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September 2, 2009

BY E-FILE

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.,
C. A. No. 08-862-JJF(LPS)

Dear Judge Stark:

Leader Technologies, Inc. ("Leader") comes before the Court to resolve a dispute between the parties regarding Judge Farnan's July 23, 2009 Rule 16 Scheduling Order (D.I. 76) ("Scheduling Order"). *See* Ex. 1, attached hereto. Leader respectfully requests the Court clarify the Scheduling Order with regards to when depositions may proceed and when fact discovery closes. This dispute arose after Leader served a deposition notice on Facebook under Rule 30(b)(6) of the F.R.C.P. ("30(b)(6) deposition") on July 29, 2009. D.I. 79; *see also* Ex. 2. Facebook refused to provide a witness or date for this deposition, taking the position that according to the Scheduling Order, no depositions could take place until after November 20, 2009. Since the same Scheduling Order lists the completion of fact discovery on November 20, 2009, Leader met and conferred with Facebook to determine what Facebook's position was regarding when fact discovery closed. Facebook confused the issues, taking a position different from that which it had in the past regarding when fact discovery closes, and not taking a position regarding when fact discovery actually closes. Leader has tried to work through this issue to no avail, which has resulted in Facebook setting the stage for further discovery disputes, as it is now asserting that the Federal Rules of Civil Procedure and the law only permits Leader to take a single 30(b)(6) deposition.[1] Leader does not want to wait until after November 21, 2009, only to find out that Facebook will take yet another position to delay deposition discovery.

[1] Facebook is taking the position that Leader "is entitled to a Rule 30(b)(6) deposition of Facebook limited to '1 day of 7 hours,'" citing Fed. R. Civ. P. 30(d)(1) and *In re Sulfuric Acid Antitrust Litigation*, 230 F.R.D. 527 (N.D. Ill. 2005) (holding party not entitled to second or

The Scheduling Order states in relevant part:

> 4. Discovery.
>
> a. Exchange and completion of contention interrogatories, identification of fact witnesses and document production shall be commenced ***so as to be completed by November 20, 2009.***
>
> b. Maximum of 35 interrogatories, including contention interrogatories, for each side.
>
> c. No maximum of requests for admission by each side.
>
> d. Maximum of 10 depositions by plaintiff and 10 by defendant, excluding expert *and non-party* depositions. ***Depositions shall not commence until the discovery required by Paragraph 4(a), (b), and (c) is completed.***

See Ex. 1 (emphasis added). While Facebook's current position is that only written discovery must be completed by November 20, 2009, and depositions can only take place after November 20, this is contrary to Facebook's suggestion to Judge Farnan regarding the close of all fact discovery. In a March 31, 2009 scheduling conference, Judge Farnan accepted Facebook's suggestion to close all fact discovery in November 2009.

> THE COURT: We're going to trial in June 2010.
>
> When are we going to have cutoff of factual discovery?
>
> I've seen what you proposed. I'm going through the exercise here. ***When are we cutting off factual discovery?***
>
> ...
>
> MR. CAPONI: ***Like November.*** Unless it narrows, we're getting a lot of third party discovery.
>
> THE COURT: ***We'll make it November. To address that issue, discovery will cutoff -- pick a date in November 2009.*** And when we will have the need after that fact discovery for an [sic] a Markman hearing? Probably in December or January.
>
> MR. CAPONI: Yes, your honor.

See Ex. 3, 4:19-5:15 (emphasis added). Despite Leader pointing out the inconsistencies with Facebook's positions, Facebook has remained steadfast that depositions can only begin after November 20, 2009 and will not discuss when fact discovery needs to be completed. *See* Exs. 4-6.

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extended Rule 30(b)(6) deposition). Wholly apart from the fact that the law that Facebook cites to does not support its position, Facebook has stated that "[t]o the extent LTI is successful in compelling Facebook's early deposition, modifying the Scheduling Order or obtaining leave to serve a deposition notice prior to the set time, Facebook will provide a designee on a single day for seven hours and will resist any efforts by LTI to obtain an additional, or extended, Rule 30(b)(6) deposition of Facebook later in the case." *See* Ex. 2.

