

# EXHIBIT A



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Court Reporter:

FEDERAL OFFICIAL COURT REPORTER  
MS. KRISTA FLYNN BURGESSON  
219 South Dearborn Street  
Chicago, Illinois 60604  
312-435-5567

1 THE CLERK: 09 C 2572, Specht versus Google.

2 MR. FLEMING: Good morning, your Honor. Andrew  
3 Fleming, John Shonkwiler, and Martin Murphy appearing on  
4 behalf of the plaintiffs.

5 MR. SHONKWILER: Good morning, your Honor.

6 MR. MURPHY: Good morning.

7 MR. HARRIS: Good morning, your Honor. Richard  
8 Harris and Herb Finn on behalf of defendant Google.

9 MR. FINN: Good morning, your Honor.

10 MR. ANDALMAN: Good morning, your Honor. Robert  
11 Andelman for T-Mobile. We were a party previously. That is  
12 spelled A-n-d-a-l-m-a-n.

13 THE COURT: All right.

14 MR. FLEMING: Your Honor, there are 3 motions up this  
15 morning.

16 There is a motion for leave to amend the complaint  
17 filed by the plaintiffs, which includes the joinder of 4  
18 defendants, Sprint, T-Mobile, AT&T Mobility, and Verizon.

19 There is a motion to strike that motion filed by  
20 Google, and --

21 THE COURT: I think it is a motion to strike the  
22 complaint that was filed.

23 MR. FINN: Yes.

24 MR. HARRIS: Yes, that is correct. We filed a motion  
25 originally and --

1 THE COURT: And you responded this morning or last  
2 night to their motion?

3 MR. FLEMING: Yes, your Honor.

4 THE COURT: And then there is a motion to compel that  
5 position.

6 MR. HARRIS: That is correct, Judge.

7 THE COURT: And you responded to that?

8 MR. FLEMING: We have not filed a written response to  
9 that motion.

10 THE COURT: Yes, you did.

11 I read it this morning.

12 MR. FLEMING: Yes, okay, yes, we did address that in  
13 the --

14 THE COURT: You did address that, okay. So I have  
15 read everything you have written.

16 Now, does anybody want to say anything?

17 Actually, first, what I should say, and it is not the  
18 basis for my ruling, but in full disclosure, if I did allow  
19 the amendment, and AT&T came into the case, I would have to  
20 recuse myself. My wife is a board member of the parent  
21 company, AT&T, and we have an ownership interest. Obviously  
22 we have many shares of AT&T.

23 MR. HARRIS: That is understood, your Honor.

24 I would like to respond with the Court's permission  
25 on just a few points.

1 THE COURT: Okay.

2 MR. FLEMING: Could I just address that comment your  
3 Honor has made?

4 THE COURT: Yes.

5 MR. FLEMING: Does your Honor feel that that would  
6 effect your Honor's position in terms of ruling on the  
7 motion?

8 THE COURT: I don't think so, because they are not a  
9 party to the case, but I really didn't think about it.  
10 Obviously if I let them in, I would have to get out  
11 immediately.

12 MR. FLEMING: I mean, there will be a case filed  
13 against them, your Honor, it is not --

14 THE COURT: If there is, obviously I would have to  
15 recuse myself under whatever the statute is.

16 MR. FLEMING: I think even in ruling on it then --

17 We have not looked at the issue, your Honor, but we  
18 would like to be able to look at the issue.

19 THE COURT: Let's ask Google.

20 What is your view of that?

21 MR. HARRIS: Your Honor, we have been before this  
22 Court so many times over the years, we have no doubts  
23 whatsoever that this Court can rule fairly and equitably.

24 THE COURT: The question is whether it can do so  
25 legally.

1 I think I can rule fairly.

2 MR. HARRIS: Yes.

3 THE COURT: But legally whether I can rule, that is  
4 the issue.

5 If it is a motion to bring in a party -- if it  
6 brought in, I would have to recuse myself.

7 MR. HARRIS: Well, thanks to plaintiff, your Honor,  
8 that is really not a problem. It was just stated on the  
9 record that they are going to go after AT&T no matter what the  
10 Court rules.

