

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LEADER TECHNOLOGIES, INC., a
Delaware corporation

Plaintiff and Counterdefendant,

v.

FACEBOOK, INC., a Delaware
corporation

Defendant and Counterclaimant.

CIVIL ACTION

NO. 1:08-cv-00862-JJF

**FILED UNDER SEAL PURSUANT TO
PROTECTIVE ORDER**

**DECLARATION OF CRAIG W. CLARK IN SUPPORT OF DEFENDANT'S
OBJECTIONS TO JULY 28, 2009 ORDER OF MAGISTRATE JUDGE STARK**

Dated: August 10, 2009

OF COUNSEL:

Heidi L. Keefe (*pro hac vice*)
Mark R. Weinstein (*pro hac vice*)
Craig W. Clark (*pro hac vice*)
Melissa H. Keyes (*pro hac vice*)
WHITE & CASE LLP
3000 El Camino Real
5 Palo Alto Square, 9th Floor
Palo Alto, CA 94306

Thomas P. Preston (DE Bar #2548)
Steven L. Caponi (DE Bar #3484)
BLANK ROME LLP
1201 N. Market Street
Wilmington, DE 19801
302-425-6400
Fax: 302-425-6464

*Attorneys for Defendant and
Counterclaimant Facebook, Inc.*

I, Craig W. Clark, declare:

1. I am an attorney with White & Case LLP, counsel of record in this action for defendant Facebook, Inc. ("Facebook"). I have personal knowledge of the facts contained within this declaration and, if called as a witness, could testify competently to the matters contained herein.

2. Attached hereto as **Exhibit A** is a true and correct copy of a letter dated June 19, 2009 sent to Rowena Young, counsel for plaintiff Leader Technologies, Inc. ("LTI"). [REDACTED]

3. Attached hereto as **Exhibit B** is a true and correct copy of a letter dated June 26, 2009 received by me from Paul Andre, counsel for LTI, [REDACTED]

4. Attached hereto as **Exhibit C** is a true and correct copy of a letter dated July 6, 2009 from Heidi Keefe, counsel for Facebook, to Mr. Andre advising [REDACTED]

5. On July 16, 2009 at approximately 9:00 a.m. PDT, I met James Hannah, counsel for LTI, and Giovanni Vigna, consultant for LTI, at the Palo Alto, California offices of White & Case LLP. I directed Messrs. Hannah and Vigna to a conference room housing a stand alone computer [REDACTED]

6. On July 21, 2009, I participated in a conference of counsel with Mr. Hannah and Ms. Young to discuss LTI's July 16 source code inspection. Mr. Hannah said that LTI required access to the entirety of Facebook's source code and would ask Judge Stark to order the production of the entirety of that code and all related "technical documents." Counsel for LTI refused to explain why it required such access and initially refused to provide any identification

of specific files or technical documents that LTI wished to review saying that they would only be identified in papers LTI planned to file with the Court on July 23, 2009. When repeatedly pressed, counsel for LTI eventually agreed to provide that identification to Facebook before filing papers with the Court, but that LTI would not be satisfied with anything less than production of the entirety of Facebook's source code and all related "technical documents." Attached hereto as **Exhibit D** is a true and correct copy of an email received by me from Mr. Hannah dated July 21, 2009 and my July 22, 2009 response to that email. [REDACTED]

7. On July 22, 2009 I participated in a second conference of counsel with Mr. Hannah and Ms. Young regarding the July 16, 2009 source code inspection. During that conference, [REDACTED]

[REDACTED]. LTI has not served supplemental infringement contentions on Facebook and, when asked during the above conferences whether LTI could supplement its infringement contentions based on its July 16 source code inspection, Mr. Hannah and Ms. Young refused to answer.

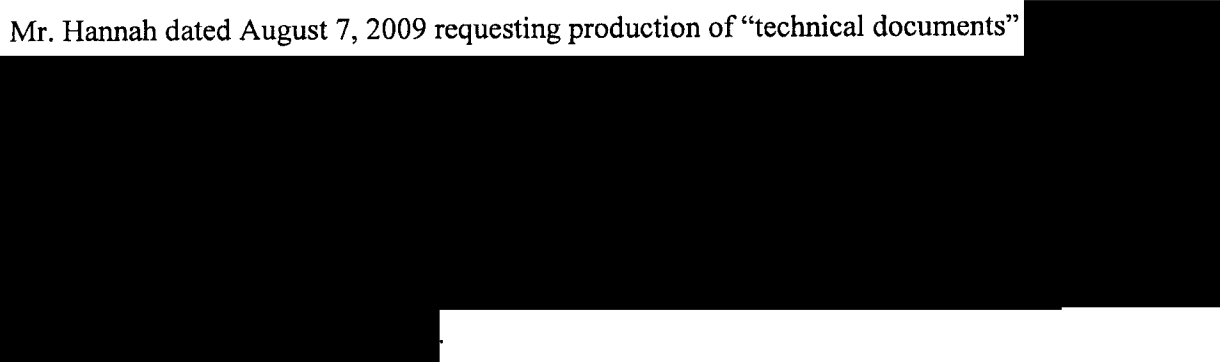
8. During both the July 21 and July 22 conferences referenced above, I explained that Judge Stark had ordered the parties to submit a joint, five-page letter by July 23, 2009

outlining any disputes not resolved following the source code inspection. I asked LTI's counsel when Facebook could expect a draft of LTI's portion of the joint letter. Counsel said that LTI would not participate in filing a joint letter, would submit its own letter to Judge Stark, and would not provide Facebook with a copy of LTI's letter brief prior to filing it with the Court.

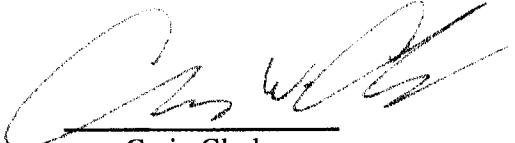
9. Attached hereto as **Exhibit E** is a true and correct copy of a letter dated July 31, 2009 sent to Ms. Young



10. Attached hereto as **Exhibit F** is a true and correct copy of a letter I received from Mr. Hannah dated August 7, 2009 requesting production of "technical documents"



I declare under penalty of perjury that the foregoing is true and correct. Executed on August 10, 2009 in Palo Alto, California.



