EXHIBIT A

Court of Appeal, First Appellate District, Division Five - No. A157902

S257385

IN THE SUPREME COURT OF CALIFORNIA

En Banc

FACEBOOK, INC. et al., Petitioners,

v.

SUPERIOR COURT OF SAN FRANCISCO COUNTY, Respondent;

DERRICK D. HUNTER et al., Real Parties in Interest.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

EXHIBIT B

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

FACEBOOK, INC. et al.,
Petitioners,
v.
SUPERIOR COURT FOR THE CITY AND COUNTY OF SAN FRANCISCO,
Respondent;
DERRICK D. HUNTER et al.,
Real Parties in Interest.
A157902
San Francisco No. 13035657 and 13035658

BY THE COURT:*

The petition for writ of mandate/prohibition is denied.

Date JUL 30 2019

Jones, P.J., P.J.

* Before Jones, P.J. and Burns, J.

EXHIBIT C

SUPERIOR COURT OF CALIFORNIA
County of San Francisco

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. Lee Sullivan and Derrick Hunter, Defendants.	Case No. 13035657 & 13035658 ORDER AND JUDGMENT OF CONTEMPT

1. Facebook and Twitter appear to be misusing their immense resources to manipulate the judicial system in a manner that deprives two indigent young men facing life sentences of their constitutional right to defend themselves at trial. But Facebook and Twitter have made it clear that they are unwilling to alter their behavior, regardless of the harm to others – or the rulings of this court. That is inexcusable contempt.

Facts & Procedural History

2. Defendants Derrick Hunter and Lee Sullivan are on trial for murder, weapons, and gang charges-related charges arising from a drive-by shooting in 2013. Jury selection began on June 24, 2019. Opening statements were July 23, 2019.

3. Recognizing that social media messages among the defendants, the victims, and others had played a central role in the underlying police investigation and would be a focus of the prosecution's case, defendants subpoenaed social media messages from third party service providers Facebook, Inc. and Twitter, Inc. (collectively, "contemnors") back in 2014. This court (Chan, J.) recognized the messages' significance as well, and denied contemnors' motions to quash the subpoenas.

4. Contemnors obtained a writ of mandate from the Court of Appeal reversing Judge Chan's denial of their motion to quash and, subsequently, a superseding favorable opinion from the Supreme Court as well, remanding the case to this court. (See Opinion, 240 Cal. App. 4th 203 (2015); and Opinion, 4 Cal. 5th 1245 (2018).) Contemnors relied heavily on the Federal Stored Communications Act, 18 USC §§ 2701 et seq. (SCA), arguing that it prevents them from producing the subpoenaed documents. They also argued undue burden – an argument they later withdrew, abruptly and strategically. (RT 7/24/19 at 4.) (Transcripts of this court's hearings on May 1, 2019, and July 24, 2019, are attached and incorporated herein by reference.)

5. Both the Court of Appeal and the Supreme Court limited their rulings to the pretrial context, and indicated that their rulings might be different if the defendants were actually

in trial. (Opinion, supra, 240 Cal. App. 4th at 459-460; and Opinion, supra, 4 Cal. 5th at 1261). Indeed, the Court of Appeal explicitly questioned the constitutionality of the Stored Communications Act if it prohibits individual defendants from subpoenaing documents for use at trial, as contemnors maintain. (240 Cal. App. 4th at 460 & n.17.)

The Order

6. On remand, defendants asserted their right to a speedy trial and again subpoenaed documents from contemnors, this time for use at trial. Once again, contemnors moved to quash. At a hearing on May 1, 2019, the court denied contemnors' motions to quash and ordered contemnors to produce specified documents for in camera review. (RT 5/1/19 at 37-44.) At contemnors' request, the court delayed the effective date of its order so contemnors could seek writ relief. (Id. at 41-42.)

7. Subsequently, contemnors asked both the California Court of Appeal and then later the California Supreme Court to stay this court's May 1st order. Each court initially did so, to evaluate contemnors' petitions. (7/17/19 S. Ct. Order; 7/1/19 Ct. App. Order.) But both courts eventually ordered their stays dissolved, expressly citing the pendency of trial as a reason. (Id.)

8. As a result, the May 1st order requiring contemnors to produce documents was in effect as of July 17, 2019.

9. The May 1st order is clear, specific, and unequivocal. (5/1/19 TR at 40:10-16.) It requires contemnors to produce "the unproduced items that have been identified by the service providers at this hearing. That will be the ten private posts on Mr. Rice's Instagram account, the four private posts on Ms. Lee's Instagram account, eight private direct messages on Ms. Lee's Twitter account, and the private posts and messages on Ms. Lee's Facebook account."))

Contemnors' Willful Violation of the Order

10. Nevertheless, by letter dated July 22, 2019, contemnors informed the Court of Appeal that they had not produced documents as ordered and that they did not intend to do so. (7/22/19 letter from Joshua Lipshutz, Esq.) Thus, on July 23, 2019, this court served contemnors with an order to show cause why they should not be adjudged guilty of contempt of court and punished pursuant to section 1209(a)(5) of the California Code of Civil Procedure. (7/23/19 OSC.) The court held a hearing on July 24, 2019, to give contemnors an opportunity to make this showing.

11. At the hearing, the court advised contemnors that their continued violation of the court's May 1st order would be adjudged contempt of court if it continued. Contemnors made clear through counsel that their failure to comply with the May 1st order was willful, and that they had no intent to comply, arguing that they were justified by a "disagreement over the requirements of federal law [the SCA] that must be resolved by an appellate court." (RT 7/24 at 7.)

12. Contemnors had made this same argument to both the Court of Appeal and the Supreme Court. Nevertheless, those courts dissolved their stays of the May 1st Order. If contemnors' SCA argument was not a sufficient basis for the appellate courts to stay the May 1st order, it surely isn't a justification for contemnors to violate the order unilaterally, particularly in light of the prejudice it has caused to defendants' constitutional rights, as well as the drain on the prosecution's resources and the court's. Contemnors' stated justification for their violation, while imaginative and articulately presented, does not excuse it, and it certainly does not outweigh the real-world time pressures and resulting prejudice involved.

13. Contemnors' continued violation of the May 1st order ignores and upsets the balance that the Supreme Court and the Court of Appeal worked hard to strike – enabling contemnors to pursue their legal arguments while preserving defendants' constitutional rights. (The Court of Appeal ruled that "notwithstanding any potential issues of mootness that could arise from the dissolving of our prior stay, the court has decided to retain this matter for consideration," and set a briefing schedule (7/1/19 Ct. App. Order at 2).) Contemnors have used the court system's resources exhaustively to obtain rulings that suit them, but now they are deliberately ignoring one that does not.

Disposition

14. After due consideration of these facts, the court finds, beyond a reasonable doubt:

a) That the contemnors are guilty of contempt of court in violation of Section 1209(a)(5) of the Code of Civil Procedure — "Disobedience of any lawful judgment, order, or process of the court."

b) That contemnors had knowledge of the court's May 1st order, that they were able to comply with it as of May 1st and again as of July 24th, that they continue to have that ability now, and that they have willfully failed to comply.

c) That the contemnors are sentenced to pay fines of $1,000 apiece, the maximum permitted by Section 1209 of the Code of Civil Procedure.

d) That there is no good cause to stay execution of this sentence, and that contemnors are ordered to pay the fines immediately or risk remand.

e) That the clerk of the court is ordered to file this order, to enter the contempt on the court's docket, and to deliver a copy of this order to contemnors.

Dated: 7/26/19

JUDGE CHARLES CROMPTON
SAN FRANCISCO SUPERIOR COURT

Superior Court of California

County of San Francisco

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. Lee Sullivan and Derrick Hunter, Defendant.	Case Number: 13035657 & 13035658 **CERTIFICATE OF SERVICE BY MAIL** (CCP 1013a (4))

I, SARAH DUENAS, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On JULY 26, 2019, I served the attached ORDER AND JUDGMENT OF CONTEMPT on the parties stated below by placing a copy thereof in a sealed envelope, addressed as follows:

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and, I then placed the sealed envelopes in the outgoing mail at 850 Bryant Street, San Francisco, CA. 94103 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices.

On the above mentioned date, I caused the documents to be sent to the persons at the electronic notification addresses as shown above.

Dated: JULY 26, 2019

T. MICHAEL YUEN, Clerk

By: _____
SARAH DUENAS, Deputy Clerk

Attachment 1

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

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ORIGINAL

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. DERRICK D. HUNTER, and LEE G. SULLIVAN, Defendants.	Court No. **13035658** 2473530 **13035657** 18018261 Pages 1-13

Reporter's Transcript of:

ORDER TO SHOW CAUSE RE FACEBOOK/TWITTER

(Taken during the Jury Trial in the above-named case)

WEDNESDAY, JULY 24, 2019

BEFORE: THE HONORABLE CHARLES CROMPTON, JUDGE

Department 19, San Francisco, California

--o0o--

REPORTED BY: DIANE WILSON, CSR 8557

A-P-P-E-A-R-A-N-C-E-S

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--o0o--

WEDNESDAY, JULY 25, 2019 - AFTERNOON CALENDAR

BEFORE THE HONORABLE CHARLES COMPTON, JUDGE

--o0o--

(Whereupon the following proceedings were held outside the presence of the jury and include only colloquy regarding the O.S.C. matter to Facebook/Twitter)

THE COURT: Good afternoon.

