaware Court did have jurisdiction, he would likely permit continuing deposition on the limited topic of the errata. *Id.*

Now, more than two months after Mr. Lamb's deposition and less than two months before trial in the underlying action, Facebook served Mr. Lamb with yet another subpoena, seeking to take a second unneeded deposition of Mr. Lamb.<sup>2</sup> Glynn Decl. Ex. A. Facebook has not sought leave from the appropriate court<sup>3</sup> to depose Mr. Lamb a second time in connection with the Leader Action. Further, the subpoena at issue was issued out of the Northern District of Ohio, which does not have jurisdiction over Mr. Lamb.

**III. ARGUMENT**

**A. Facebook's Subpoena Is Issued Out of the Wrong Jurisdiction**

This Court should quash Facebook's most recent subpoena on Mr. Lamb for the simple reason that it was issued from the wrong judicial district, namely it was issued out of the United

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<sup>2</sup> Facebook also served Mr. Lamb with an amended deposition notice pursuant to Rule 30 of the Federal Rules of Civil Procedure.

<sup>3</sup> To the extent that Facebook seeks leave from this Court for a second deposition, Mr. Lamb respectfully notes that his subpoena should have issued from the Southern District of Ohio and Facebook should seek the appropriate leave from a court in that District, and not from the Northern District.

States District Court for the Northern District of Ohio. *See* Glynn Decl. Ex. A. Federal Rule of Civil Procedure 45(a)(2) states that a subpoena for attendance at a deposition must issue “from the court for the district where the deposition is to be taken.” Fed. R. Civ. P. 45(a)(2)(B). Similarly, the authority to quash or modify a subpoena rests with the court from which the subpoena issued. *See* Fed. R. Civ. P. 45(c)(3)(A) (“[o]n timely motion, the issuing court must quash or modify a subpoena . . .”).

Mr. Lamb’s address, at it appears on the face of the most recent subpoena, is in Hillard, Ohio. *Id.* Hillard is located in Franklin County, which is part of the Southern District of Ohio. The location for the deposition is a law firm in Columbus, which is also in the Southern District of Ohio. Facebook is presumably aware of these facts, as it knows where Mr. Lamb lives as he testified to this information during his first deposition and Facebook has a map.<sup>4</sup> Given that Facebook’s third subpoena on Mr. Lamb was issued out of the wrong judicial district, despite knowing where Mr. Lamb lives, this Court has sufficient grounds to quash Facebook’s most recent subpoena on Mr. Lamb.

**B. Facebook Failed To Follow The Process Required By The Federal Rules of Civil Procedure For Seeking Multiple Depositions of an Individual**

Facebook is attempting to take the second deposition of a third party without seeking leave from the appropriate Court as required by Rule 30(a)(2)(A)(iii). This portion of Rule 30 exists specifically to prevent discovery that is unreasonably cumulative, duplicative, or burdensome. *See* Fed. R. Civ. P. 26(b)(2)(C). Rule 30(a)(2)(A) specifically states that a party seeking a deposition “must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(2)” if the parties have not stipulated to the deposition and “the

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<sup>4</sup> Notably, Facebook’s first subpoena on Mr. Lamb for documents was issued out of the correct jurisdiction. When Facebook issued another subpoena on Mr. Lamb for deposition, Mr. Lamb just cooperated with Facebook and appeared, after negotiating the location, time and date for his deposition.

deponent has already been deposed in the case.” Fed. R. Civ. P. 30(a)(2)(A)(ii). Failure to obtain leave of the court is sufficient grounds to quash a deposition. *See Stratienko v. Chattanooga-Hamilton County Hospital Authority*, 2008 U.S. Dist. LEXIS 27674 at \*5 (E.D. Tenn. April 4, 2008) (depositions quashed for failure to obtain leave of court). Facebook’s attempt to subpoena Mr. Lamb for another day of deposition is improper as a matter of law. Facebook failed to seek leave of the Court to take another deposition of Mr. Lamb, which it is required to do under the Federal Rules of Civil Procedure.