Craig Clark

EXHIBIT A

June 19, 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:

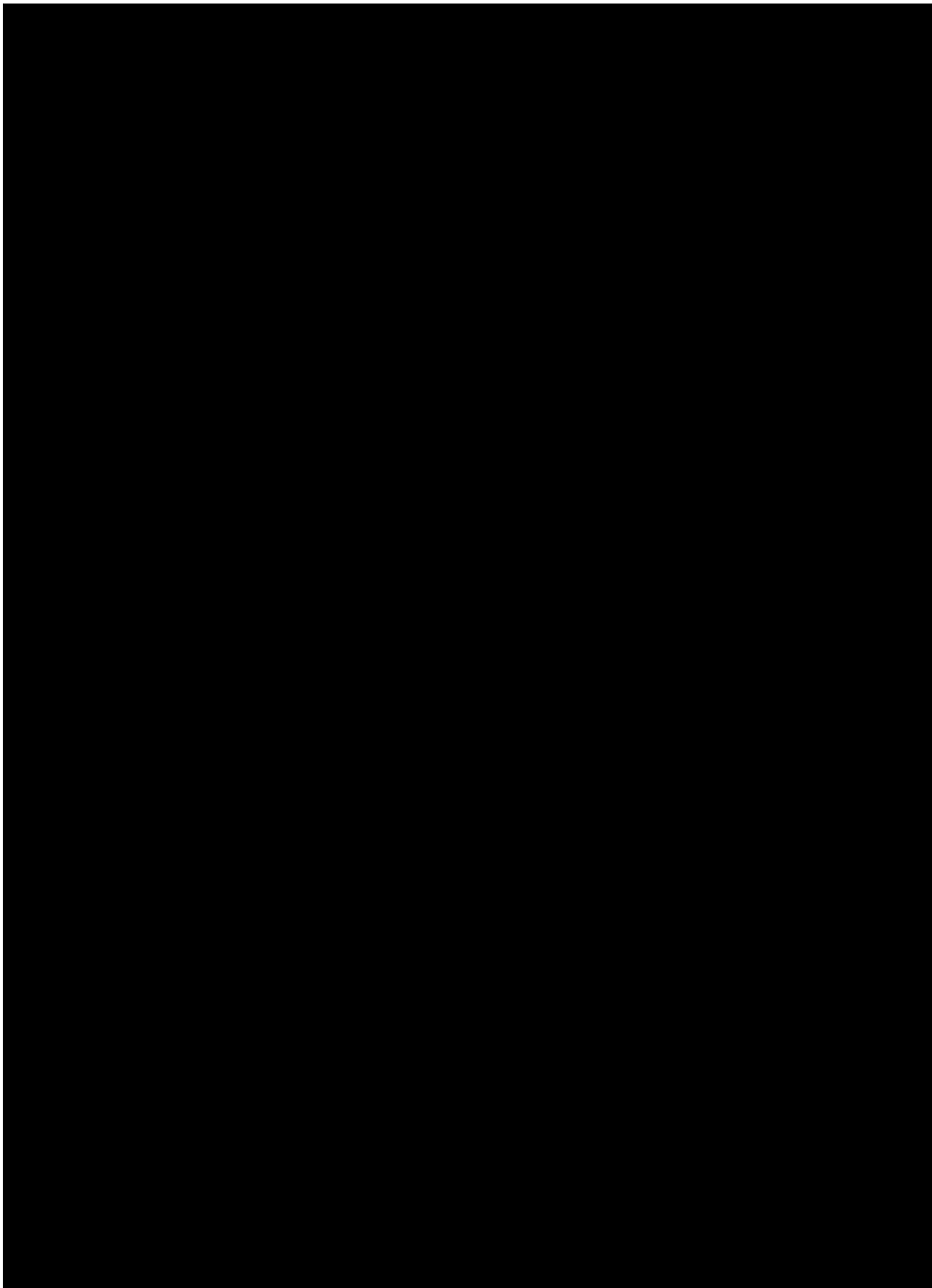
As directed by the Court on May 28, 2009, enclosed herewith is a list representing the modules of code used to operate facebook.com as of June 16, 2009. These materials are designated **HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - SOURCE CODE** and marked FBSC00000001 through FBSC00000003 ("FBSC" indicating "Facebook Source Code") under the terms of the Stipulated Protective Order in place in the litigation, and must be treated accordingly.