It appears that the final sentence of Paragraph 4(d) of the Scheduling Order, which states "[d]epositions shall not commence until the discovery required by Paragraph 4(a), (b), and (c) is completed" is a vestigial remnant from the earlier April 6, 2009 draft of the Proposed Scheduling Order. D.I. 30. In light of the statements made by counsel and the Court during the March 31 scheduling conference, it is clear that the language in the Scheduling Order was not intended to leave the fact discovery cut off open ended or permit Facebook to further delay Leader's efforts to keep discovery moving forward. While Facebook claims depositions should not proceed until written discovery is completed, Facebook has, at the same time, delayed written discovery as much as possible by not producing its technical documents, refusing to provide written discovery.

To ensure that Facebook cannot create any further discovery delays that will prejudice Leader, Leader respectfully requests that the Court clarify the Scheduling Order as, allowing depositions to take place immediately, and setting the end of all fact discovery for November 20, 2009.

Respectfully,

/s/ Philip A. Rovner

Philip A. Rovner (#3215)
provner@potteranderson.com

PAR /mes/931498
cc: Steven L. Caponi, Esq. – By E-File and E-mail
Heidi L. Keefe, Esq. – By –E-mail
Paul J. Andre, Esq. – By E-mail

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES, INC., a Delaware corporation,	)	
Plaintiff-Counterdefendant,	)	Civil Action No. 08-862-JJF
v.	)	
FACEBOOK, INC., a Delaware corporation,	)	
Defendant-Counterclaimant	)	

RULE 16 SCHEDULING ORDER

The parties, Plaintiff-Counterdefendant Leader Technologies, Inc. ("Leader") and Defendant-Counterclaimant Facebook, Inc. ("Facebook"), having satisfied their obligations under Fed. R. Civ. P. 26(f),

IT IS ORDERED THAT:

1. **Pre-Discovery Disclosures.** The parties exchanged on March 3, 2009 the information required by Fed. R. Civ. P. 26(a)(1) and D. Del. LR 16.1.

2. **Joinder of Other Parties.** All motions to join other parties shall be filed on or before August 21, 2009.

3. **Mediation.** The parties shall retain a Mediator for the purposes of exploring the possibility of a settlement. A Report shall be filed every sixty (60) days, or as otherwise directed by Magistrate Judge Stark to advise the Court of the parties efforts to include the nunber of conferences or teleconferences held and whether any progress has been made.

4. **Discovery.**

a. Exchange and completion of contention interrogatories, identification of fact witnesses and document production shall be commenced so as to be completed by November 20, 2009.

b. Maximum of 35 interrogatories, including contention interrogatories, for each side.

c. No maximum of requests for admission by each side.

d. Maximum of 10 depositions by plaintiff and 10 by defendant, excluding expert *and non-party* depositions. Depositions shall not commence until the discovery required by Paragraph 4(a), (b), and (c) is completed.

e. Reports from retained experts required by Fed. R. Civ. P. 26(a)(2) are due from the party with the burden of proof on the issue the expert is offered thirty (30) days after the issuance of the Court's Markman decision.

f. Any party desiring to depose an expert witness shall notice and complete said deposition no later than thirty (30) days from receipt of said expert's report, unless otherwise agreed in writing by the parties or so ordered by the Court. Expert reports and depositions shall be completed by April 19, 2010.

5. **Non-Case Dispositive Motions.**

a. The Court has suspended its non-case dispositive motions procedure in this matter.

b. Magistrate Judge Stark shall hear and resolve all discovery disputes that may arise.

6. **Amendment of the Pleadings.** All motions to amend the pleadings shall be filed on or before November 20, 2009.

7. **Case Dispositive Motions.** Any case dispositive motions, pursuant to the Federal Rules of Civil Procedure, shall be served and filed with an opening brief on May 1, 2010. Briefing shall be pursuant to D. Del. LR 7.1.2. No case dispositive motion may be filed more than ten (10) days from the above date without leave of the Court. The parties shall follow the Court's procedures for summary judgment motions which is available on the Court's website at: http://www.ded.uscourts.gov/JJFmain.htm

8. **Markman.** A Markman Hearing, if necessary, will be held on January 20, 2010 at 10:00 a.m. The parties shall identify and exchange their contentions at least forty-five (45) days before the Markman Hearing. Briefing on the claim construction issues shall be completed at least twenty (20) days prior to the hearing. The Court, after reviewing the briefing, will allocate time to the parties for the hearing.

