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July 23, 2009

PUBLIC VERSION 7/30/09

<u>BY E-FILE</u>   CONFIDENTIAL – FILED UNDER SEAL
                <u>PURSUANT TO PROTECTIVE ORDER</u>

The Honorable Leonard P. Stark
Magistrate Judge
U.S. District Court for the District of Delaware
U.S. Courthouse
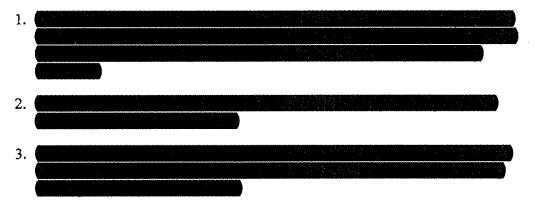844 N. King Street
Wilmington, DE 19801-3556

Re: Leader Technologies, Inc. v. Facebook, Inc.,
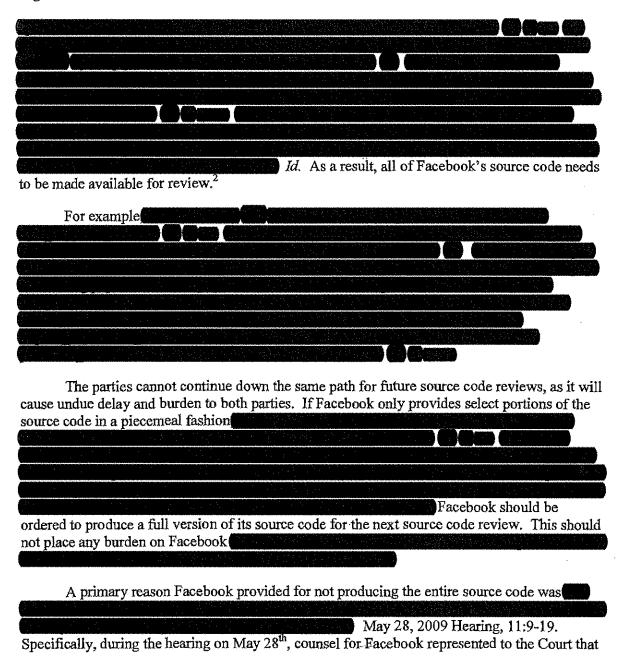   <u>C. A. No. 08-862-JJF(LPS)</u>

Dear Judge Stark:

Pursuant to the Court's instruction, Leader Technologies ("Leader") submits this letter brief to request the Court to compel Facebook to produce its source code and relevant documents in response to Leader's discovery requests. Based on the parties' last conference call with Your Honor, Leader completed its review of the limited amount of source code that Facebook made available. It learned the following:

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<u>Facebook Should Be Ordered to Produce its Entire Source Code Repository</u>

After Leader's review of the selected portions of the Facebook source code, it is now apparent that all of the source code must be made available to complete a meaningful review. (*See* Declaration of Dr. Giovanni Vigna in Support of Leader's Letter Brief to Compel the Production of Documents and Source Code, attached hereto as Exhibit A). ████████

██ *Id.* As a result, all of Facebook's source code needs to be made available for review.[2]

For example ██

The parties cannot continue down the same path for future source code reviews, as it will cause undue delay and burden to both parties. If Facebook only provides select portions of the source code in a piecemeal fashion ██ Facebook should be ordered to produce a full version of its source code for the next source code review. This should not place any burden on Facebook ██

A primary reason Facebook provided for not producing the entire source code was ██ May 28, 2009 Hearing, 11:9-19. Specifically, during the hearing on May 28th, counsel for Facebook represented to the Court that

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[1] A module is an independent piece of code which forms part of a larger program. In terms of source code, typically, each individual file is considered a separate module. In order for the larger program to operate, certain functions that are contained within one module will be called or accessed by another module in order to perform a desired operation.

[2] The production of source code is vital to understanding the operation of software and there have been numerous cases in the District of Delaware in which the Court ordered the production of the source code repository. *See* CIF Licensing, LLC v. Agere Systems Inc., No. 07-170-JJF, 2009 WL 187823 (D.Del. Jan. 23, 2009); Adobe Systems, Inc. v. Macromedia, Inc., No. 00-743-JJF, 2001 WL 1414843 (D.Del. Nov. 05, 2001); Oracle Corp. v. Parallel Networks, LLP, 588 F.Supp.2d 549, 565-66 (D. Del. 2008)

the Facebook source code ██
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███████████████████████ ██ Thus, there is no reason for Facebook to withhold the full
source code repository.

Facebook Should Be Ordered to Produce a Hierarchical Map of its Source Code

In addition to the full source code repository, Leader requires a hierarchical map of the
source code in order to efficiently and effectively complete its review. During the Court ordered
meet and confer between the parties (which occurred after the source code review), opposing
counsel initially represented██
████████████████████████████ During a subsequent conference, Facebook changed its
position and represented██
██ Both representations are
contrary to the source code provided by Facebook which shows████████████████████
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Facebook Should Be Ordered to Produce its Technical Documents

During the meet and confer with opposing counsel, Facebook agreed to produce a small number of additional documents and files, but refused to produce a vast majority of the technical documents necessary for Leader's inspection of the source code. Facebook refused to produce these technical documents despite Leader's good faith attempt to identify the specific modules for which it sought technical documents. Specifically, Leader identified the same categories of documents that are listed in Dr. Vigna's declaration. *Id.* at ¶10-21. Rather than agreeing to produce the documents, Facebook represented that it would only consider producing certain documents that Leader could specifically identify, ███████████████████████████
██. This is an untenable request because Leader cannot possibly provide the specific names of relevant documents that are in Facebook's possession. Moreover, ███████████████████████████████
██████████████████████████ Facebook is clearly attempting to avoid its duty to produce relevant technical documents in response to Leader's discovery requests. Thus, Facebook should be ordered to produce all relevant technical documents████████████████
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In fact, the production of all technical documents relating to the Facebook website should not be a burden to Facebook. During the meet and confer between Leader and Facebook regarding the results of Leader's source code review, Facebook represented███████████████
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██ These documents are highly relevant and responsive to the discovery served by Leader which Facebook has chosen to ignore.

Leader's expert, Dr. Vigna, is available at the Court's convenience in the event the Court wishes to have a hearing regarding Leader's motion to compel.

Facebook Should Be Ordered to Produce Documents from Previous Litigations

Additionally, the Court informed Leader that it could renew its request for relevant documents from Facebook's previous litigations after the source code review. ████████████████
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Therefore, Leader respectfully requests the Court to compel Facebook to produce such relevant documents from previous litigations.

For the reasons set forth above, Leader respectfully requests that the Court order Facebook to produce: (1) Facebook's full source code repository, (2) a hierarchical map of the source code, (3) all technical documents relating to the Facebook website; and (4) all relevant documents produced in previous litigations.

Respectfully,

/s/ Philip A. Rovner

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provner@potteranderson.com

PAR /926141
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

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EXHIBIT A

THIS EXHIBIT HAS BEEN
REDACTED IN ITS ENTIRETY

EXHIBIT B

THIS EXHIBIT HAS BEEN REDACTED IN ITS ENTIRETY