

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

TIMELINES, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.: 11 CV 6867
	)	
FACEBOOK, INC.	)	HONORABLE JOHN W. DARRAH
	)	
Defendant.	)	Jury Trial Demanded

**TIMELINES, INC.’s MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR  
LEAVE TO FILE ADDITIONAL FACTS IN ITS LOCAL RULE 56.1(b)(3)(C)  
STATEMENT OF ADDITIONAL FACTS IN OPPOSITION TO  
FACEBOOK, INC.’S MOTION FOR SUMMARY JUDGMENT**

Timelines, Inc. (“Timelines”) submits this Memorandum of Law in support of its Motion for Leave to File Additional Facts in Its Local Rule 56.1(b)(3)(C) Statement of Additional Facts in Opposition to Facebook Inc.’s Motion for Summary Judgment.

**INTRODUCTION**

Due to an oversight by counsel, Timelines submitted more than 40 fact statements as additional facts in support of its response to Facebook’s motion for summary judgment. Many of those paragraphs could have been condensed into fewer paragraphs. Furthermore, as the Court may recall, the Court denied an earlier *Daubert* motion by Facebook and asked the parties to address certain expert issues in their summary judgment papers, rather than separate motion practice (which necessarily increased certain of the matters Timelines needed to address), and thereby also permitted Facebook to file a larger opening brief – 20 pages – to which Timelines had to respond. Also, the complexity of this case, and the fact that Timelines needed to address certain matters for the first time in its response (which Facebook did not address in its opening brief), in order to show why Facebook’s motion should be denied, both further necessitated these additional fact statements. Finally, Timelines’ statement of additional facts was made in good

faith and otherwise complied with the rules regarding format and citation to matters appearing in the record. The excess paragraphs are not flagrant or overly excessive, and were not added with a deliberate disregard for the Court's rules. We submit that in other matters the Court has accepted statements of additional facts in excess of 40 paragraphs when, as here, the facts are complicated. This is true even when a party fails to ask for leave of Court. For these reasons, which are more fully explained below, the Court should grant Timelines' Motion for Leave.

### **ARGUMENT**

“It is within the district court's discretion as to how strictly to enforce the requirements of Local Rule 56.1.” *Stanciel v. Gramley*, 267 F.3d 575, 579 (7th Cir.2001); *Best Vacuum, Inc. v. Ian Design, Inc.*, 2006 WL 3486879 \*2-3 (N.D.Ill. Nov.29, 2006); *Perry v. Bodman*, 2006 WL 1460003 \*2 (N.D. Ill. May 23, 2006); *Traum v. Equitable Life Assurance Society of United States*, 240 F.Supp.2d 776, 780 (N.D. Ill. 2002).

Courts regularly grant leave to parties to file a brief in excess of the prescribed page limit. *See e.g., Carpenter Welfare Fund of Illinois v. Perkins, Inc.*, 93 C 2072, 1994 WL 406579 (N.D. Ill. Aug. 1, 1994) (“This Court recalls no instance in which it has ever denied a motion for leave to file a memorandum in excess of 15 pages, as GR 9(d) permits.”); *PAA Mgmt., Ltd. v. United States*, 91 C 168, 1995 WL 265974 (N.D. Ill. Jan. 10, 1995); *Todd v. City of Chicago*, 96 C 5247, 1999 WL 967524 (N.D. Ill. Oct. 7, 1999).

This Court, likewise, routinely allows plaintiffs—like Timelines—to file a statement of additional of facts in excess of 40 paragraphs. *See Maher v. Hyundai Const. Equip. USA, Inc.*, 10 C 03396, 2012 WL 3264946 (N.D. Ill. Aug. 7, 2012) (granting plaintiff leave to submit 70 paragraphs of additional facts). This is true even when a party inadvertently does not ask for leave prior to filing a statement of additional facts that exceed the forty paragraph limit under

Local Rule 56.1. *See Smith v. Illinois Dept. of Human Services*, 05 C 4907, 2008 WL 4679456 (N.D. Ill. May 8, 2008) (allowing plaintiffs to file a statement of additional facts in excess of 40 paragraphs without leave of court); *see also See Nat'l Inspection & Repairs, Inc. v. George S. May Int'l Co.*, 03 C 5529, 2008 WL 4389834 (N.D. Ill. Sept. 24, 2008) *aff'd*, 600 F.3d 878 (7th Cir. 2010).