9. **Applications by Motion.**

a. Any applications to the Court shall be by written motion filed with the Clerk of the Court in compliance with the Federal Rules of Civil Procedure and the Local Rules of Civil Practice for the United States District Court for the District of Delaware (Amended Effective June 30, 2007). Any non-dispositive motion shall contain the statement required by D. Del. L.R. 7.1.1 and be made in accordance with the Court's February 1, 2008 Order on procedures for filing non-dispositive motions in patent cases. Briefs shall be limited to no more than ten (10) pages. Parties may file stipulated and unopposed Orders with the Clerk of the Court for the Court's review and signing. The Court will not consider applications and requests submitted by letter or in a form other than a motion.

b. No facsimile transmissions will be accepted.

c. No telephone calls shall be made to Chambers.

d. Any party with a true emergency matter requiring the assistance of the Court shall e-mail Chambers at: jjf_civil@ded.uscourts.gov. The e-mail shall provide a short statement describing the emergency.

10. **Pretrial Conference and Trial.** A Pretrial Conference is scheduled for June 3, 2010. Trial is scheduled for June 28, 2010 at 9:30 a.m.

July 23, 2009
DATE

UNITED STATES DISTRICT JUDGE

EXHIBIT 2

WHITE & CASE

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August 17, 2009

VIA E-MAIL

Rowena Young, Esq.
KING & SPALDING LLP
333 Twin Dolphin Drive, Suite 400
Redwood City, CA 94065

Re: *Leader Technologies Inc. v. Facebook, Inc.* Civil Action No. 1:08-cv-00862-JJF

Dear Rowena:

Your August 14, 2009 letter is unclear as to whether LTI intends to move the Court for an order compelling Facebook's Rule 30(b)(6) deposition, an order modifying the Scheduling Order entered on July 23, 2009 or an order seeking leave to serve a deposition notice. Please clarify.

LTI agreed to the Scheduling Order entered by the Court and has neither articulated why it believes departure from that schedule is necessary nor shown good cause for a departure. You first claimed that LTI construed the Scheduling Order to mean that once written discovery of a party was complete, depositions could commence. However, you would not confirm that LTI had completed written discovery on Facebook. You then indicated that LTI believed the Scheduling Order did not allow the parties sufficient time to take depositions and that this alone justified noticing and taking Facebook's deposition early. You then claimed that remarks made at the March 2009 case management conference somehow trump the Court's later-issued order.

As I explained during our conferences on this topic, Facebook does not agree with LTI's positions, believes LTI's Rule 30(b)(6) deposition notice violates the clear Scheduling Order and believes that LTI has failed to articulate any reason why early depositions are necessary. I must also correct your mischaracterization of our prior discussions: At no time did I say that Facebook contends that there is no close of fact discovery in this case. As I explained, it is clear from the Scheduling Order that written fact discovery is to close on November 20, 2009 and that oral fact discovery would commence thereafter.

Finally, I point out that LTI is entitled to a Rule 30(b)(6) deposition of Facebook limited to "1 day of 7 hours." Fed R. Civ. P. 30(d)(1); *see also, in re Sulfuric Acid Antitrust Litigation*, 230 F.R.D. 527 (N.D. Ill. 2005) (holding party not entitled to second or extended Rule 30(b)(6) deposition). To the extent LTI is successful in compelling Facebook's early deposition,

modifying the Scheduling Order or obtaining leave to serve a deposition notice prior to the set time, Facebook will provide a designee on a single day for seven hours and will resist any efforts by LTI to obtain an additional, or extended, Rule 30(b)(6) deposition of Facebook later in the case.

Please contact me if you wish to discuss the issue further.

Sincerely,

/s/ Craig W. Clark

EXHIBIT 3

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES, INC	:	CIVIL ACTION NO.
	:	March 31, 2009
Plaintiff,	:	
	:	2:41 p.m.
v.	:	
	:	
FACEBOOK, INC	:	
	:	
Defendant.	:	
.....	:	

TRANSCRIPT OF SCHEDULING CONFERENCE

BEFORE THE HONORABLE JOSEPH J. FARNAN, JR.

UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: POTTER, ANDERSON & CORROON

BY: PHILLIP A. ROVNER, ESQ.