All right. Back on the record in the Hunter and Sullivan case. The jury is not with us because we are here to deal with a third-party discovery issue.

Appearances, please.

MR. QUIGLEY: I'm Nathan Quigley. I'm back here.

MS. BARLOW: Bicka Barlow appearing for Mr. Sullivan and Mr. Hunter.

Mr. Umali is behind me as well.

MR. UMALI: I'm here as well.

MS. KAPLAN: Susan Kaplan here as well for Mr. Sullivan.

THE COURT: I see Ms. Sinha is here as well.

MS. SINHA: Just lurking in the back, Your Honor.

MR. LIPSHUTZ: Joshua Lipshutz and Thomas Cochrane for Facebook and Twitter.

THE COURT: Good afternoon.

All right. I've scheduled this hearing as a result of the service providers' failure to comply with my May 1st order that they provide the subpoenaed documents to me for in camera review and their letter to the Court of Appeal dated July 22nd indicating that they do not intend to do so. Given the service providers' unilateral actions and the documents' importance to our ongoing trial, I was forced to take the extraordinary step of releasing the jury early today to deal with this issue.

Unlike any reported case that's been cited to me or found by me, this case involves trial subpoenas and the need for the production of documents during trial. Both the Court of Appeal in this case and the Supreme Court observed the uniqueness of this case's procedural situation and the heightened concern that it raises for the defendants' Constitutional rights.

The service providers themselves bear at least partial responsibility for this situation. Since this case was assigned to me in early 2019, the service providers have spent months arguing that producing subpoenaed documents would be unduly burdensome requesting an evidentiary hearing in which they were to provide -- they would prove that, according to them, with a witness that they said they had to bring from the east coast. They sought cooperation of the parties and the Court in scheduling that hearing to accompany their witness, thereby delaying the start of trial, and then at the last possible moment, on the date of the hearing itself, the service providers announced

surprisingly that they would not produce a witness after all and that, for the first time, they expressly withdrew their burden argument that they had been making for years to this Court, the Court of Appeal, and the Supreme Court.

The subpoenaed documents' great potential importance to the defendants at trial has been cited more than once. I found the documents sufficiently relevant to justify ordering them produced at least for in camera review, and so did Judge Chan back in 2015. To my knowledge, neither the service providers nor anyone else has ever disputed these findings. That is not surprising. The People's trial witness list, exhibits proffered at pretrial hearings, opening statements yesterday, and the witness examination thus far have all confirmed that there is a strong justification for, at the very least, in camera review of the subpoenaed documents and potentially for the defendants to have access to them to ensure their rights under the 5th and 6th Amendment, the 14th Amendment guarantees, and perhaps on other basis as well.

It's worth noting that producing the subpoenaed documents entails zero risk of prejudice to the service providers. They are immunized from liability under the Stored Communication Act Safe Harbor Provision, and they ultimately abandoned their burden argument in the manner that I described.

By contrast, the potential prejudice to the defendants of denying the Court an opportunity to review the documents in camera, potentially to provide them to the

defendants to defend themselves at trial if warranted, is immediate and undeniable given the defendants have been in jail for six years awaiting trial. The trial has now begin, and the crimes charged here are potential life sentences. Time is of the essence. Both the Court of Appeal and the Supreme Court recognizes urgency and appeared to be motivated by it in dissolving their stays. And again, the service providers bear at least partial responsibility for this situation.

There is no longer a stay of my May 1st order by any court still in effect. Both the Court of Appeal and the Supreme Court have resolved their earlier stays, so the May 1st order compelling the service providers to produce the subpoenaed documents for in camera review is operative and binding on the service providers and the production is past due. All of the arguments raised by the service providers in their July 22nd letter to the Court of Appeal were already made to and considered by this Court, Court of Appeal, and the Supreme Court. All of them. Those arguments did not convince any of the Courts to grant a longer stay of the service providers' duty to produce the subpoenaed documents, and they surely don't entitle the service providers to engage in self-help for the same purpose. Immense judicial resources been devoted to the service providers' arguments, motions, and petitions, but the service providers apparently disagree with the results so far, so apparently the service providers have decided that they will simply not comply. That is unacceptable.

The service providers' failure to comply with my May 1st order is contemptuous. I set this hearing to give the service providers clear warning of that, and an opportunity to explain themselves.

So, let me first hear from the service providers.

MR. LIPSHUTZ: Thank you very much, Your Honor. Thanks very much for the opportunity to be here to present to you today.

My clients, Facebook and Twitter, have as much interest as anyone in resolving this issue quickly and with finality, understanding the seriousness of the current matter before the Court. Providers, however, are unable to produce the private social media records at issue here, because in our view, such production would violate the Stored Communications Act, which is a federal statute. We understand this Court disagrees, and we mean the Court no disrespect by our actions. But in our view, this is a good faith disagreement over the requirements of federal law that must be resolved by an Appellate Court.

We understand this Court and the parties are eager to proceed with the trial that's already underway here, and we do not believe our actions need to or should hold up this trial. Defendants respectfully have other means of obtaining the very same documents at their current disposal.

THE COURT: I disagree with that. That's been dealt with. Stored Communications Act, if it prohibits

production of the subpoenaed documents as you maintain, it appears to be unconstitutional. Both the Court of Appeal and the Supreme Court recognize this potential. That's at 240 Cal.App.4th 203 note 17 and 4 Cal 5th at 1261.

In any event, there's an order that you produce these documents, and the Appellate Court and the State Supreme Court have both recognized that that order needs to be complied with in order to vindicate these gentlemen's Constitutional rights.

MR. LIPSHUTZ: Respectfully, Your Honor, neither the Court of Appeal nor the Supreme Court have resolved the merits of the lawfulness of this Court's order.

THE COURT: Understood. And they're not going to wait to do that -- they're not going to wait to get the documents until they do that. There's a timeline for doing that. You're going to get your day in court on that. But in the mean time, these documents have to be produced for the vindication of these gentlemen's Constitutional rights.

MR. LIPSHUTZ: Several problems with that, Your Honor. First is that if we do produce the documents, it's our view that the arguments we're making on appeal could likely be moot. I know the Court of Appeals seem to be willing to overlook the mootness of that issue, but other Courts may not.

THE COURT: Well, as you said, Court of Appeals indicated otherwise, so I view that as a specious argument.

MR. LIPSHUTZ: Respectfully, the U.S. Supreme Court cannot overlook the mootness that would take place if

we were to produce the documents, and under binding U.S. Supreme Court case law, we are forced to take the actions that we're taking today if we have any possibility of appealing the order up to the U.S. Supreme Court. U.S. Supreme Court will not take the case unless we have -- we have refused to comply with the order and are faced with contempt. That is the case law we're faced with.

So -- and I would point out, the Court of Appeal did ask this Court to show why the order that was entered in May is not unlawful, so there is some question as to the legality of the order that is currently being adjudicated in the Courts of Appeal.

THE COURT: That same Court lifted its stay on my order indicating that you are obligated to produce the documents.

MR. LIPSHUTZ: It did, Your Honor, and we respectfully cannot comply with that order because of the --

THE COURT: I disagree you cannot comply.

All right. So your -- it would appear you're in contempt.

MR. LIPSHUTZ: That's up to Your Honor. I think there are certainly cases, In Re Noland, 45 Cal 4th 1217 at Page 1231 from 2009 that say that -- where the California Supreme Court said not every violation of a court order is subject to punishment as a contempt of court. We don't think that this action today justifies contempt of court because there is this ongoing legal dispute over the legality of the order. It is a good-faith dispute. We are

not here --

THE COURT: I disagree.

MR. LIPSHUTZ: Well, I'm sorry that you disagree with a good-faith dispute, but there is a Court of Appeal order saying there is questions as to the legality of the order, and we would like --

THE COURT: You're ignoring the part of the Court of Appeals' ruling that indicates that the order to produce the documents is not stayed. So you can't pick and choose among what the Court of Appeal is saying.

MR. LIPSHUTZ: Understood, Your Honor.

Just -- as I explained, I think we are taking action that we think are required by federal law and in order to preserve our arguments for appeal up to the U.S. Supreme Court, if necessary.

THE COURT: All right.

Anything else that the service providers want to say in explanation of their actions?

MR. LIPSHUTZ: I would just point out that this same procedure took place in the D.C. Court of Appeal last year. We were forced to take a contempt order there as well. We did appeal it very quickly to the Court of Appeals. The whole thing was resolved in a matter of two weeks, I think. And our objections to the subpoena were upheld by that Court. Your Honor is correct that that was not a trial subpoena. It was a pre-trial subpoena. But we think the same arguments apply. The Stored Communications Act does not distinguish between pre-trial and trial

communication. So we would certainly --

THE COURT: The act may not, but the Constitution does. And from what I can tell, every Court that has dealt with the distinction has acknowledged that it's quite different, including the Court of Appeal here and the Supreme Court here. So I don't think that citing cases that relate to pre-trial discovery has any persuasive value whatsoever here.