Given the complexity of this case—which this Court has recognized by extending the page limits for the briefs to 20 pages—it was necessary for Timelines’ statement of additional facts to go beyond the 40 paragraph limit under Local Rule 56.1. Indeed, to fully respond to Facebook’s motion for summary judgment, Timelines had to address certain issues that Facebook did not raise or address in its own Local Rule 56.1(a)(3) factual statements. For instance, it was necessary for Timelines to set forth facts concerning Timelines’ own federal trademarks, a description of Timelines’ business, Facebook’s brand and trademark use of the term “Timeline,” Facebook’s awareness of Timelines’ trademarks, third-party confusion about Facebook’s “Timeline” announcement in relation to Timelines’ business, and Facebook’s historical practices with its own trademarks for terms that otherwise appear to be generic (including poke, wall and like).

In addition, before Facebook filed its motion for summary judgment, the Court directed the parties to address certain issues regarding experts in the summary judgment briefs, rather than in Daubert motion practice. This in turn added complication to the summary judgment proceeding and compounded issues, some of which needed to be addressed in Timelines’ statement of additional facts. A 66-paragraph statement of additional facts was therefore necessary to provide a complete picture to the Court of the issues in dispute.

This Court has allowed a party to file a statement of facts in excess of forty paragraphs for thoroughness sake—even when that party did not first seek leave of court. *See Nat'l Inspection & Repairs, Inc. v. George S. May Int'l Co.*, 03 C 5529, 2008 WL 4389834 (N.D. Ill. Sept. 24, 2008) aff'd, 600 F.3d 878 (7th Cir. 2010) (“Despite NIR’s untimely request to file more than 40 paragraphs (NIR filed its request only after May’s reply alerted NIR to the problem), in the interests of completeness, the court grants NIR’s motion for leave to file in excess of 40 additional facts . . .”).

Confronted with similar facts to this case, the Court in *Thomas v. Sheahan*, accepted a 140-paragraph statement of additional facts submitted by a plaintiff who did not first obtain leave of court. 499 F. Supp. 2d 1062, 1072 (N.D. Ill. 2007). Relying on Local Rule 56.1’s committee comments, the Court determined that the “factual complexity in this case warrants the relaxation of the 40-paragraph limit.” *Id.* Here too, the Court should find that because this case is so convoluted, additional paragraphs of statements of fact are necessary.

Facebook will not suffer any unfair prejudice if this Court were to grant Timelines’ Motion For Leave. In fact, Facebook has already responded to each of Timeline’s statements of additional facts. *See Butler v. Sentry Ins. A Mut. Co.*, 85 C 10466, 1986 WL 8347 (N.D. Ill. July 18, 1986) (granting plaintiff leave to file an amended complaint even after plaintiff filed it without leave of court because, in part, defendant had already answered it). Because Facebook will not unfairly suffer prejudice, the Court should grant Timelines’ Motion For Leave.

### **CONCLUSION**

For the reasons stated above, Plaintiff Timelines, Inc. respectfully requests that the Court GRANT its Motion For Leave to File Additional Facts in Its Local Rule 56.1(b)(3)(C) Statement

of Additional Facts in Opposition to Facebook Inc.'s Motion for Summary Judgment, and grant such other relief as the Court deems just and proper.

Dated: February 22, 2013

Respectfully submitted,

**TIMELINES, INC.,**  
*Plaintiff/Counter-Defendant*

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**CERTIFICATE OF SERVICE**

The undersigned, one of the attorneys of record in this case, hereby certifies that he caused true and correct copies of Timelines, Inc.'s Memorandum of Law in Support of its Motion for Leave to File Additional Facts in Its Local Rule 56.1(b)(3)(C) Statement of Additional Facts in Opposition to Facebook Inc.'s Motion for Summary Judgment to be filed with the Court via the CM/ECF System, and also served copies of these documents upon Counsel of Record for Facebook via e-mail on February 22, 2013.

/s/Douglas A. Albritton  
An attorney