For the reasons discussed above, Facebook cannot meet the burden of demonstrating that taking another deposition of Mr. Lamb is necessary and appropriate under the Federal Rules of Civil Procedure. *See Kasperski v. Village of New Haven*, 2009 U.S. Dist. LEXIS 1524 at \*4 (E.D. Mich. April 14, 2009) (motion to compel second deposition of a third party denied for failure to demonstrate how re-depositing the third party would be consistent with Rules 30(a) and 26 (a-b) of the FRCP). Facebook is required to provide an adequate explanation to these questions before taking Mr. Lamb’s deposition, as required by Rule 30. In the absence of any explanation from Facebook, this Court should quash the Lamb subpoena and enter an appropriate protective order preventing further harassing tactics.

**C. Facebook’s Most Recent Subpoena Issued On Mr. Lamb Should be Quashed and a Protective Order Entered**

Facebook has not presented a legally cognizable theory as to why it needs additional deposition testimony from Mr. Lamb well after the close of fact discovery and after the close of expert discovery in the Leader Action. While Facebook is presumably going to claim that it needs to depose Mr. Lamb again to inquire about his errata sheet, this is just Facebook’s attempt to get a second shot at deposing Mr. Lamb for another day and ask questions that go well beyond his errata sheet. As a preliminary matter, the presumed justification is insufficient because



apparent from Mr. Lamb's errata, he only made clarifications that plainly do not alter the substance of his testimony. Furthermore, Mr. Lamb already provided Facebook with a written explanation for each of his errata clarifications that describe the reasons for each clarification. *See Glynn Decl. Ex. F.* Thus, the burden of requiring a third party to respond to yet another subpoena by Facebook is unduly burdensome, particularly where Facebook already has the basis for Mr. Lamb's clarifications in his errata. In addition, there are a number of other deficiencies with the subpoena at issue that necessitate it be quashed and an appropriate protective order entered.

**D. Facebook's Subpoena is Unduly Burdensome**

There is no question that subjecting Mr. Lamb, a third party to the underlying dispute between Leader and Facebook, to another day of deposition would be unduly burdensome. Pursuant to Rule 45 of the Federal Rules of Civil Procedure ("FRCP"), courts have broad discretion to protect third parties from the burden of attending duplicative or harassing depositions and instructs parties that they "must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena." Fed. R. Civ. P. 45(c)(1). Rule 45 states, more specifically, that "the issuing court must quash . . . a subpoena that . . . subjects a person to undue burden." Fed. R. Civ. P. 45(c)(3)(A)(iv). In addition, Rule 26 of the FRCP provides additional protections for a party from discovery that constitutes an annoyance, undue burden, or undue expense, instructing there should be limitations on discovery if "the discovery sought is unreasonably cumulative or duplicative" or if "the burden or expense of the proposed discovery outweighs its likely benefit. . . ." Fed. R. Civ. P. 26(b)(2)(C). A court "may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26(c)(1).

**1. Mr. Lamb Has Already Provided Discovery In Good Faith To Facebook**

Facebook is demanding that Mr. Lamb appear for another day of deposition. When Mr. Lamb was unwilling to make himself available for another deposition, Facebook served him with another subpoena for deposition and issued an amended notice of deposition pursuant to Rule 30 of the FRCP. Mr. Lamb should not be faced with responding to so many requests from Facebook, particularly where he cooperated fully with Facebook. He has already (1) timely responded to Facebook's subpoena for documents, (2) provided Facebook with a full day of deposition, and (3) provided Facebook with his errata and the basis for the clarifications made in his errata.