MR. LIPSHUTZ: My point was simply that we are willing to act and proceed as expeditiously as possible through the appellate courts. We think this issue could be resolved quickly, and in light of the fact that Ms. Lee has not taken the stand here yet, it's possible it need not effect the trial.

THE COURT: I think that is very unrealistic. As I said, I think we're -- in the timing position that we are in, in part because of your clients' conduct, and I don't think that it will be any consolation to the defendants or their lawyers that you think you are vindicating federal rights.

MR. LIPSHUTZ: That may be so, Your Honor, but we have an obligation under federal law to protect the privacy of the other account holders that were required to protect under federal law.

California Code of Civil Procedure Section 1218 provides for a contempt sanction of a $1,000.00 in this situation. I think if Your Honor is contemplating contempt, we would propose that sanction and we would ask that the

Court stay the sanction pending appeal. That would be our request.

THE COURT: It also authorizes five days in jail.

All right. I am going to take this under submission. I expect that I'll be ruling by Friday, the 26th, at the latest.

Is there anything anyone else wants to say at this time?

MS. KAPLAN: I think we made our record earlier.

THE COURT: I do as well.

Okay. Thank you, all.

MR. LIPSHUTZ: Thank you, Your Honor.

(Whereupon these proceedings concluded)

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STATE OF CALIFORNIA)
) ss.
COUNTY OF TUOLUMNE)

I, Diane Wilson, a Certified Shorthand Reporter licensed to practice in and for the State of California, County of San Francisco, do hereby certify:

That on Wednesday, the 24th day of July, 2019, I was present at the above-entitled matter; that I took down in shorthand notes all proceedings had and testimony given; that I thereafter caused said shorthand notes to be reduced to typewriting using computer-aided transcription, the foregoing being a full, true and correct transcription thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my hand.

Diane Wilson
Certified Shorthand Reporter No. 8557

Case: ***13035658****, 2473530,*
13035657*, 18018261*
Date: *Wednesday, July 24, 2019*

Attachment 2

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

BEFORE THE HONORABLE CHARLES CROMPTON, JUDGE PRESIDING

DEPARTMENT NUMBER 19

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PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. **DERRICK HUNTER,** **LEE SULLIVAN,** Defendants.	Court Nos. 13035658 17004548, 13035657 Pages 1 - 45

Reporter's Transcript of Proceedings

Wednesday, May 1, 2019

GOVERNMENT CODE §69954(d):

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Reported By: Jacqueline K. Chan, CSR No. 10276

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WEDNESDAY, MAY 1, 2018 9:33 P.M.

P-R-O-C-E-E-D-I-N-G-S

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THE COURT: Good morning.

MR. QUIGLEY: Good morning.

THE COURT: Right. We're here on the Sullivan/Hunter case. We better get appearances, please.

MR. SNELL: Your Honor, Jim Snell for third party providers Facebook and Twitter.

MR. QUIGLEY: Good morning, Your Honor. Nathan Quigley for the People.

MS. KAPLAN: Susan Kaplan for Lee Sullivan who is in custody.

MS. BARLOW: And Bicka Barlow for Mr. Sullivan as well.

MR. UMALI: Jose Pericles Umali for Mr. Hunter and that's the last thing I'm going to say today.

THE COURT: All right.

MS. BARLOW: Your Honor, we have sitting at counsel table Eric Hernandez who is from our forensic -- digital forensic firm and he's going to be assisting me today.

THE COURT: Welcome. Good morning, Counsel.

Good morning, Mr. Hunter and Mr. Sullivan.

DEFENDANT HUNTER: Good morning.

DEFENDANT SULLIVAN: Good morning.

THE COURT: We're here to deal further with this discovery issue. As far as I can tell, what's really in the balance now is the private communications only. Is that correct?

MS. BARLOW: Well, I think -- as I've said, I think in the last hearing and I was reviewing our transcript from the last time, at least I was here and Mr. Snell was here, I think that the only outstanding discovery -- and I understand the Court has a production from the service providers that we have not yet gotten?

THE COURT: I do have a production of what I understand to be public messages that was provided to me on April 12th by Mr. Snell's office.

MS. BARLOW: We haven't seen those obviously since they have been produced to the Court and subpoenaed. So I think one outstanding question for the defense and I think the Court has to address now because of the public production is what remains, what quantity of it remains and what is private and what different aspects, you know, the privacy settings are relevant because that was an unanswered question in the Facebook litigation. *Facebook v. Superior Court* opinion left that as an open question. And given the fact that that now exists in a sort of separate file, I suppose it is relevant for our purposes and our discussion.

What is left: What are the privacy settings, what percentage of those messages and what settings, in particular with Facebook since they have multiples, and then what is the burden.

I think one of the issues that arises from the fact that they did this public production is credibility of the earlier declarations of the witnesses saying this was so burdensome they couldn't do it. And I also think the Court

did mention at our last hearing that the Court was interested in deleted content. And after reviewing the declaration of Mr. Strahs, I believe it is S-T-R-A-H-S, it appears that they do have this information somewhere, but getting it is the question. I think that's a valid area of inquiry for our cross-examination.

THE COURT: Just on that last point, Ms. Barlow, I understood you to say before that you were accepting the representation that deleted stuff is deleted and so that really wasn't on the table any longer.

MS. BARLOW: Well, I did say that but then I just went back -- and the Court raised it and then I went back and I reread the Declaration of Preparation for Stay and it appears that at least the last two or three paragraphs of that declaration indicate the deleted content may actually exist. The form, where it is and how it can be retrieved I think is the question of burden. We did request that in the subpoenas. And my -- and in no way was I intending my statement to be a waiver of Mr. Sullivan's right to access that information if it actually exists.

THE COURT: All right.

MR. SNELL: Your Honor.

THE COURT: Yeah, Mr. Snell.

MR. SNELL: So the California Supreme Court in Hunter said the issues that this Court should be thinking about is if something was said as public and later changed to private or deleted, what is the burden of wading through that, and as a matter of first impression is deletion or

setting something from public to private revocation of consent. We talked at the last hearing that Judge Brown has found that deleting something or rendering it private is revocation of consent.

And we've gone through the burden both for Twitter and for Facebook. This would be for Facebook's Instagram and Facebook's records and produced the public information. So that has been burdensome but that burden has been sustained. And my understanding was aligned with yours that deleted content was not an issue based on the strength of the declarations that have been presented prior.

So our position is that the -- I think what we called it before was a potential hearing, an evidentiary hearing is not necessary. We're interested to hear how the Court feels about that and to obviously argue the merits of whether private content could be obtained at this stage of the proceedings, but we don't think there's a need for an evidentiary hearing based on the public production.

MS. BARLOW: And, Your Honor, if I can address one issue that was raised by Mr. Snell which is that the Facebook casts this Court with the definition of what is public as if it has been decided and it is a settled matter of law when, in fact, it was an open question. The Supreme Court rejected both the defense and Facebook's -- I'll use service providers to make it a little more straightforward -- service providers' arguments regarding what's public versus private and left open for the trial court to reach that question of first impression.

And the fact now that Facebook has produced something that they deem to be public does not do away with that question because the question still remains of the, quote, private or restricted content, which of it is actually private legally, not is it restricted by the service providers' definition, but at what point does something become actually public even though someone has restricted access. And we had a short discussion. I know the Court doesn't really want to reach that question but because the service providers have forced the Court into a position of actually having to address it now given the production.

THE COURT: I understand. Well, let's -- let's start with what I've got which is the production from the service providers.

Mr. Snell, first of all, is this something that I'm expected to review in camera for anything that would need to be redacted or is this for release to the defense?

MR. SNELL: Your Honor, I think that's an issue for you to decide. We've complied with the Code in terms of how to get it to you and I think it's up to you to determine what to do with it. I can say that what's been done in both instances, both with respect to Twitter and Facebook is that the company has taken the preservation copy that existed and compared that preservation copy against what is presently publicly available on the internet and something presently publicly available on the internet, has produced that from the preservation copy so that's been emailed.

THE COURT: So the preservation copy, tell me about

that.

MR. SNELL: So preservation copies were made for Twitter. The preservation copy was made in early December 2014, right after the subpoena was requested, and we have gone through the process of somebody making a manual comparison to what was in that -- there were 800 or so tweets -- against what's public and we produced from the preservation copy what is presently publicly available on the internet.

And with respect to Facebook --

THE COURT: Before you move on to Facebook, how many of the 800 wound up getting produced?

MR. SNELL: Every tweet that the user had posted and was in the preservation copy is presently available on the internet, Your Honor. So there is nothing from the tweets that has been withheld.

THE COURT: 800.