11 So, in essence, regardless of how the Court rules,  
12 AT&T eventually, according to what we have just heard, will be  
13 a party in some case, probably assigned to some other Judge,  
14 and I don't believe it effects at all this Court's ability to  
15 rule on the motion.

16 MR. FINN: Moreover, your Honor, AT&T stands with the  
17 other 3 potential defendants, or at least in the similar  
18 position of the other potential defendants, and we assume you  
19 have no issue with that, and that the ruling would be based  
20 more on --

21 THE COURT: I have no issue with any of the other  
22 defendants.

23 MR. FINN: Right.

24 And since they are similarly situated, it would  
25 appear logical that you should be able to rule on the

1 entirety.

2 MR. FLEMING: Well, we do have a concern, your Honor,  
3 and we would like to present something in writing to the  
4 Court. We would like to look at this issue and present  
5 something in writing.

6 We certainly are not going to --

7 THE COURT: Well, if I continue that motion --

8 I can rule on the motion for depositions, I believe.

9 MR. HARRIS: Very well, your Honor.

10 And also, certainly you can rule on the motion --

11 THE COURT: I can give a time and --

12 This is more for my own concern. I mean, I don't  
13 want to do something illegal. I don't think it would be  
14 illegal for me to rule on the motion, but --

15 MR. HARRIS: Understood.

16 MR. FLEMING: We can certainly get something on file  
17 very quickly, your Honor.

18 THE COURT: That is what I am thinking of.

19 MR. FLEMING: We would certainly do that.

20 And we are back in court next Tuesday on the  
21 continued motion to --

22 THE COURT: I am concerned about the motion because  
23 of the discovery deadline, the other motion, which there is no  
24 question I can rule on, having not taken up the issue of  
25 bringing in any other additional defendants.



1           MR. HARRIS: Your Honor, could the Court rule on the  
2 other 3 named parties, 2 of which were named in one of the  
3 early amended complaints or one of the original complaints  
4 over a year ago? Could the Court address just the 3, and  
5 remove for now the issue of AT&T, so that this Court can  
6 fairly and equitably address a motion for leave to amend a  
7 complaint that is being brought ten days, in essence, before  
8 the close of discovery in this case, while a separate motion  
9 for extending discovery is still pending?

10           This is another approach, and I should mention to the  
11 Court that there are 4 depositions scheduled over the next ten  
12 days, one of which is the court ordered deposition --

13           THE COURT: That is what I was thinking of ruling on,  
14 a motion --

15           MR. HARRIS: (Continuing) -- which was the subject of  
16 a sanction order.

17           THE COURT: (Continuing) -- a motion to compel  
18 depositions.

19           Now, that I can put off say until next week for  
20 ruling on the motion to amend. They have tied them together,  
21 but I don't see the basis for not ordering the depositions to  
22 go forward.

23           It was agreed -- as I understood from looking at all  
24 the E-mails back and forth, they were agreed to, the dates, up  
25 to a few days ago, a week ago. I don't have it in my mind

1 exactly what the date was when Mr. Shonkwiler, I think,  
2 notified Google's attorneys that the depositions would not go  
3 forward because of the plan to file the third amended  
4 complaint, bringing in new parties.

5 MR. SHONKWILER: Judge, this all happened rather  
6 fast, and the one part of this that I think needs a little  
7 clarifying is we don't want to postpone dispositive briefing  
8 and we don't want to postpone discovery any more than we have  
9 to if no new defendants were added.

10 There is some extension of the discovery deadline  
11 that is necessary, and we will file a brief tomorrow if that  
12 deadline stays on the calendar for filing a brief for the  
13 defendant motion to extend discovery, just because discovery  
14 is not complete between Google and the plaintiffs.

15 But apart from the extension that is needed for that  
16 purpose, we don't want to postpone dispositive briefing, any  
17 summary judgment briefing, in this case.