Sincerely,

/s/ Craig W. Clark

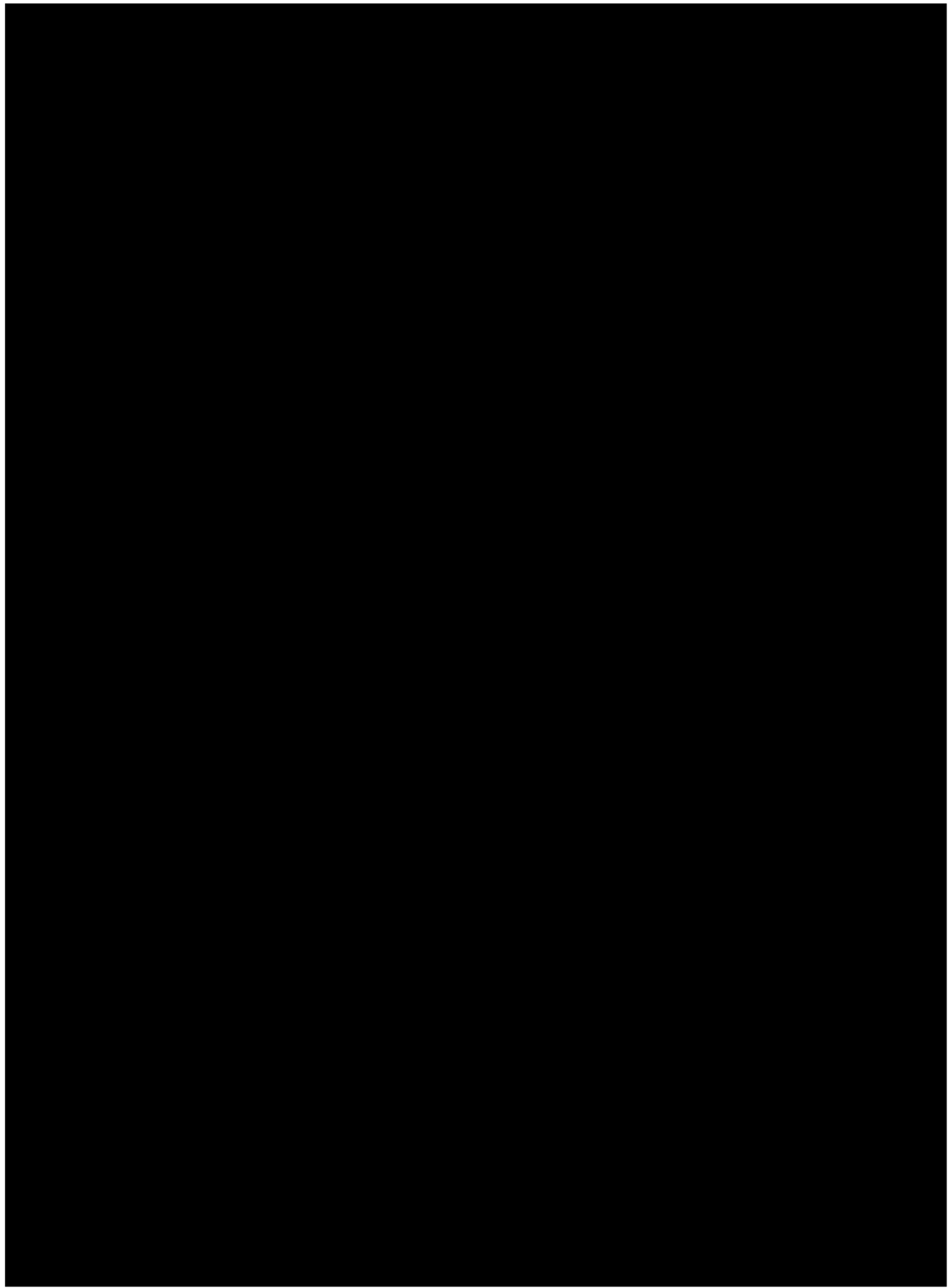
Attachment

ABU DHABI ALMATY ANKARA BEIJING BERLIN BRATISLAVA BRUSSELS BUCHAREST BUDAPEST DUSSELDORF FRANKFURT HAMBURG
HELSINKI HONG KONG ISTANBUL JOHANNESBURG LONDON LOS ANGELES MEXICO CITY MIAMI MOSCOW MUNICH NEW YORK
PALO ALTO PARIS PRAGUE RIYADH SAO PAULO SHANGHAI SINGAPORE STOCKHOLM TOKYO WARSAW WASHINGTON DC