MR. SNELL: I can't remember the exact number. There is a difference in the sense that if there's a retweet, so if the user that's the subject of the subpoena had retweeted somebody else's content and that user deleted it, those retweets may not exist. That's what made the manual comparison somewhat cumbersome, but we were able to confirm that every tweet that the user who was subpoenaed in this instance posted is still available publicly on the internet and that the only content that apparently is not available publicly on the internet is eight direct messages.

And, in fact, Your Honor, we have prepared a two-page

demonstrative that I think might help walk through some of the questions that Ms. Barlow's raised and might clear some of these issues up for the Court. I think we've all struggled with the accounts at issue and what's happened to those.

THE COURT: All right. I'll be interested in seeing that in a moment. Tell me what you were going to tell me about the Facebook production.

MR. SNELL: Same process, Your Honor. So I believe the Facebook preservation was made in March of 2018 and so there was a manual comparison of materials in that March 2018 preservation. And where content was publicly available on the internet, that content was produced from the preservation copy.

And obviously, Your Honor, the clients are producing it from the preservation copies because that's the way they keep their business records. They have tools that will pull this information. The tools don't distinguish between public and private because they are usually responses being made to search warrants and so here they had to do the manual comparison made.

THE COURT: And the Facebook production, when you did the manual comparison, did that result in anything being removed from the preservation copy?

MR. SNELL: I believe so, Your Honor. On the exhibit we have, I think the Pistol.Dutch Facebook account there was material that's not public. And with respect to the account Nesha.Lee.35, there are private posted messages as

well, so both of those accounts had public content.

THE COURT: Got it. And one more question about that exercise. How many personnel hours did it take? How much did it cost? Can you quantify the burden for me?

MR. SNELL: I'll start with Twitter because that's more manageable because we're only looking at tweets, but I believe that's a several hour project. I don't know the exact number of hours, but it was not an easy event because we have to look at each tweet and find it on the internet.

With respect to Facebook it was extremely, extremely cumbersome. And our office was involved at some point in helping to get the production out, and the way we were trying to get the preservation copy redacted was by applying some tags in Adobe. And Adobe couldn't accommodate I think the number of tags and so there was several rounds of QC that had to be done to make sure that no private content was produced. And my understanding from the Facebook side is that there was more than 100 hours of time spent trying to parse this data. Facebook page is a little bit more complicated in terms of content than the Twitter page, Your Honor. At least these were.

THE COURT: All right. That's helpful. Thank you.

You say you had a demonstrative you want to illustrate what you've done. Does the demonstrative also address what's left?

MR. SNELL: Not in terms of quantity, Your Honor, but it does address -- well, in some instances it does. I think it will be helpful.

THE COURT: All right.

MR. SNELL: I haven't talked yet about the Instagram accounts that are both private. And in one of the Instagram accounts there's ten posts and in another there's four posts. So I think that in terms of quantity illustrates what might be there.

THE COURT: All right. And did you -- or does your demonstrative tell me what remains on the Twitter and Facebook accounts, what's not been produced?

MR. SNELL: Yes on the Twitter account, no on the -- yes on the Twitter account with respect to quantity.

THE COURT: Yes.

MR. SNELL: No on the Facebook account with respect to quantity.

THE COURT: All right.

MR. SNELL: Although I think -- can I share the demonstrative? I think walking through it might be useful.

THE COURT: Let's end the suspense. Yeah.

MR. SNELL: Yeah.

THE COURT: All right. So Mr. Snell has just handed me and defense counsel and Mr. Quigley two pages of what look like they might be messages. In any event, it's two pages of it.

MR. SNELL: Thanks, your Honor. So just to walk through this, we have separated the two pages between the two folks who have been subpoenaed here. The first one is Jaquan Rice who is the decedent/victim here.

With respect to the Facebook account, Pistol.Dutch, you

see the second bullet is the Facebook produced public account content on April 12th. That's the material you have, Your Honor. But also as noted by the California Supreme Court in Hunter, there was a 2013 search warrant and presumably the information in the account had been shared with defendants. So even though there is private information that Facebook did not produce from its own production, we're not aware that there's anything that wouldn't have been in the search warrant production from 2013.

MS. KAPLAN: Could I just briefly interject? You're talking about the search warrant with respect to Rice. There was never a search warrant with respect to Lee, correct?

MR. QUIGLEY: Yeah, we're just focused on Rice on this page now.

MS. KAPLAN: Thank you.

MR. SNELL: And then with respect to the dbf-dutch Instagram account, that's the other Rice account that's subject to the subpoena, that account you can publicly see. We've taken the screenshot here and it has ten posts in it.

And we also know from the Hunter case, the Hunter California Supreme Court case, that the D.A. sought search warrants for three other Rice Instagram accounts and that content was turned over presumably with the defense according to the California Supreme Court.

So what's left with Rice as far as we can tell is ten posts on Instagram and we're not aware of what these posts

would contain that's not contained in the three other Instagram accounts or the Facebook account that's been produced pursuant to search warrant. So with respect to quantity, my understanding is we're just focused on the ten posts in this one Instagram account. I may be wrong on that but we're not less attuned to the merits.

THE COURT: All right.

MR. SNELL: And then the second page is Renesha Lee. This is the witness who I believe will be testifying at trial. And I think the highlight here is that Ms. Lee's never been subpoenaed. There were efforts by the defense I think, maybe some efforts, but she's never actually been subpoenaed. There were representations in the fall of 2018 that she would be but I don't think she has been.

But with respect to her, there is a Facebook account that does have private and public posted messages and with the April 12th production to Your Honor, all the public content from our preservation is now in your hands.

And then for the other two accounts there's a nina03 Instagram account and again we've taken a screenshot from what's publicly available now on the internet, and this account is private but it lists four posts. So I think with respect to content we're just talking about four -- four posts there.

And then for the Twitter account, all tweets were public and all tweets have been produced from the preservation and what's left over is eight private direct messages.

THE COURT: All right. So then the universe of what is in dispute at this point if I understand this would be 22 private posts and then whatever is on Facebook for Ms. Lee?

MR. SNELL: That's our understanding, Your Honor.

THE COURT: All right. And do you have any, I guess, even ballpark of what might be unproduced on that Facebook account?

Let's ask this. How many -- do you know how many messages were produced for Ms. Lee's Facebook account; in other words, how many public posts there were?

MR. SNELL: I don't know, Your Honor.

THE COURT: All right.

MR. SNELL: That's something that I can certainly confirm.

THE COURT: I'm just, you know, wondering if we can sort of deal with proportionality I guess based on what was public.

Anyway, all right. So do you want to address what Ms. Barlow said about deleted content? Like you I thought it was in the balance. But has that even been considered by the service providers whether that could be retrieved?

MR. SNELL: Yeah. Your Honor, my understanding in reading Hunter is deleted content was only focused on deletions of public content where that would be an indication of revocation of consent, not whether content that may have been deleted before the subpoena was served was somehow obtainable. Our position would be that that's not obtainable under the Stored Communications Act as an

initial matter, but I don't think it exists either anymore.

THE COURT: And in terms of designating something public versus private as you use those terms because Ms. Barlow indicated there might be a dispute about that, how did you define them and when did you define them for, private and public as of what date?

MR. SNELL: So how do we define it? With Twitter, literally going to the internet and what's available on the internet. With Facebook, the same thing with one caveat. I think you need to be logged in to Facebook to see whatever somebody has protected and so the folks who were doing that were logged in.

With respect to --

THE COURT: Like any other user?

MR. SNELL: Yes.

THE COURT: All right. Go ahead.

MR. SNELL: With respect to timing, Your Honor, we tried to make it coincidental with the production, so the QC efforts were an effort to say whatever we have in our preservation copy that's public coincident with the time we're producing is what's being produced. And we believe that's what happened although with the Facebook production -- well, we know that's what happened with the Twitter production because everything is still public. With the Facebook production there's more content to sort through so it's more cumbersome, but I believe we got it right, Your Honor.

THE COURT: So we're talking roughly April 2019?

MR. SNELL: Yeah.

THE COURT: All right. Ms. Barlow, further questions?

MS. BARLOW: Well, again, I think it just -- Mr. Snell's definitions begs the question as to what is public versus private and what is restricted versus completely unrestricted.

And I would note that in looking on Facebook myself and Mr. Rice's Facebook page, that Mr. Quigley and I were talking on the telephone. We're both looking at the page and he was seeing different things than I was seeing. So clearly Mr. Quigley is not friends with Jaquan Rice I believe.

MR. QUIGLEY: I didn't know I was testifying at the evidentiary hearing.

MS. KAPLAN: But I did that -- I did that same thing with my investigator where we looked at the same page and it was public and it had completely different feeds.

MS. BARLOW: So I think that there's an open question. The manner in which they produced it gives me even more pause. If that's the test, then I think the Court has to go further into the inquiry of what exactly public versus private is in the legal sense, not what you can see when you get on Facebook but -- and I think I suggested this to the Court, that if the legal definition of privacy is the expectation of the individual who is posting it. And if I post something to Facebook, and I'm going to focus on Facebook because they have so many different settings, and I say only my friends can see it, then only my friends I

understand can see that.