Given how much discovery Mr. Lamb has already provided to Facebook, Facebook's attempt to subpoena Mr. Lamb for another deposition is improper because it violates Rules 45 and 26. Mr. Lamb has also already provided discovery to Facebook regarding the subject matter that presumably is the impetus for Facebook's most recent subpoena for deposition of Mr. Lamb, namely his errata. Mr. Lamb explained that his errata was done to clarify his testimony. Assuming that Facebook is using the errata as the basis for seeking a second day of deposition of Mr. Lamb, any testimony Mr. Lamb provides would be duplicative of the errata sheet itself, which states that the clarifications "[did] not change the substance of my testimony" and that each minor change was made to clarify he was answering the narrow question asked and not making a general statement. *See Glynn Decl. Ex. F.* The changes consist largely of adding the word "just" to his answer, to indicate that Mr. Lamb was answering "just" the question asked.<sup>5</sup> Mr. Lamb should not be required to suffer the undue burden of appearing for a deposition to repeat in person the statements that he already provided. Indeed, the value of any deposition

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<sup>5</sup> Magistrate Stark apparently agreed, stating that "the changes are not substantive and are more in the nature of clarifying." *See Glynn Decl. Ex. G.*

testimony about Mr. Lamb's non-substantive errata is very low compared to the high burden of deposing a third party for a second time. Therefore, under Rules 26 and 45, the Lamb Subpoena should be quashed and a protective order entered barring Facebook from further harassment of Mr. Lamb.

**2. Mr. Lamb Should Not Be Subjected To Additional Discovery Because He Followed Facebook's Instructions Regarding Reviewing His Transcript**

Mr. Lamb should not be subjected to a second day of questioning because he, in good faith, cooperated with Facebook and followed the instructions of Facebook's counsel regarding reviewing and submitting an errata to his deposition transcript after his deposition. Mr. Lamb has already taken time out of his busy work schedule to be deposed a full day and Facebook had ample opportunity to question Mr. Lamb at that time. Requiring Mr. Lamb to attend a second deposition for the same matter represents an unnecessary burden on a third party that, ultimately, would serve little purpose other than to harass Mr. Lamb. The protections of Rules 45 and 26 exist specifically to prevent the undue inconvenience that Facebook's subpoena would impose on Mr. Lamb.

**E. There Is Nothing Inappropriate About Mr. Lamb's Errata**

Federal Rule of Civil Procedure 30(e) permits a deponent to make changes in the "form or substance" to a deposition transcript if the changes are done within 30 days and the deponent submits a signed "statement listing the changes and the reasons for making them. Fed. R. Civ. P. 30(e). The Southern District of Ohio, the location of Mr. Lamb's first deposition, allows a deponent to correct typographical or translation errors and substantively modify the testimony. *See United States v. Piqua Eng'g, Inc.*, 152 F.R.D. 565, 566-567 (S.D. Ohio 1993) ("under the Rule, changed deposition answers of any sort are permissible, even those which are contradictory or unconvincing, as long as the procedural requirements set forth in the Rule are also

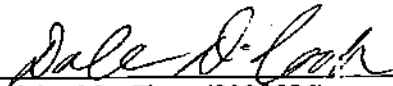
followed.”); *see also Sauder Indus., Inc. v. The Carborundum Co. v. Alasia Interstate Co.*, 1980 WL 324461 at \*4 (N.D. Ohio 1980).

To the extent that Facebook attempts to claim that Mr. Lamb made substantive changes to his deposition transcript with his errata, it is noteworthy that Magistrate Stark already determined that Mr. Lamb’s errata were not substantive changes to his deposition testimony. *See* Glynn Decl. Ex. G. A review of Mr. Lamb’s errata and accompanying explanation demonstrates that nothing improper occurred and that Mr. Lamb did not substantively change his testimony. Facebook simply has no justification for seeking another day of deposition of Mr. Lamb.

#### IV. CONCLUSION

For at least the above reasons, Mr. Lamb respectfully requests that the Court quash the Lamb Subpoena and enter an protective order prohibiting Facebook from making a second duplicative deposition in this matter.

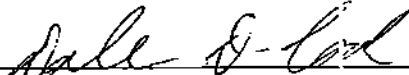
Respectfully submitted,

  
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**CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the foregoing *Third Party Jeffrey Lamb's Motion to Quash Deposition Subpoena and for Protective Order* was mail by regular U.S. Mail this 7<sup>th</sup> day of May, 2010 upon the following:

Elizabeth Stameshkin  
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