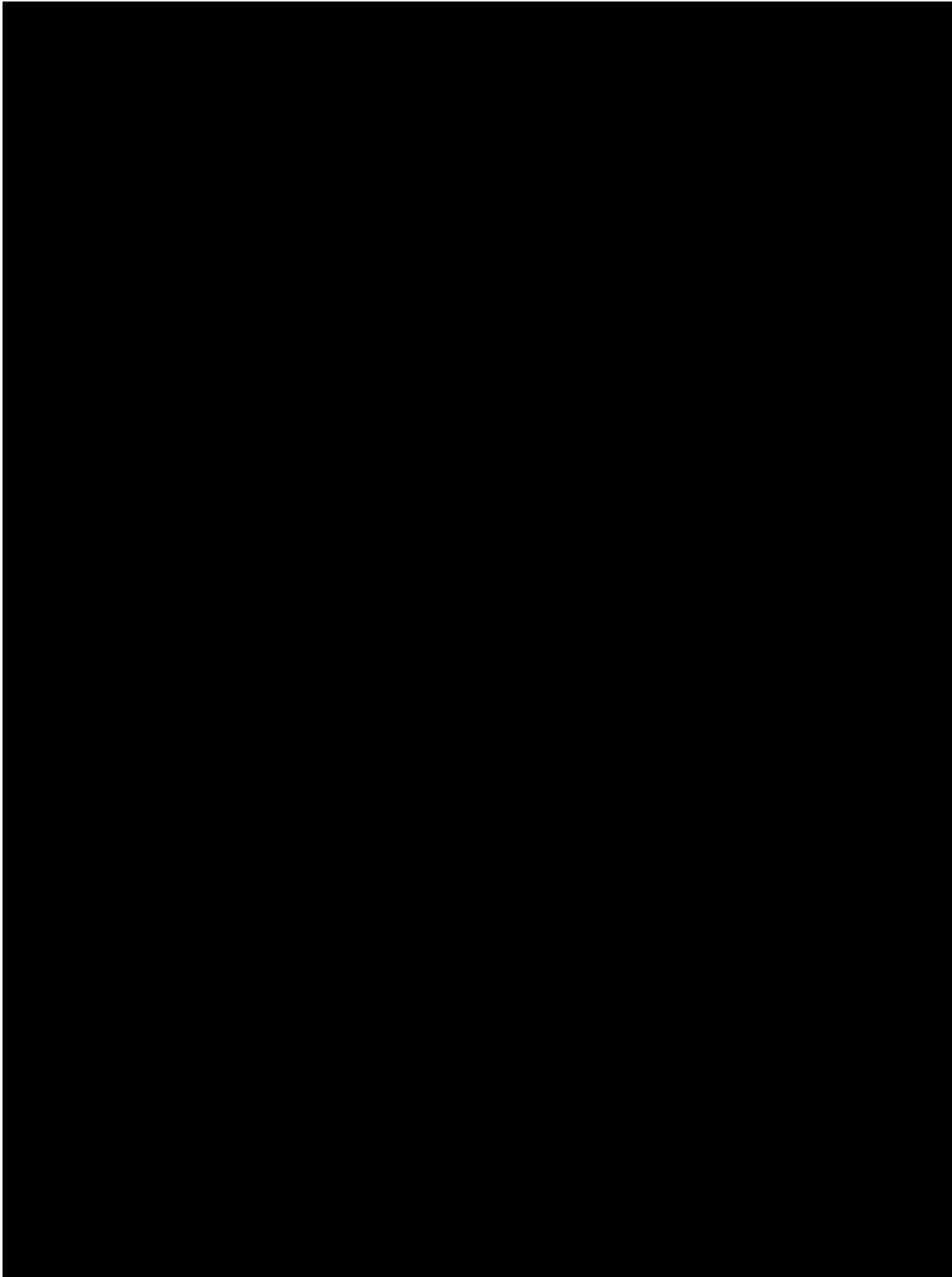
**HIGHLY CONFIDENTIAL –
ATTORNEYS' EYES ONLY –
SOURCE CODE**

FBSC00000001



**HIGHLY CONFIDENTIAL –
ATTORNEYS' EYES ONLY –
SOURCE CODE**

FBSC0000002



**HIGHLY CONFIDENTIAL –
ATTORNEYS’ EYES ONLY –
SOURCE CODE**

FBSC00000003

EXHIBIT B

KING & SPALDING

King & Spalding LLP
333 Twin Dolphin Drive
Suite 400
Redwood Shores, CA 94065
www.kslaw.com

Paul Andre
Partner
Direct Dial: (650) 590-0721
Direct Fax: (650) 590-1900
pandre@kslaw.com

June 26, 2009

VIA E-MAIL

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

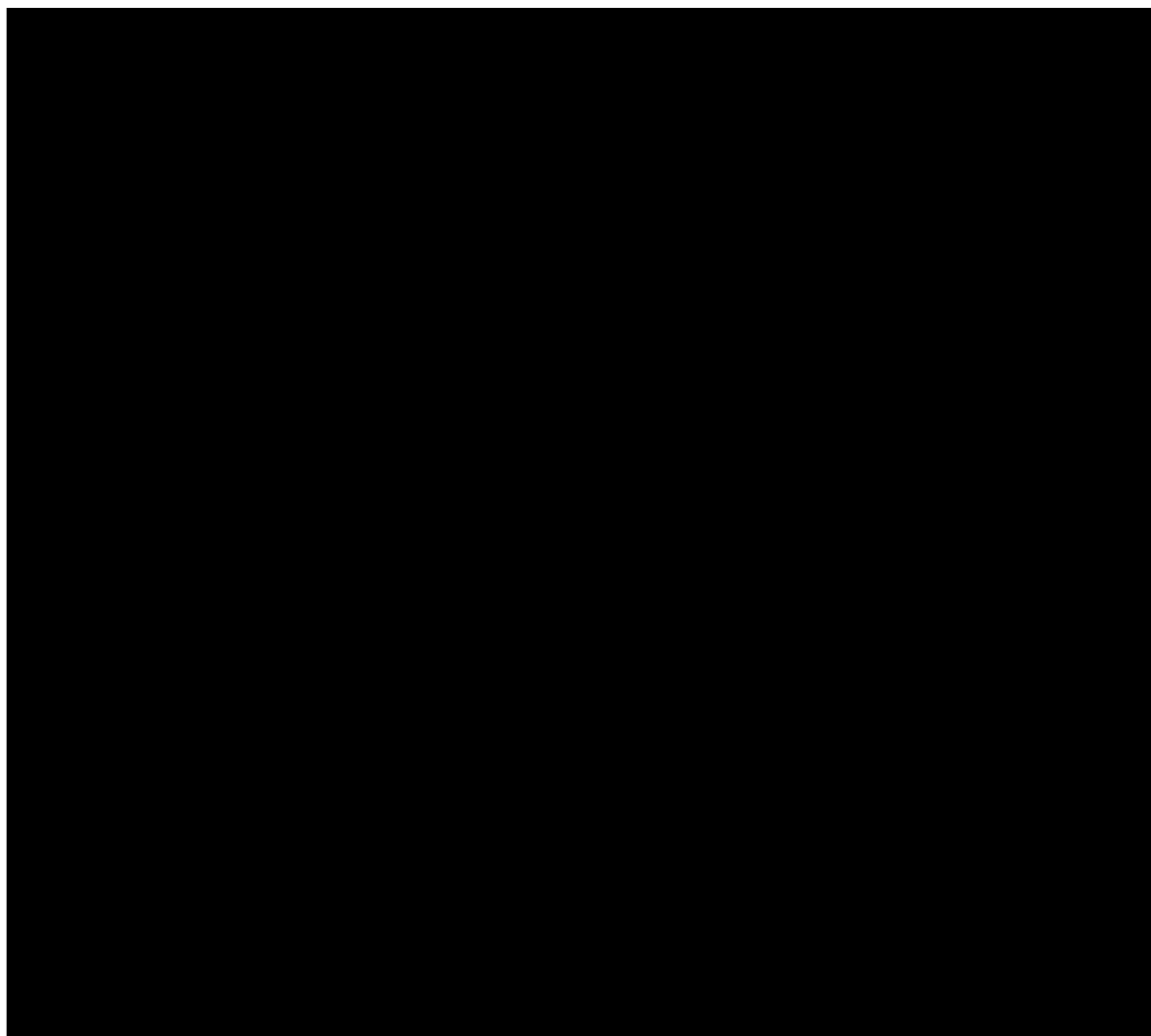
Re: Selection Modules from Facebook's Source Code List

Dear Craig:

I write to you regarding the source code list Facebook provided to us on June 19, 2009. Judge Farnan ordered Facebook to provide Leader with a map of source code modules including category descriptions of the source code modules. See May 28, 2009 Hearing Transcript at 38:12-15. Facebook has not provided Leader a source code map as required by Judge Farnan, rather it has provided a list of unidentified items with no category description or explanation of the items on the list. It is extremely difficult to determine with any specificity the source code covered from the information provided. Furthermore, in your accompanying letter you describe the list as a "list representing the modules of code," without explaining what representing module of code means.