If I share it with friends of friends, then all the friends I have and all of their friends, and you've essentially at that point you've lost control of your post. Anybody who's a friend of a friend of a friend and the more friends you have, the more people will see it and the less you will know about who is seeing what you have posted. So it essentially becomes in essence public.

THE COURT: I understand the argument. I think I followed the Supreme Court's statements on it, both the oral argument that counsel directed me to and the written opinion. Really for right now, for purposes of this, what I care about is produced versus unproduced.

MS. BARLOW: Okay.

THE COURT: Because -- and then unproduced, you know, there may be differences of opinion about whether it's private or public and that might matter in terms of whether it gets compelled to be produced. But at this point I'm just trying to define the universe that's in dispute basically.

MS. BARLOW: Okay.

MR. SNELL: And, Your Honor, I don't want to have Ms. Barlow and Mr. Quigley testify, but my understanding is if you're logged in -- if you're not logged in, you might see something different than if you're logged in. I don't know if they were both logged in at the time.

THE COURT: Understood. All right. So there is some content for both users that has not been produced and I

assume that the defense still wants me to order that produced.

MS. BARLOW: Absolutely, Your Honor.

THE COURT: All right. And I assume that the service providers still don't want to produce it.

MR. SNELL: That's correct, Your Honor.

THE COURT: All right. Tell me why I shouldn't order it produced, Mr. Snell, beyond what's in your brief. It looks like you filed something today which I have not read.

MR. SNELL: I don't think anything's been filed today, Your Honor.

THE COURT: All right.

MR. SNELL: It may have been filed last week.

THE COURT: All right. These are just courtesy copies of what you filed before. Okay. I did read that. A couple of thoughts on that.

I read your arguments about the safe harbor that exists in the Act and the good faith requirement and the safe harbor. As far as I'm concerned, if you -- if I were to order this stuff produced, you'd be complying with the order in good faith whether or not you agree to it. It doesn't seem to me that there's a good faith requirement that a party agree that an order is legally correct before the party complies with it. It happens all the time that parties think judges are morons but they still obey orders.

So I don't think that the argument you've made there about the applicability of the safe harbor is valid and so I think that the safe harbor does completely immunize the

service providers if I order this material produced. Of course I would only order it produced in camera for my review.

And also, I read some arguments about the -- the obligation or the lack of obligation to provide discovery in a criminal case and the like. You know here, what I think we're dealing with is the Sixth Amendment confrontation right and making sure that the defendants have a complete -- a complete right to do so. So it's not really a matter of a discovery obligation but rather a confrontation right.

So with that understanding, Mr. Snell, tell me why I shouldn't order these evidence produced.

MR. SNELL: Great. Thank you, Your Honor.

Well, I think the first issue we have, and we're not privy to everything that the Court has because there's been a confidential filing, but the first question we have is what is the crystalized constitutional law issue that exists with respect to content that has not yet been produced.

With respect to Jaquan Rice, I think we're talking about ten private posts that are in one of four Instagram accounts, the other three of which have been produced. And my understanding, and I may get this wrong because we're not the ones -- we're third parties here, but my understanding is that with respect to Rice, the evidence is sought to show that he had an individual dispute with Mr. Hunter, Quincy Hunter, and that there's going to be

some evidence that shows that's not gang related but it's a personal issue, and I've not heard from the defense what they expect in these ten posts that might bear on that issue.

With respect to Ms. Lee, Your Honor, we're talking about eight direct messages on Twitter, a handful of four Instagram posts and some private content. I think with respect to that, they want to show that she's a jealous and violent person. In the information that you've seen, Your Honor, attached to their papers and what we've produced, she's -- there's ample evidence to make those arguments.

So with respect to what's missing and why it rises to the level of a constitutional concern, you know I think we need -- we would need much more -- well, we would ask the Court to give much more specificity, because I think we don't view the safe harbor the same way the Court does. We view that as a risk. It's easy for other folks to talk about the safe harbor. It's hard for the providers who are subject to potential criminal claims to read it the way Your Honor reads it. And the statute is completely unambiguous that, you know, providers are not to produce these.

And we talked at the last hearing about easy ways and hard ways. There are very easy ways to get this information. One with respect to Rice is if the Court really feels that there's something in these ten private posts that's important in this one Instagram account, the People have already obtained search warrants for the other

three accounts. And under the Evans case that we cited, this California Supreme Court case where the Supreme Court said the trial court can force a pretrial lineup for the People to perform a pretrial lineup for the benefit of the defense, Your Honor, we think you could either order the D.A. here to remedy a constitutional issue with respect to seeking a final search warrant for the last remaining Instagram account or do whatever you want evidentiary wise if they refuse to do that.

With respect to --

THE COURT: Let me say --

MR. SNELL: Yeah.

THE COURT: -- for reasons that I think we've discussed before, I don't see any alternatives as viable for obtaining this information in the form and the manner, and the authenticity guarantees that the defendants would need it. So I'm -- unless you have new arguments in that realm, I really am past it.

MR. SNELL: Yeah, I understand, Your Honor. We don't -- well, we strenuously disagree. They've never subpoenaed Ms. Lee.

THE COURT: I understand.

MR. SNELL: It's been going on since 2014. They've never issued a subpoena to the witness, which is another easy way to get this information. And I think the Evans case gives the Court clear guidance to fashion a remedy with respect to the parties and not with respect to nonparties.

Your Honor, let me briefly address the Stored Communications Act. As I said it's a federal statute. It's unambiguous. There are exceptions but they don't apply here. The defense has tried to sort of make it look like they might apply, they just -- they don't. Providers are prohibited unless there's an exception from providing this information.

THE COURT: Why wouldn't Section 2707(e)(1) apply and immunize the service providers? That's the good faith reliance defense that is addressed in your brief.

MR. SNELL: Yeah. I think our view, Your Honor, is that an order that tries to create an exception under the Stored Communications Act where one doesn't exist is not an order we can rely on in good faith. And that's something that -- and I may be getting ahead of myself but I think we would ask the Court for a firm ruling on the grounds for why the information is needed from the providers and would ask time for a writ.

Your Honor, we've also cited the O'Grady case that sided with us on the issue of good faith and said that you can't rely on the Court's order to create good faith where it doesn't exist.

THE COURT: Yeah. I think we may have a different reading of O'Grady in that instance. But I did -- as I said, to me I see that provision Section 2707(e)(1) as a complete defense that will be available to the service providers' right to order these items produced.

MR. SNELL: Your Honor, I'd like to make just a few

more points.

THE COURT: Go ahead.

MR. SNELL: One is that we think there's a reasonable statute and there's statutes that are passed by legislators all the time that prohibit production of information. The California Supreme Court has agreed with that in the Gurule case that analyzed privilege. The finding was that the due process violations do not allow you to trump the attorney/client privilege. That's a state law privilege, it's not a federal statute passed by Congress to protect privacy and to extend the original protections that exist for mail and other means of communication or electronic communications. So we would view the other Stored Communications Act even heightened from the Gurule case where privilege is sacrosanct.

And there's also the case, Your Honor, Webb. That's a case that actually the California Supreme Court was analyzing psychotherapists' records and these were records that were not held by the state. The cases that address psychotherapy records are mainly focused on the state or where they're in the possession of a government. And in the Webb case the Court held that it was very skeptical whether any risk -- any constitutional risk can be material enough to trump voluntary private psychotherapy visits and that the confidentiality of those should be sacrosanct as well.

We don't think it's unusual for a court to find that a statute like this, a reasonable statute should be upheld in

spite of constitutional claims. And we think any time a court has held that you need to stray to address a constitutional issue, the remedy is with the state, it's not in ordering a private party to violate federal law.

And we've -- you know, the U.S. has submitted briefs that agree with that position. We've submitted that in the Wint case as part of our most recent filing, Your Honor. Wint was a case. This is in the D.C. Circuit. Wint was a case at trial. It was a trial subpoena and the Court nonetheless found that there were not constitutional concerns that trump the Stored Communications Act and found that the Stored Communications Act should be upheld with respect to the providers in that instance.

And the U.S. submitted a brief saying we agree and if there's remedies the Court believes should be applied, they should be applied against the state with respect to the parties who were actually in the action, not with respect to a third party.

THE COURT: All right. Thank you.

Ms. Barlow.

MS. BARLOW: Well, I think we're on the same page as you are, Your Honor, in terms of the safe harbor provision of the S.C.A. And I think that it's well settled in criminal proceedings at least that confidential documents are routinely produced, even psychotherapists' records are produced even though there is a privilege that is statutory. The attorney/client privilege is a little bit of a different animal because it's actually a

constitutional privilege. It's different than the attorney work product privilege, and so a statute can't trump that constitutional right to confidential communications with your attorney in the criminal arena.