For the Defendant:	BLANK ROME, LLP.
	STEVEN L. CAPONI, ESQ.
	-and-
	WHITE & CASE, LLP.
	BY: HEIDI L. KEEFE, ESQ
Court Reporter:	LEONARD A. DIBBS
	Official Court Reporter

P R O C E E D I N G S

THE COURT: Good afternoon.

Do you want to announce your appearances and case?

MR. ROVNER: Phil Rovner from Potter, Anderson & Corroon.

Good afternoon, your Honor, representing the plaintiff, Leader Technologies.

This is Leader Technologies versus Facebook.

MR. CAPONI: Good afternoon, Steve Caponi from Blank Rome, and with me is Heidi Keefe of White & Case for Facebook, the defendant.

THE COURT: Good afternoon.

I wanted to get you over because I got correspondence from both sides about why you couldn't get a Scheduling Order together.

And I understand that there are discovery -- alleged deficiencies. And I understand that there are start-up issues between the two sides.

But not to be able to get an Scheduling Order submitted shouldn't have as a reason that those things were occurring between you. It's unacceptable.

So what I thought I would do is get you here, have you put together a bare-bones Scheduling Order in front of me. That way I can resolve any of those disputes. Then if you continue

to have issues going back and forth, you can notice something for the Motion Day and we'll take it up.

It sounds like even that in the initial stages if you are having these kind of very elementary disagreements that we might have to do something more than -- I have a case now. I've never seen anything like it in the 25 years. There are over a 120 motions in the case. It's just crazy.

Good news. I'm using it for a lecture. I'm keeping all the papers and silliness of e-mails. I'm going to make something positive out of it. You two shouldn't be having these problems.

When do you want to go to trial?

MR. ROVNER: Both parties agreed that the June 2010 trial date that you set is what we want, since you ordered it. It's good that we want it. The problem seems to be on some discovery deadlines.

THE COURT: I'm not going to get into that.

MR. ROVNER: Okay.

THE COURT: We're going to trial in June 2010.

When are we going to have cutoff of factual discovery?

I've seen what you proposed. I'm going through the exercise here. When are we cutting off factual discovery?

MR. ROVNER: We believe July, August time frame as we have in the order.

MR. CAPONI: Later in the year. We're looking at

October, November. The issue from our standpoint -- not to get into the discovery dispute. It really comes down to -- we don't -- we do know the size. As it stands right now.

THE COURT: I remember the whole issue.

MR. CAPONI: We're looking at the entire --

THE COURT: They said it's your entire platform.

MR. CAPONI: Like November. Unless it narrows, we're getting a lot of third party discovery.

THE COURT: We'll make it November.

To address that issue, discovery will cutoff -- pick a date in November 2009.

And when we will have the need after that fact discovery for an a Markman hearing? Probably in December or January.

MR. CAPONI: Yes, your Honor.

MR. ROVNER: We believe it should be in October. We think the Markman Hearing can be done before the fact discovery.

THE COURT: You're going to be arguing so much before then, you won't have time to do the briefing and all. I can tell there are going to be a lot of arguments here. Unless this case gets narrowed down tremendously, we'll have the Markman Hearing in January of 2010.

Now, assuming this is going to be an easy Markman Hearing having a taken a look at the patent. This is like, two guys in a dorm room.

MR. CAPONI: I don't think this is going to be astrophysics here.

THE COURT: It's not going to tax my chemical background or biological background, two guys in a Harvard dorm. How hard can it be?

So, we're going to have a quick Markman decision, which means your expert reports -- so that we're ready for the June trial -- are going to be due, and your depositions completed by mid-April of 2010. That will give us time to have a hearing, get you a Memorandum Order on the constructions and give you a chance to designate and then exchange with the Court, take your depositions.

It doesn't look like the case lends itself to Summary Judgment since I've been certified as the least granting Summary Judgment judge in the country on patent cases. I'm going to say you can file Summary Judgment motions by May 1.

Don't be surprised if you get an order back and the client says that's all he did because this transcript will be out there in the world recognizing that it will be almost impossible in this case not to have a general issue of material fact or some other bar to the grant of Summary Judgment. At least being a deferral of it until some additional evidence is heard, which means we ought to have a pretrial conference in the first week in June contemplating a late June trial date.