June 26, 2009

Page 2



Based on the above identification of modules, Leader requests a location and a date certain upon which the specified source code modules will be made available for review. In advance of the source code review, please produce all supporting technical documents related to these modules, including emails, white papers, design documents, presentations, and meeting notes.

Sincerely,

A handwritten signature in black ink that reads "Paul Andre" followed by a small mark that appears to be a checkmark or a stylized flourish.

Paul Andre

EXHIBIT C

July 6, 2009

VIA E-MAIL

Paul Andre, Esq.
KING & SPALDING LLP
333 Twin Dolphin Drive, Suite 400
Redwood Shores, CA 94065

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

Dear Paul:

Facebook has collected all but a few of the files contained in the modules LTI has identified. We are prepared to make the collected files available for inspection under the Protective Order at our offices presently. If you prefer to wait for the remaining files, we will endeavor to have them available on July 10, 2009, or shortly thereafter, as LTI originally requested.

Please provide notice of LTI's proposed reviewers as required by the Protective Order.

LTI's demands for additional productions from Facebook (emails, white papers, design documents, presentations and meeting notes, which you classify as "technical documentation") ignore the Court's May 28, 2009 order. You will recall that the Court denied LTI's motion in its entirety, including LTI's request for "technical documentation" and other materials, and instead directed Facebook to produce a subset of source code contained in modules selected by LTI. LTI's renewed demands for material sought in its motion, which Judge Farnan denied, is wholly improper.

Thank you, and please feel free to contact me as necessary.

Sincerely,

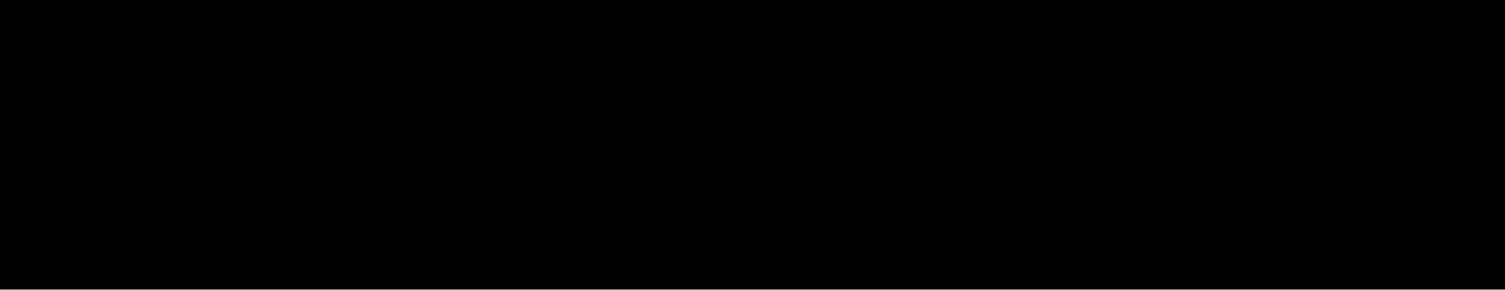
/s/ Heidi L. Keefe

EXHIBIT D

From: Clark, Craig W.
Sent: Wednesday, July 22, 2009 12:54 PM
To: 'Hannah, James'
Cc: Young, Rowena; Andre, Paul; Kobialka, Lisa; Rovner, Philip A.; Keefe, Heidi L.; Weinstein, Mark R.; McCool, Melissa; 'Caponi, Steven L.'
Subject: RE: Source Code Review - Attorneys Eyes Only

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY - SOURCE CODE

James,



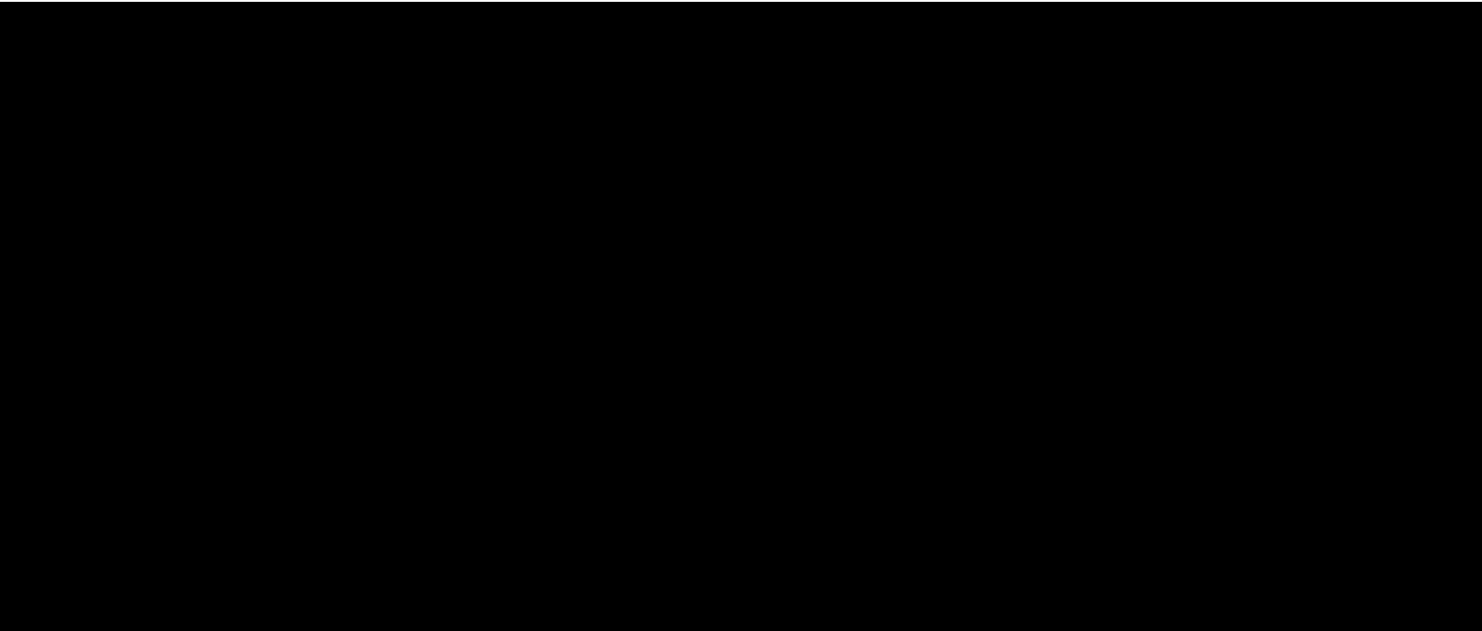
Thank you.