And I briefed for the Court the California law on privilege and absolute privilege and I think the rationale there is very clear and it's a very useful roadmap for the Court which is that if there are exceptions that allow for production, essentially what exists with the S.C.A. is a qualified privilege, that there are certain circumstances which allow production of this. And as long I think that this Court is engaged in the process and the Court is making findings such as materiality or good cause in the case of a subpoena, that does -- the order from the Court to produce the information would clearly provide the service providers with a safe harbor for complying with that.

And I agree with the Court that the rationale that it doesn't matter if they like your order or they disagree with it. If the Court orders the production, then there's a legal obligation to comply, that is outside of their own personal ideas of whether or not it's a valid order.

THE COURT: Let me ask the defendants' counsel. You heard Mr. Snell ask -- state that the service providers were going to writ if I order these items produced. Obviously that's going to slow the process down. I don't know what the defendants want in terms of the effect on a trial date that that would have.

MS. KAPLAN: Well, let me say this, Your Honor. I wanted to take this up before we got started but we got started quickly. So at this point both Mr. Sullivan and Mr. Hunter want to assert their right to a speedy trial, withdraw any time waivers and require a trial within 60 days.

And is that correct, Mr. Sullivan?

DEFENDANT SULLIVAN: Correct.

MS. KAPLAN: And for Mr. Umali, may I ask Mr. Hunter if is that correct?

MR. UMALI: That's correct. And I would like to add something once Ms. Kaplan is done.

THE COURT: You promised you weren't going to say anything else, Mr. Umali.

MR. UMALI: Not on the Facebook side, Your Honor.

THE COURT: And on that score, I mean we've got the May 14th start date.

THE CLERK: The last day is July 1st now.

THE COURT: Last day July 1st. All right.

MS. KAPLAN: So we'll move it up a few days.

THE COURT: But in any event, we had already set May 14th and I intended to honor that. I intend to honor that but -- and that's what my question really goes to.

MS. KAPLAN: Yeah.

THE COURT: There's no way this process gets done by May 14th.

MS. KAPLAN: Right. So our feeling is that we want a speedy trial. We've always wanted a speedy trial once this

was resolved. It appears to us that the Supreme Court has wanted us to be in trial, wanted the trial court to resolve these issues, and that we are asserting once again our right to a speedy trial.

And Facebook may take a writ. And I'm sure this will be found to be incredibly disrespectful, but as far as I can tell, they have nothing but money and time to spend writting things and they have no real human people involved in their litigation.

Additionally, for example, yesterday, I read something about a 100 million-dollar fine or something like that they have to pay. So that being said --

THE COURT: They have rights too, okay.

MR. SNELL: Yeah.

THE COURT: Hold on, hold on. Disrespectful moment is over for everybody.

MS. KAPLAN: Right.

THE COURT: I understand Facebook's got its own interests here. I intend to protect them as well. I don't trivialize them.

MS. KAPLAN: Right, I understand that but --

MR. SNELL: Your Honor, no court in 30 years has forced providers to produce documents, whether there's a constitutional issue or not. I mean this is unprecedented. We understand these are serious proceedings, Ms. Kaplan, but it's completely unfair to be just be flip about the issues on our side. All right.

MS. KAPLAN: We routinely ask courts to force

production of documents. That having been said, our position is we're in trial, we are in a speedy trial. We have a last day. If Facebook takes a writ, they will take a writ. It will be up to the Court of Appeals to decide or the Supreme Court or whoever to decide if they're going to do anything about it. They may very well not issue a stay. So I can't tie Facebook's hands, nor can any of us but our posture is very clear. We want a speedy trial. We have a last day. And we appreciate the Court's attention to getting things done in a timely fashion.

THE COURT: All right. Mr. Umali.

MR. UMALI: Can I just add, first of all, I join Ms. Kaplan in her comments. We are of the same position.

And I just want to add that quite some time ago, I announced that I was ready for trial in Department 22, that the case was transferred here for all purposes including trial.

From my notes -- I'm sorry. We were first transferred to Department 16. Because of Judge Brown's elevation to the Court of Appeals, we returned to 22 and we were transferred for trial and all purposes to this department. I believe on March 1, 2019, we were transferred to this court. At that point in time, Mr. Hunter did announce that he was ready for trial. We were ready for everything but for the resolution of the Facebook issues, but the Court did set a schedule with regard to our motions in limine. I was the first to file those and they were filed on the due date that the Court had set.

We understand that we have a May 6th opposition deadline, which is this coming Monday. I and my team have drafted almost all of our oppositions. We are just doing the finishing touches and we will file them on Monday morning to this court and of course serve everybody that needs to be served at that time.

There are some outstanding issues that need to be resolved quickly I think or else witnesses could be lost. And I -- I -- I would object to any delay whatsoever. And I would ask for a trial to commence as soon as possible. I think that I believe that the 402 hearings that would result from our in limine motions as well as the district attorney's in limine motions do constitute the beginning of the trial so for all intents and purposes, I am in trial.

I did want to add one personal note. There was some scheduling problem. I thought we were going to be here for April 16th for a hearing. Apparently there was some miscommunication with regard to the court schedule at that time. I did fly back from New York on the evening of April 15th and was told that I don't need to be here at all on April 16th. I was prepared to go with the hearing which I thought -- which I think is the same hearing that we're doing today.

THE COURT: I apologize for that. I checked everything except my daughter's spring break schedule before we set that last hearing.

MR. UMALI: Your Honor, I mean no disrespect and I don't mean to disparage the Court or anybody else.

THE COURT: Not at all. I appreciate all of you being patient.

MR. UMALI: All I'm trying to do, Your Honor, is to say that I am eager to begin this trial because Mr. Hunter announced ready for trial in 2015. The Facebook appeals essentially occurred which took almost three years essentially to resolve and Mr. Hunter waited very patiently for that to be completed --

THE COURT: I understand.

MR. UMALI: -- because we believed it was important.

THE COURT: May 15th we're on calendar. No more spring breaks. We'll get going then.

You mentioned something about witnesses who may be lost?

MR. UMALI: There are. There are three witnesses that I have that are the subject of my motion to compel discovery for current whereabouts and/or in the alternative a meeting with those witnesses. I requested those witnesses from the very start of the case, the whereabouts of those witnesses. Those witnesses -- the current addresses at the time which were not provided to me but I can tell from my investigation at least the neighborhood of those current witnesses was an area which has now been destroyed or demolished. So all those witnesses have been relocated.

Back in 2015 when I thought the case was ready for trial posture with a different deputy district attorney, Ms. Heather Trevisan, that those three witnesses would be

provided to me, either their current whereabouts and/or a meeting in the District Attorney's Office where those witnesses were so I can serve trial subpoenas and interview them of course.

Because of the Facebook issues that has been delayed essentially for three years, but once this case started to come again forward towards trial posture, I made the same request both informally and in writing, and through a motion with this district attorney, Deputy District Attorney Mr. Quigley. I have not received a response. I assume I'm going to receive a response.

Now, depending on what that response is, if the response, for example, is we don't have any current addresses, then there's a due process issue because all three witnesses are exculpatory witnesses essentially whose whereabouts have been withheld from the defense and those three are material exculpatory witnesses. So we need to move on with issues like that as soon as possible.

I think at the last -- I addressed this in camera with the Court, this issue. Mr. Quigley represented that he thought we could resolve this issue informally. We have not yet done so but because of these delays, then I'm afraid that at some point I'm not going to have the time to find these witnesses, interview them and subpoena them to court.

THE COURT: I understand. Okay. Thanks for crystalizing that.

MS. KAPLAN: Your Honor, two short remarks in response

to the Court's question. The first is that I would consider us to be in trial and that this hearing to be a 402 hearing. So I do not feel we are in any way pretrial.

And the second is that the -- Mr. Snell gave us a handout and on the second page of that handout where he has Renesha Lee listed. And the first thing he has listed is an account called Nesha.Lee.35 saying this is a public account. This account does not appear on Facebook. If you type in Renesha.Lee.35 it comes back to a woman named Flor, F-L-O-R, Perez, P-E-R-E-Z, who is clearly not Renesha Lee in any way, shape or form. So this account does not exist unless he knows where it is but it's not there.

THE COURT: All right. Let me hear from the defendants about production the service providers have already made. Is this an in-camera production along the lines of what we've been talking about with respect to the private items or something else? I know you haven't seen it yet so just speaking in the abstract.

MS. BARLOW: Well, I would assume that they're all, quote, public because they are things that we could see if we had the time to go and look at the individual posts on the particular pages. So I would suggest that the Court doesn't have a need for an in-camera hearing unless there's no privacy concerns. And that also relieves the Court of the obligation of going through the posts and trying to figure out which ones might be relevant because of what the defense theory might be and how it relates to Ms. Lee and her posts. It seems like extra work for the Court that is

really not necessary.

THE COURT: I think the only conceivable privacy issues, you know, might be, for example, with health care. I mean it's highly unlikely that there's something in here related to somebody's personal health, for example, and sometimes addresses and other identifying information of uninvolved people merit protection.

I'll review this stuff. I tend to agree that it's really hard to imagine what might need to be redacted but I think it's the safer course for me to go through it.