18 If we can add the new parties, and get that briefing  
19 schedule on the same track, it would be otherwise. None of  
20 this needs to be cause for delay or expense, and no party here  
21 wants to delay this trial or this summary judgment briefing,  
22 and no party here wants to add expense.

23 I think that is the part where we missed each other  
24 apparently on the phone, and at the briefing.

25 I talked to counsel outside of the courtroom this

1 morning, but just very briefly, and I don't know whether we  
2 will be able to agree to a schedule for briefing and/or for  
3 the addition of parties, but that is the part that I think is  
4 not --

5 THE COURT: Well, the motion for briefing additional  
6 parties is fully briefed, as far as I am concerned. I mean, I  
7 am aware of the issues. Now the only question is whether or  
8 not I legally can rule on it.

9 MR. HARRIS: There is one issue, Judge, that came up,  
10 besides the delay and the representations that were being made  
11 up, and the fact that this information has been known over a  
12 year, that all of a sudden now it justifies things.

13 There was a transcript that was attached to the  
14 motion we received last night, and with the Court's  
15 permission, I would like to give the Court the entire segment  
16 of the transcript as opposed to the one that was simply  
17 paraphrased in the brief that was filed last night.

18 May I approach, your Honor?

19 THE COURT: Yes.

20 MR. HARRIS: Now, this particular transcript, and I  
21 believe it is from February 23rd, I happened to be there that  
22 day, and there is mention of the fact that there is a  
23 reference that --

24 MR. FLEMING: Your Honor, we are now arguing the  
25 motion that your Honor has indicated we will have an

1 opportunity to file something on.

2 I don't think this makes sense.

3 THE COURT: I don't need anything else to --

4 MR. FLEMING: We are not arguing enjoinder or arguing  
5 discovery.

6 THE COURT: The only issue before me that I need is  
7 that I think I should obtain input from you on whether or not  
8 I legally have to recuse myself because you filed a motion to  
9 bring in a party which, if I allow in, will require me to  
10 recuse myself.

11 MR. HARRIS: I understand that, Judge.

12 I thought you were asking is there anything else that  
13 either of the parties wanted to say with regard to the motion  
14 to amend the complaints now for a third time before we address  
15 deferring that issue until the Court addresses the concern of  
16 recusal.

17 THE COURT: What I said is I thought I had sufficient  
18 information from the briefing, particularly, the one that you  
19 filed, the motion you filed with the brief, and then the brief  
20 -- the 2 briefs, actually, they had the motion to amend, and  
21 their brief that was filed -- I received a copy this morning  
22 when I came in, and I have read it, but it is plaintiff's  
23 memorandum in support of their motion for leave to file a  
24 third party complaint in opposition of the motion to strike  
25 the same and so on.

1           Now, you wanted to supplement what they -- one of  
2 their exhibits, is that what you are saying?

3           MR. HARRIS: Yes, Judge.

4           I just wanted to add, because we were not aware that  
5 they would be relying on the transcript of February 23, 2010,  
6 but skip the first page where the Court specifically says --  
7 and says it to Mr. Fleming, no less, that it will allow  
8 Mr. Fleming to amend the pleadings up to July 15th, but not to  
9 join new parties.

10           THE COURT: I think they did have that in here,  
11 didn't they?

12           MR. HARRIS: I don't believe they had that page.

13           They had the reference a page or two later that  
14 suggests if they want to come in with new parties, they would  
15 have to file a motion that justifies it.

16           THE COURT: Yes, yes.

17           It was clear that I took that position that it would  
18 require a motion, they couldn't do that on their own, but the  
19 amendments contemplated would be clean up amendments, so to  
20 speak, and that type of thing.

21           MR. HARRIS: That is correct, your Honor.

22           With that, that is all we have to add to supplement  
23 then.

24           THE COURT: All right.

25           As far as the motion then to -- the other motion that

1 Google filed to compel the depositions, I am going to grant  
2 that. It seems to me that there was an agreement reached, and  
3 I am just looking through all the E-mails back and forth, that  
4 the depositions would be taken within the Court imposed  
5 discovery closure, and that they should have been, unless by  
6 agreement of parties, gone through.