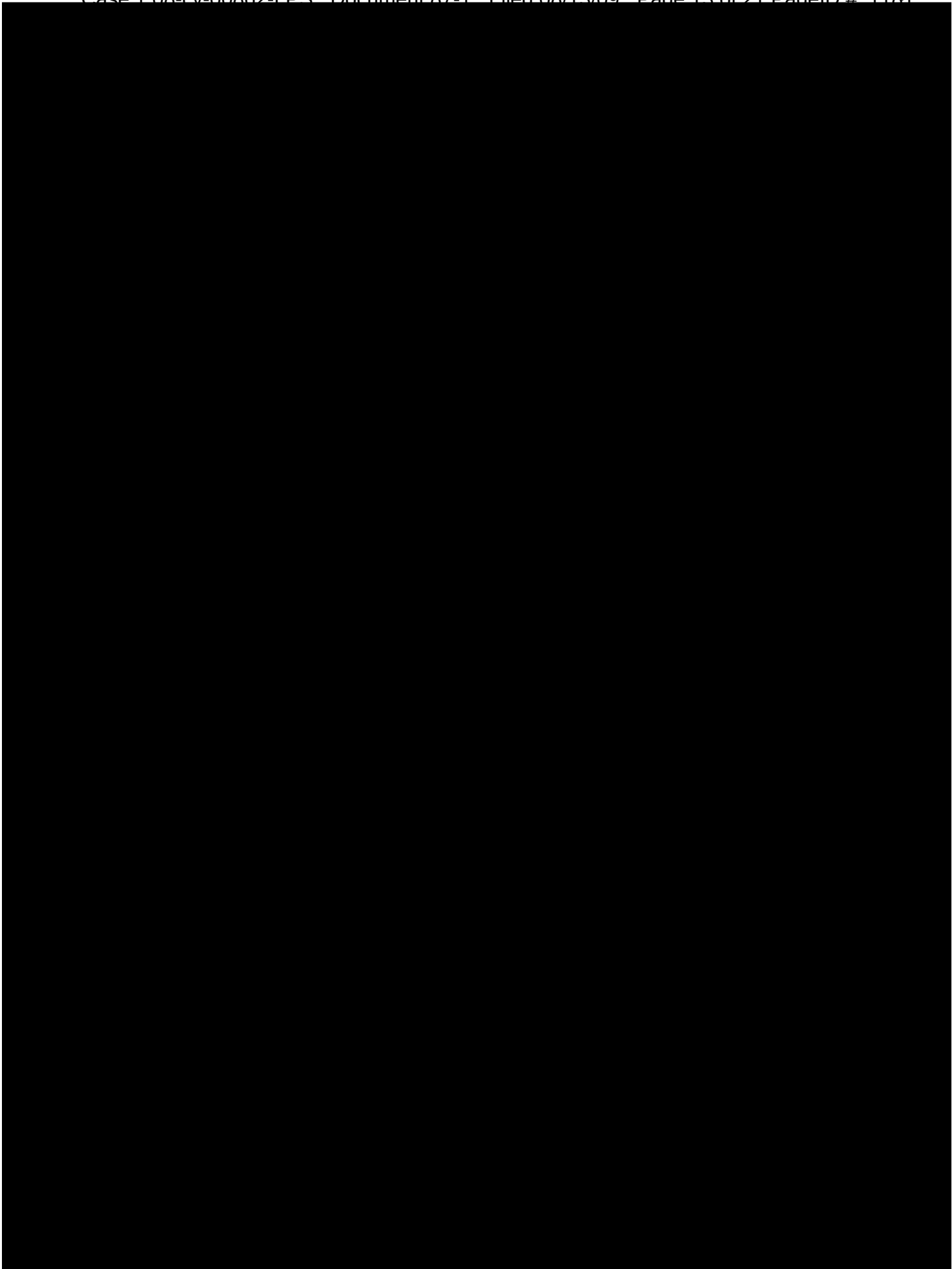
Craig W. Clark | WHITE & CASE LLP
3000 El Camino Real | 5 Palo Alto Square | 9th Floor | Palo Alto, CA | 94306
t + 1 650 213 0307 | f + 1 650 213 8158 | cclark@whitecase.com

From: Hannah, James [<mailto:jhannah@KSLAW.com>]
Sent: Tuesday, July 21, 2009 4:07 PM
To: Clark, Craig W.
Cc: Young, Rowena
Subject: Source Code Review - Attorneys Eyes Only

ATTORNEYS EYES ONLY

Craig,







James

James Hannah
Attorney At Law
King & Spalding LLP

Silicon Valley -
333 Twin Dolphin Drive, Suite 400
Redwood Shores, CA 94065

San Francisco -
Four Embarcadero Center, Suite 3500
San Francisco, CA 94111

Phone (SV & SF): (650) 590-0726
Fax (SV & SF): (650) 590-1900
Email: jhannah@kslaw.com

Confidentiality Notice:

This message is being sent by or on behalf of a lawyer. It is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.