MR. UMALI: May I just make a suggestion, Your Honor?

THE COURT: Yes.

MR. UMALI: The Court mentioned something about health care posts and things like that.

THE COURT: Yeah.

MR. UMALI: My understanding of what some of those health care posts may reveal is that Ms. Renesha Lee at the time of the homicide in this case was actively trafficking prescription medication to the public.

THE COURT: All right. Well, that's not what I was talking about so I don't know.

MS. KAPLAN: Your Honor, we're aware due to our discovery that she suffers from a chronic health condition which involves the taking of narcotics for the treatment of that health condition and that she was I believe discovered in the hospital.

THE COURT: I'm sorry?

MS. KAPLAN: She was in the hospital.

THE COURT: Okay.

MS. KAPLAN: We all know -- in the end it might not be relevant, or may but we're all aware of her health condition.

THE COURT: That's good to know.

Let me just go back to Mr. Snell and Mr. Quigley for that matter. Do either of you -- just a simple question. Do either of you think I have it wrong in terms of doing an in-camera review of these items and what I'd be looking for to protect?

MR. QUIGLEY: No.

THE COURT: To excise if necessary?

MR. SNELL: No.

THE COURT: In other words, are either of you aware of anything sensitive in these other than what I've described theoretically that I should be looking for in order to potentially withhold from accounts?

MR. SNELL: Your Honor, I think the providers are agnostic on that point. I think the effort has been to produce only public information and I believe only public information has been produced.

THE COURT: All right. And so that means as Ms. Barlow described with the right manipulation of key strokes, this is something that anyone with public access to Facebook or Twitter or Instagram could find themselves?

MR. SNELL: Yes, Your Honor.

THE COURT: Mr. Quigley, anything more on that issue?

MR. QUIGLEY: No.

THE COURT: All right. So the elephant in the room is burden I think with respect to the non-produced items.

And I understood, Mr. Snell, that you were going to provide a knowledgeable witness on that today to talk about the burden in what you did produce, so it's certainly not trivial what the parties have incurred but I think we need more -- before I can do the balancing I think we need to do, I think I need more detail on the burden that would be involved were the non-produced items to be produced.

MR. SNELL: Can I have a moment to confer with the client, Your Honor, on the issue?

THE COURT: Yes. In fact, why don't we take our morning break. We'll take 15. Let's come back at a quarter of.

(Brief recess.)

THE COURT: Thank you. Welcome back. We're back on the record.

All right. Mr. Snell.

MR. SNELL: Your Honor, I appreciate the break. Just one preliminary. During the break we did check the Nesha.Lee.35 account and it does appear the account that was subpoenaed and which we produced documents.

MS. BARLOW: Your Honor, we also were looking at it over the break and it appears to be in part -- there's a new screen name or whatever you call it, but new identities of somebody who does not look like Ms. Lee. But going back in time to the public posts that are there, it appears to be her actual Facebook page and it was the one that was

subpoenaed.

MS. KAPLAN: So we would need a custodian of records to say that at the time those posts were made, it was clearly the post of Renesha Lee. And what appears to be an attempt to change the identity by having a Hispanic name and Hispanic friends and Hispanic interests is -- whatever purpose it was done for, there still remains on the posts some photos of her and I think her child, and some comments that would hardly be attributed to a Ms. Gomez.

MR. SNELL: And, Your Honor --

THE COURT: Yes.

MR. SNELL: -- we can hardly be put to the test of identifying who actually made posts.

THE COURT: I understand.

MR. SNELL: We have affirmed that they're business records that's been produced and that defense will receive that if you allow it.

THE COURT: Very well.

MR. SNELL: And just harkening back to our last hearing, we're talking about public and private content. We're no longer I think in the world of the Hunter Supreme Court's burden argument where public's available and private's not.

So if Your Honor is going to order a production of private content, I think that production would be similar to what Facebook and Twitter do in response to legal process. There is obviously a burden associated with it but it's something that they do in the ordinary course of

business. And I don't think we want to advance a burden argument, Your Honor, with respect to what would be that sort of response in response to normal legal process.

THE COURT: All right. Well, I appreciate that both from the standpoint of simplifying the issues and from the standpoint of 100 plus hours that have already been spent and would have to be spent in further compliance with further orders is not trivial in my mind, it's significant. And so I still -- I credit the service providers for having done so and for any further burden that is imposed here. Obviously, the defendants' rights, their Sixth Amendment right is very important here.

I think particularly even I know, Mr. Snell, you weren't able to see some of the statements of relevance that the defendants provided to me for in-camera review, but even just I think watching the video of the Supreme Court arguments and what the Chief Justice herself articulated, you know, better than I could about why in this particular case these posts are so significant. It seems like they were significant to the People in identifying the defendants, in deciding to charge them, presumably will be relied upon by the People at trial in some part. And as I think I said before, it's hard for me to imagine a case where there's greater relevance imposed in a post like this. It's not to say that the Facebook account of a party or a defendant or a witness in every criminal case is going to be relevant or the like, but here, I think this is a special case and it seems to me

that the Supreme Court would recognize that.

Anyway, so I'm prepared to order -- for the reasons we've talked about is to order the service providers to produce these items. What does that mean timing-wise for the service providers and any -- any writ requests you might want to file?

MR. SNELL: And my understanding, Your Honor, that it will be an oral order of the Court today that we would be acting from rather than from a written order?

THE COURT: That's correct.

MS. BARLOW: I'm sorry. I don't mean to interrupt you, but finish your thought and then I'll have my say.

MR. SNELL: Yeah. Your Honor, I understand there's some other scheduling issues going on in the case. I think we would want as much breathing room that we can get to prepare and file a writ.

I think there's a date, May 14th that's coming up, but if we could get three weeks that would be preferable, but whatever the Court could extend.

And also, Your Honor, with respect to the ruling, I think it would be helpful to get a little more guidance respectfully from you about --

THE COURT: Of course.

MR. SNELL: -- whether the Sixth Amendment right attaches to each of the items sought from each of the witnesses. I mean Rice is deceased so he won't be a witness at trial but to better understand the Court's rationale in preparing any writ papers.

MS. BARLOW: Your Honor, just so I understand what the service providers' position is, I want to be crystal clear on the record, is it -- if I'm understanding correctly is that they are withdrawing their argument of burden because the Court is poised to order them to produce this information; therefore, it's not burdensome to them anymore, it's simply a production as they do with any warrant.

Is that correct? It might not have been an artful statement.

THE COURT: I think what he's saying is that it's not burdensome but it's not inordinately burdensome.

MS. BARLOW: Right.

THE COURT: Such that it gives them a defense.

MS. BARLOW: That's what I thought.

MR. SNELL: And just to be clear, with respect to the pretrial issues that we dealt with, that the California Supreme Court dealt with in Hunter, we maintain that that sort of public production is extremely burdensome and we've now lived through it and it's extremely burdensome. With respect to a court order that public and private information needs to be produced, there is a burden but as the Court said, we're not going to rely on that burden because that's a sort of response that the providers do to legal process in the ordinary course.

MS. BARLOW: And I'd also like to add, Your Honor, that I think the Court in its ruling has said Sixth Amendment right to confrontation, while that's an important right and

it's clearly attached in a trial situation, I think that also *Pennsylvania v. Ritchie*, the Fourth Amendment due process clause is in some ways even more important. And I would hope that the Court would say that as part of the ruling that the Court is relying on on both of those constitutional rights in ordering the production just to make it a bulletproof type of opinion or order.

THE COURT: I understand. Yes, I think both of those rights of both of the defendants need to be protected here of course. And I find that both require the production of the unproduced items that have been identified by the service providers at this hearing. That will be the ten private posts on Mr. Rice's Instagram account, the four private posts on Ms. Lee's Instagram account, eight private direct messages on Ms. Lee's Twitter account, and the private posts and messages on Ms. Lee's Facebook account.

As I understand what you've told me, Mr. Snell, that's the sum total of what has been requested but not yet produced by the service providers.

MR. SNELL: That's my understanding, Your Honor.

THE COURT: All right. And to the extent there's any weighing that can be done with the withdrawal of the burden argument, I think that these rights are important enough in this particular case, as I've said, given the relevance of electronic messages that's been raised in this particular case, with these particular charges and these particular defendants, it would certainly outweigh any -- a burden like the one you've described it as the one that's already

been incurred. If we were talking about a far greater burden or something else, I might feel differently but I think the most important thing, or one of the most important things is to clarify again, you know, this ruling is really about this case and these defendants and their rights.

All right. What about timing and Mr. Snell's request for a stay?

MS. BARLOW: I would request, and I think Mr. Umali and Ms. Kaplan would agree with me on this, given the posture of the case and given the defendants have been in custody and very patient for quite some time around this litigation, that this court proceed as already decided to proceed with the beginning of trial and with the motions in limine, et cetera May 14th. And then if the service providers want a stay, they should seek it from the Court of Appeal, but they need to comply with the Court's order immediately or as soon as they can and then they can go to the court.