So that first week of June, let's just the Wednesday or

the Thursday. That will be the pretrial. Your outside counsel are coming from where?

MS. KEEFE: California.

THE COURT: Mr. Rovner?

MR. ROVNER: Paul Andre is coming from California.

THE COURT: It's better to get you hear the night before to have the 10 o'clock in the morning and have you get out of Philadelphia.

MS. KEEFE: That is better for us, your Honor.

MR. ROVNER: One thing, you had set a trial date for June 7th.

THE COURT: We're going to move that a tiny bit. I did that thinking that I was going to go with the August, September kind of date. Since I pushed it out, I have to push out some other date. We'll do it at the end of June.

June the 3rd will be the pretrial or the second. It doesn't matter, I guess.

MS. KEEFE: Either one, your Honor.

THE COURT: We'll do it at 10 o'clock in the morning so we can contemplate those flights.

We'll start the trial on June the 28th of 2010, 9:30 a.m.

MS. KEEFE: Thank you, your Honor.

MR. ROVNER: Sorry to keep passing questions.

You said the Markman would be June 2010.

Do you want to set a date now?

THE COURT: We can do that.

MR. ROVNER: I'm on a roll.

THE COURT: We can do that Markman Hearing. It could be either January 19 or 20th. That's a Tuesday or Wednesday. That way you don't have to fly out on a Sunday.

MR. CAPONI: We'll go the Wednesday, your Honor.

MR. ROVNER: I don't have any preference.

THE COURT: Okay. 10 o'clock on January 20th. That's a Wednesday, at 2010.

MS. KEEFE: Thank you, your Honor.

MR. ROVNER: Thank you.

THE COURT: Okay. I'll expect to get that order pretty quickly and we'll get the filed. Then you can continue your arguments.

I'll probably see you in May. Work them out. I'm not going to use this as one of my abuse showing cases.

If you are really not getting along to the point of reasonableness, what's going to happen? Your favorite thing, Mr. Rovner, your special thing. You might be going to a Special Master.

MR. ROVNER: I didn't want to suggest it.

THE COURT: You're going to go to a Special Master. I'm trying to get prepared for two pretty large trials.

I haven't heard an announcement yet as of March 31st of

who the new judge is going to be. This thing is probably put off until late summer or early fall. We're going to be carrying 90, 95 patent cases. You can't be meaningful and do your bench trials decisions and patents and keep them going and try to stay within a window of two years for trial.

Your conduct will dictate whether or not you go to a Special Master after I see your first round of arguments.

MR. CAPONI: Your honor, for both sides, we actually get along. The happens to be the first issue that we disagree with the most. Once we get past that hurdle, hopefully the waters won't be too choppy.

THE COURT: I'm looking forward to it, Mr.Caponi.

Mr. Rovner, is there anything you want to add.

MR. ROVNER: We'll be fine. We'll have a Protective Order agreed upon and get it to you. I'm curious about the case that you are going to use as an example. I hope I'm not in that one. I might be.

(A discussion was held off the record.)

THE COURT: All right it. Thank you very much.

(At this time court proceedings concluded.)

EXHIBIT 4

KING & SPALDING

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August 6, 2009

VIA E-MAIL

Craig W. Clark
White & Case LLP
3000 El Camino Real
5 Palo Alto Square, 9th Floor
Palo Alto, CA 94306

Re: Leader Technologies, Inc. v. Facebook, Inc. (1:08-cv-00862-JJF)

Dear Craig:

I write to follow up on our meet and confer earlier today.

During our meeting, Facebook confirmed that it agreed to Leader's proposal that the parties exchange courtesy copies of all discovery obtained from third parties during the course of this action, including documents produced pursuant to subpoena.

With respect to Leader's request that Facebook supplement its response to Leader's Interrogatory No. 14, pursuant to Court order, Facebook's position during the meet and confer was that it would not provide a supplemental response to Interrogatory No. 14. Rather, Facebook took the position that Judge Stark's Order required Leader to serve a new interrogatory, identical to Interrogatory 14. Since our meet and confer, I received your voicemail that Facebook has reconsidered its position and is now willing to supplement Interrogatory 14, if Leader agrees that Facebook has two weeks to provide its supplemental response. Leader agrees. Please confirm that Facebook will provide its supplemental response to Interrogatory 14 by August 20.