EXHIBIT E



White & Case LLP
3000 El Camino Real
5 Palo Alto Square, 9th Floor
Palo Alto, California 94306-2109

Tel. + 1 650 213 0300
Fax + 1 650 213 8158
www.whitecase.com

July 31, 2009

VIA FEDEX

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 Ms. Young:

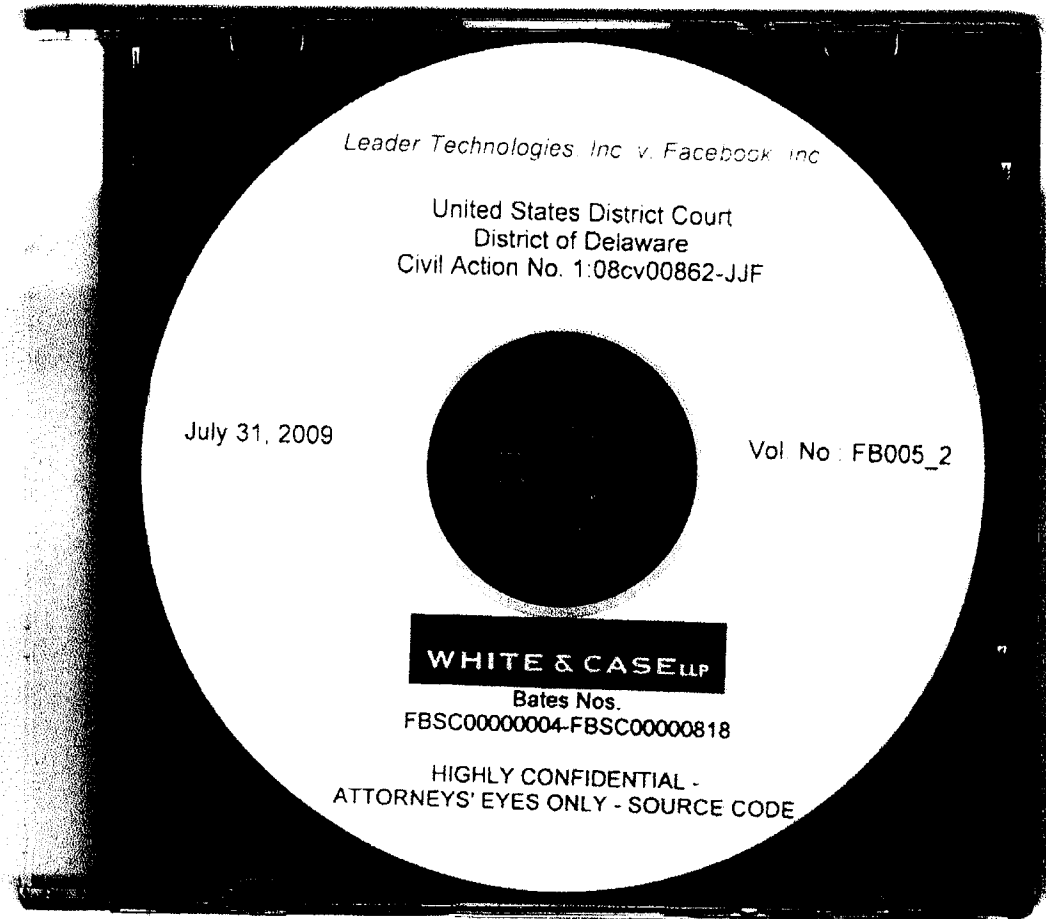
Enclosed please find a disk containing documents produced by Facebook, Inc. bearing the production numbers FBSC00000004 to FBSC00000818 ("FBSC" indicating "Facebook Source Code"). Please note that these materials are designated **HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE** under the terms of the terms of the Stipulated Protective Order in place in this litigation and must be treated accordingly.

Best regards,

Christina Ishihara
Legal Assistant

Enclosure

ABU DHABI ALMATY ANKARA BEIJING BERLIN BRATISLAVA BRUSSELS BUCHAREST BUDAPEST DÜSSELDORF FRANKFURT HAMBURG
HONG KONG LISBON LONDON LOS ANGELES MADRID MANILA MEXICO CITY MIAMI MONACO MUNICH NEW YORK
PALO ALTO PARIS PRAGUE SINGAPORE SÃO PAULO SHANGHAI SINGAPORE STOCKHOLM TOKYO WASHINGTON, DC



Leader Technologies, Inc v. Facebook, Inc

United States District Court
District of Delaware
Civil Action No. 1:08cv00862-JJF

July 31, 2009

Vol No : FB005_2

WHITE & CASE LLP

Bates Nos.

FBSC00000004-FBSC00000818

HIGHLY CONFIDENTIAL -
ATTORNEYS' EYES ONLY - SOURCE CODE

EXHIBIT F

KING & SPALDING

King & Spalding LLP
333 Twin Dolphin Drive
Suite 400
Redwood Shores, CA 94065
www.kslaw.com

James Hannah
Direct Dial: (650) 590-0726
Direct Fax: (650) 590-1900
jhannah@kslaw.com

August 7, 2009

VIA E-MAIL

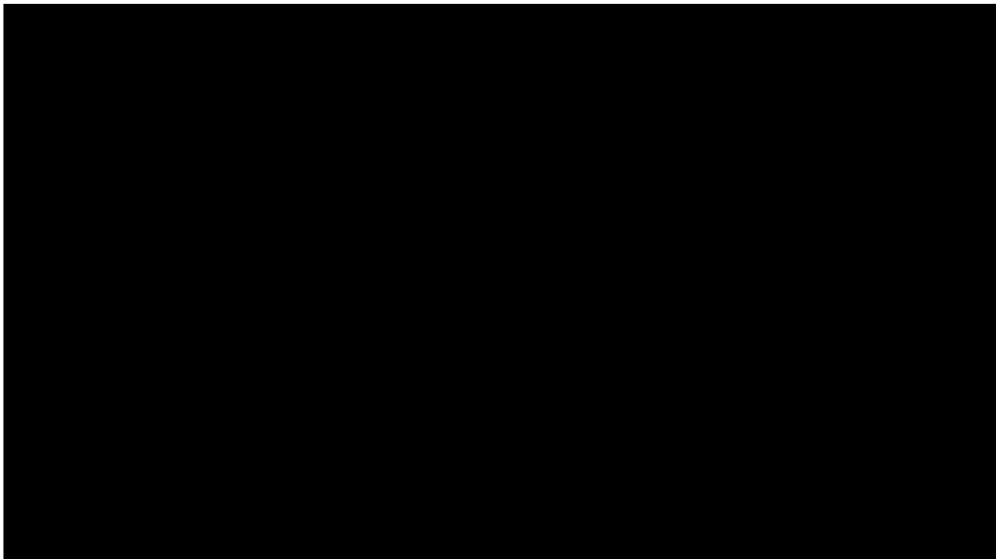
Craig Clark
White & Case LLP
3000 El Camino Real
5 Palo Alto Square, 9th Floor
Palo Alto, CA 94306