7 So, I will order that, that they be completed by the  
8 discovery close.

9 MR. HARRIS: Thank you, your Honor.

10 THE COURT: So, that motion is granted.

11 MR. HARRIS: Thank you.

12 MR. SHONKWILER: Your Honor, tomorrow is the deadline  
13 for briefing, any additional briefing, in support of the  
14 pending motion extending discovery, the discovery deadline.  
15 As I said before, we will be filing a brief to extend what  
16 impact, if any, that will have on the ruling your Honor just  
17 made.

18 THE COURT: None, none.

19 It seems to me there was an agreement reached to  
20 produce witnesses at particular times, and if plaintiff -- I  
21 assume Google knows that if they wish to depose the parties  
22 again, they would have to seek leave of Court to do so.

23 MR. HARRIS: That is understood, your Honor.

24 MR. ANDALMAN: It is not Google, your Honor, it is  
25 the other parties.

1 MR. MURPHY: We wanted to avoid the --

2 THE COURT: I am saying Google, if they wish to  
3 depose your witnesses a second time because, if I grant -- or  
4 if some Judge grants leave to bring in new parties, that they  
5 would have to seek leave of Court to depose your people again,  
6 not to say that the new parties wouldn't have an opportunity  
7 to depose them, but that --

8 MR. SHONKWILER: That was our only concern, that the  
9 new parties would, and we are not refusing to produce these  
10 parties for deposition.

11 THE COURT: If I allow the amendment, that is the  
12 problem you run into this late in the game by amending.

13 So, we will put the motion to amend the third amended  
14 complaint over to next week, and you should file something by  
15 the end of this week, just simultaneously file something by  
16 the end of the week as to whether or not legally I can rule  
17 on the motion.

18 You can also put in your arguments why perhaps I  
19 shouldn't rule on it, and/or if you conclude I legally should  
20 do it, I won't limit you to that, you can put anything you  
21 want in there, whether I should recuse myself now, because you  
22 have raised the specter of adding a party which would force me  
23 to recuse myself, or whether I can rule on that legally, but  
24 perhaps I shouldn't, because of whatever reason you can think  
25 of.

1 MR. HARRIS: Very well.

2 You would like that filed by Friday?

3 THE COURT: Yes, so we can review it.

4 And we will continue the motion over until next  
5 Tuesday.

6 MR. HARRIS: Okay.

7 THE CLERK: Tuesday, the 27th, at 9:00.

8 THE COURT: Okay.

9 MR. FLEMING: Can we have also until Friday to file  
10 our brief in support of the extension for discovery?

11 THE COURT: Is the motion for extension up?

12 MR. FLEMING: It is up next Tuesday.

13 MR. FINN: Your Honor ordered that tomorrow the  
14 plaintiffs file a supplemental brief, if necessary, for the  
15 continued motion to extend discovery.

16 MR. FLEMING: It is due tomorrow, yes, but we will  
17 obviously be in Mr. Specht's deposition tomorrow.

18 THE COURT: Wait a minute.

19 What is up tomorrow before me, anything?

20 MR. FLEMING: No, but we are supposed to file a  
21 further brief tomorrow, your Honor, in support of our motion  
22 to extend the discovery cut off. Your Honor wanted to see  
23 what happened at the 30(b)(6) depositions and wanted us to  
24 come and file supplemental briefs.

25 THE COURT: Okay.



1 MR. FLEMING: And so what I am suggesting is that  
2 we file that on Friday as well, and that will be up next  
3 Tuesday as well.

4 THE COURT: You can file it on Friday.

5 MR. FLEMING: Thank you, your Honor.

6 MR. HARRIS: Thank you.

7 THE COURT: All right.

8 (Proceedings concluded.)  
9  
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12 C E R T I F I C A T E  
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14 I certify that the foregoing is a correct transcript  
15 from the record of proceedings in the above-entitled matter.  
16

17 /s/Krista Burgeson, CSR, RMR, CRR      July 20, 2010  
18 Federal Official Court Reporter      Date  
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