As we told you during the meet and confer, Leader has taken a very broad view of what is relevant in responding to Facebook's document requests and has produced, or will be producing, all responsive, non-privileged, non-work product documents in Leader's possession that could possibly be relevant. With respect to your request that Leader produce documents in Leader's possession related to Leader employees' use of Facebook for personal reasons, such

documents are not relevant to any claim or defense in this matter. Therefore, Leader will not produce such personal, non-relevant information to Facebook.

With respect to Leader's outstanding deposition notice, we understand Facebook's position is that depositions are not to commence until after November 20, 2009 and therefore will not produce the requested 30(b)(6) witness on August 10, 2009. As Facebook has not provided an alternative date on which it will produce a witness, and refuses to take a position on when fact discovery closes, Leader will likely move the Court on this issue.

Feel free to contact me if you have any questions regarding these matters.

Very truly yours,

Rowena Young

EXHIBIT 5

KING & SPALDING

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August 11, 2009

VIA E-MAIL

Craig Clark
White & Case LLP
3000 El Camino Real
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Palo Alto, CA 94306

Re: Leader Technologies Inc. v. Facebook Inc. (1:08:cv-00862-JJF)

Dear Craig:

I write regarding your letter of August 7, 2009, refusing to provide a witness pursuant to Leader's 30(b)(6) Notice of Facebook which was served on July 29, 2009. Facebook's refusal is based on its position that while written discovery closes on November 20, 2009, depositions cannot commence until the close of written discovery.

Facebook's position cannot be reconciled with the Court's order made during the March 3, 2009 hearing that fact discovery, not just written discovery in this matter, closes in November, 2009. In fact, Facebook itself suggested that the cutoff for fact discovery in this case should be in November, 2009:

> THE COURT: We're going to trial in June 2010.
> When are we going to have cutoff of factual discovery?
> I've seen what you proposed. I'm going through the
> exercise here. When are we cutting off factual discovery?
> ...
>
> MR. CAPONI: Like November. Unless it narrows, we're
> getting a lot of third party discovery.
>
> THE COURT: We'll make it November. To address that issue,
> discovery will cutoff -- pick a date in November 2009. And when we will have the need
> after that fact discovery for an a Markman hearing? Probably in December or January.

MR. CAPONI: Yes, your honor.

3/3/09 Hearing - 4:19-5:15

Accordingly, based on Facebook's request, the Court ordered that fact discovery be completed by November 2009. Facebook's current position that depositions cannot take place until after November 20, 2009 is antithetical to the Court's order, and Facebook's own request for a November fact discovery cutoff.

In light of the Court's order and Facebook's request that fact discovery, and not just written discovery, end in November 2009, Leader requests that Facebook immediately provide a date on which it will make available a witness pursuant to Leader's deposition notice. If Facebook does not provide such date by August 14, 2009, Leader will be forced to move the Court on this issue.

Feel free to contact me if you have any questions regarding this matter.

Regards,

Rowena Young

EXHIBIT 6

WHITE & CASE

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August 14, 2009

VIA E-MAIL

Rowena Young, Esq.
KING & SPALDING LLP
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Redwood City, CA 94065

Re: *Leader Technologies Inc. v. Facebook, Inc.* Civil Action No. 1:08-cv-00862-JJF

Dear Rowena:

I write regarding your August 11, 2009 letter again requesting that Facebook produce a Rule 30(b)(6) witness prior to the time the Court set for depositions. I again refer you to the controlling Scheduling Order issued July 23, 2009, which states unequivocally:

> 4. **Discovery**.
>
> a. Exchange and completion of contention interrogatories, identification of fact witnesses and document production shall be commenced so as to be completed by November 20, 2009.
>
> ***
>
> d. Maximum of 10 depositions by plaintiff and 10 by defendant, excluding expert and non-party depositions. **Depositions shall not commence until the discovery required by Paragraph 4(a), (b), and (c) is completed.**

D.I. 76 at 2 (bolding added). LTI is not entitled to take its Rule 30(b)(6) deposition of Facebook until after November 20, 2009. Facebook will not produce a witness until after that date. To do otherwise would violate the Court's Scheduling Order.

Sincerely,

/s/ Craig W. Clark