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

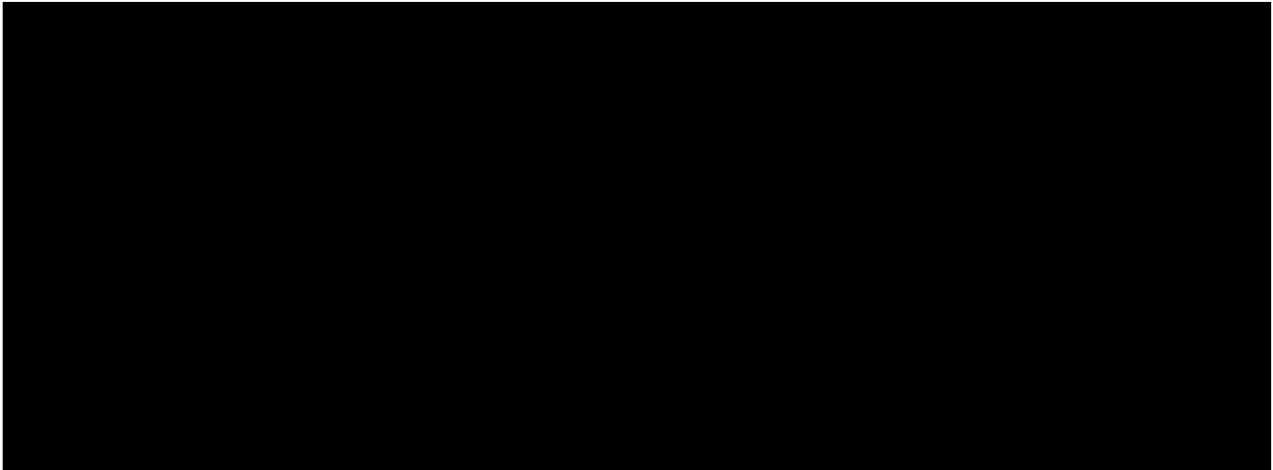
Dear Craig:

This letter identifies the technical documents for which Leader seeks production pursuant to Judge Stark's July 28th, 2009 order.

As a result of the meet and confer on July 22, 2009, Leader understands that Facebook's definition of a source code module is a directory which contains source code files. To that extent, Leader requests that Facebook produce all technical documents which relate to the following source code modules / directories based on the information provided by Facebook on July 31, 2009:

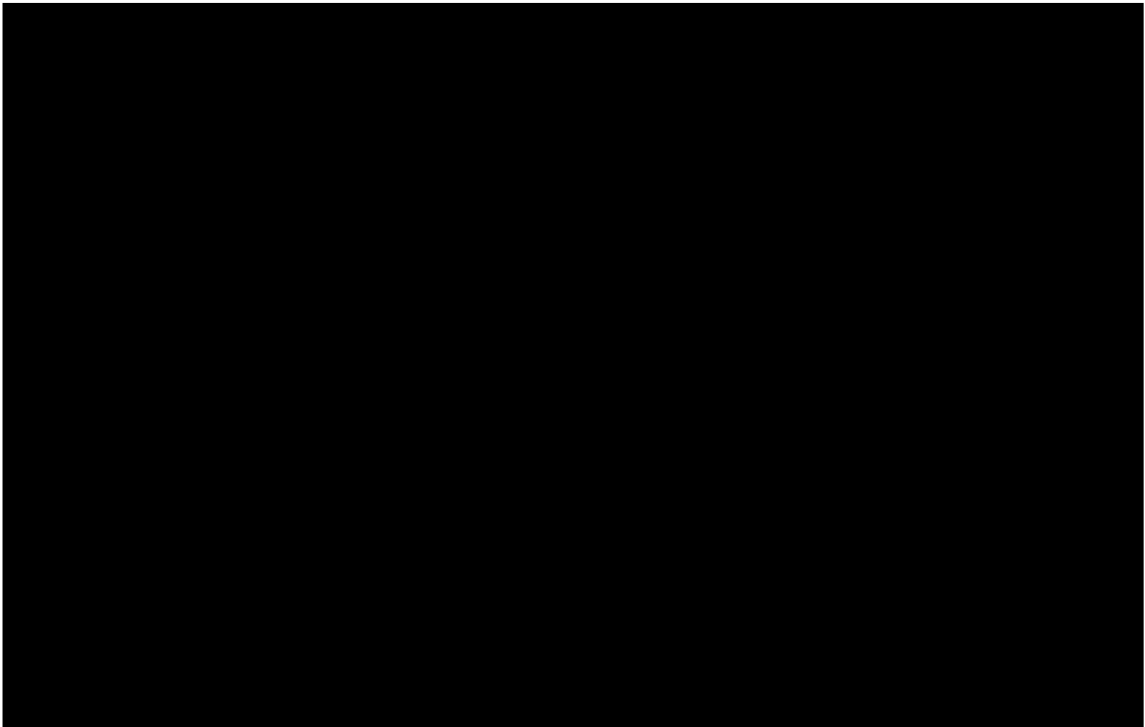


Craig Clark
August 7, 2009
Page 2



The technical documents which relate to the above listed source code modules shall include, without limitation:

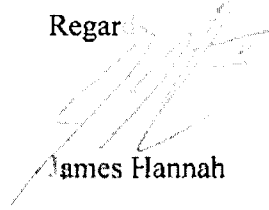
- 1)
- 2)
- 3)
- 4)
- 5)
- 6)
- 7)
- 8)



Craig Clark
August 7, 2009
Page 3

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

Regard

A handwritten signature in black ink, appearing to read "James Hannah", is written over the printed name. The signature is stylized and somewhat cursive.

James Hannah