THE COURT: Well, I think -- I think I'm limited in my ability to extend a stay given the defendants' assertions of speedy trial rights, but I do want to give the service providers enough time to proceed to the Appellate Court, ask for a stay there without, you know, my order taking effect before they have an opportunity to do that.

MR. QUIGLEY: Well, I would just point out based on the timing -- I'm not a party to this, but I do have concerns for getting half of -- getting certain -- like half of our

balls rolling if there's another issue going on, which is the only part that I would care about.

But from what I'm -- just looking at the calendar, from what Mr. Snell asked for, I think that's only a week past the date we had set for the 14th and that's still six weeks prior to the last date that the Court set. So I think it's within the reasonable range here. And if the Appellate Court issued their stays, then that would be the end of it, but it doesn't sound like he's asking for something that sort of sabotages our schedule very much.

THE COURT: Right now we've got May 14th as a startup of 402s.

Let me suggest this. Mr. Snell, why don't I give you a stay until May 13th, the day before our 402s start just to be safe. Obviously you're going to ask the Appellate Court for a further stay and they'll rule on that.

All right. And what else do we need to do today?

MR. QUIGLEY: That's the only thing that's on today.

MS. BARLOW: So if I understand -- I'm sorry, I always like to clarify myself -- the Court has issued a stay as to the service providers' production to the 13th of May?

THE COURT: Yes.

MS. BARLOW: Okay.

THE COURT: So the order's stayed until May 13th so that they can seek an appellate review if they wish to and any stay from the Appellate Court.

THE CLERK: And you're not releasing those subpoenas that you have now?

THE COURT: Oh, the records that I have now, yes, I'm not releasing these until after I do the in-camera review. Given what I learned about the volume, I don't think that will take long.

And do we need to set a special hearing for that or should I just say I'll produce any unredacted portions on that --

MS. KAPLAN: That's perfect.

THE COURT: Perfect is what I shoot for.

MR. SNELL: Your Honor, I'd ask to clarify one thing.

THE COURT: Yes.

MR. SNELL: That it's clear we're not waiving our right to make a burden argument on public production and I don't think that's -- I think I made that clear when I was laying out the issues, but I just want to make that clear.

THE COURT: Right, because you said you --

MR. SNELL: We've sustained that burden in this case already.

THE COURT: Right, right. The burden's been incurred already.

All right. Anything else? Thank you all.

MS. KAPLAN: So, yes. May 14th.

THE COURT: Put your hand up, please.

MS. KAPLAN: May 14th is our next court date; is that correct?

THE COURT: Yes.

MS. KAPLAN: And could Madam Clerk and Mr. Sheriff please be clear, if there are any intervening dates

scheduled in our case, that the defendants do not need to come to court until May 14th. Every now and then there's something written down like briefs due and they show up.

THE CLERK: Yeah. I have May 6th for responses, but they've waived and so --

THE COURT: That's not even a hearing.

(Whereupon, at 11:07 a.m. the proceedings were concluded.)

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State of California)
)
County of San Francisco)

I, Jacqueline K. Chan, Official Reporter for the Superior Court of California, County of San Francisco, do hereby certify:

That I was present at the time of the above proceedings;

That I took down in machine shorthand notes all proceedings had and testimony given;

That I thereafter transcribed said shorthand notes with the aid of a computer;

That the above and foregoing is a full, true, and correct transcription of said shorthand notes, and a full, true and correct transcript of all proceedings had and testimony taken;

That I am not a party to the action or related to a party or counsel;

That I have no financial or other interest in the outcome of the action.

Dated: May 2, 2019

JACQUELINE K. CHAN, CSR No. 10276

Attachment 3

S256686

IN THE SUPREME COURT OF CALIFORNIA

En Banc

FACEBOOK, INC. et al., Petitioners,

v.

SUPERIOR COURT OF SAN FRANCISCO COUNTY, Respondent;

DERRICK D. HUNTER et al., Real Parties in Interest.

The requests to appear pro hac vice are granted.

In light of (1) the fact that trial has begun (*Martinez v. Illinois* (2014) 572 U.S. 833, 840; *People v. Rogers* (1995) 37 Cal.App.4th 1053, 1057, fn. 3; see also *People v. Superior Court (Douglass)* (1979) 24 Cal.3d 428, 431, fn. 2), and (2) the trial court's finding of a strong justification for access to the sought information by real parties in interest (see, e.g., Pet's Ex. 1, RT of May 1, 2019, at pp. 38-39 & 41-42; see generally, *Kling v. Superior Court* (2010) 50 Cal.4th 1068, 1075), the petition for writ of mandate, prohibition, and/or other extraordinary relief is denied. The stay previously issued by this court is dissolved.

CANTIL-SAKAUYE

Chief Justice

Attachment 4

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

FACEBOOK, INC. et al.,
Petitioners,
v.
SUPERIOR COURT FOR THE CITY AND COUNTY OF SAN FRANCISCO,
Respondent;
DERRICK D. HUNTER et al.,
Real Parties in Interest.
A157143
San Francisco No. 13035657 and 13035658

ORDER DISSOLVING STAY AND ORDER TO SHOW CAUSE

BY THE COURT:

The court has preliminarily reviewed the parties' briefing regarding this petition, as well as the record.

The court is mindful of the impending trial, including real parties' assertion of their speedy trial rights (with a last day of July 1, 2019), and petitioners' assertion of the need for a stay of the superior court's disclosure order notwithstanding the "safe harbor" provision of the Stored Communications Act (SCA, 18 U.S.C. § 2707, subd. (e)(1) [good faith reliance on a court order is a complete defense to any civil or criminal action brought under the SCA or any other law]; see also *Facebook, Inc. v. Superior Court* (2018) 4 Cal.5th 1245, 1290, fn. 46 [observing that subdivision (a) of section 2707 "contemplates liability only for a provider that violates the Act 'with a knowing or intentional state of mind,' " and that subdivision (e)(1) "provides a safe harbor for a provider who, in 'good faith,' relies on 'a court . . . order"].) Taking all of those issues into account, as well as the voluminous record (in excess of 1,300 pages), and the need for meaningful and time-consuming review of the issues presented by the petition, the court hereby dissolves our earlier May 9, 2019 order imposing a stay on the superior court's May 1, 2019 order

requiring petitioners to produce additional documents in *People v. Hunter et al.,* San Francisco County Superior Court case Nos. 13035657 and 13035658. On or before July 3, 2019, petitioners shall inform this court in writing of their compliance with the May 1, 2019 order.

Furthermore, notwithstanding any potential issues of mootness that could arise from the dissolving of our prior stay order, the court has decided to retain this matter for consideration, and to issue an order to show cause.

Therefore, good cause appearing from the petition for writ of mandate/prohibition on file in this action, IT IS ORDERED that respondent superior court show cause before this court, when the matter is ordered on calendar, why the relief requested in the petition should not be granted.

The return to the petition shall be served and filed within thirty (30) days of the issuance of this order to show cause. The reply to the return shall be served and filed within fifteen (15) days after the filing of the return. (Cal. Rules of Court, rule 8.487(b).)

This order to show cause is to be served and filed on or before July 1, 2019. It shall be deemed served upon mailing by the clerk of this court of certified copies of this order to all parties to this proceeding and to respondent superior court.

The justices will be familiar with the facts and issues, will have conferred among themselves on the case, and will not require oral argument. If oral argument is requested, the request must be served and filed on or before August 6, 2019. If no request for oral argument is filed on or before that date, the matter will be submitted at such time as the court approves the waiver and the time for filing all briefs and papers has expired. (Cal. Rules of Court, rule 8.256(d)(1).) If oral argument is requested, the court will notify the parties of the exact date and time set for oral argument, which will occur before Division Five of this court at the courtroom located on the fourth floor of the State Building, 350 McAllister Street, San Francisco, California.

I, CHARLES D. JOHNSON, CLERK OF THE COURT OF APPEAL, STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, DO HEREBY CERTIFY THAT THIS PRECEDING AND ANNEXED IS A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN MY OFFICE.

WITNESS MY HAND AND THE SEAL OF THE COURT THIS 1st DAY OF July 2019

CHARLES D. JOHNSON CLERK

BY Lynne Jacksmer DEPUTY

Date JUL 1 2019

Simons, J., Acting P.J.

Attachment 5

GIBSON DUNN

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July 22, 2019

VIA TRUEFILING

California Court of Appeal
First District Court of Appeal
350 McAllister Street
San Francisco, CA 94102

Re: ***Facebook, Inc., et al. v. Superior Court of the City and County of San Francisco,*** Case No. A157143 (San Francisco Superior Court Case Nos. 13035658 and 13035657)

Dear Presiding Justice Humes and Associate Justices:

On July 1, 2019, this Court ordered Providers to send an update on "their compliance with the [Superior Court's] May 1, 2019 order," which required Providers to produce to Defendants the private communications of third parties without finding a valid exception under the Stored Communications Act ("SCA"), 18 U.S.C. §§ 2701, *et seq*. Providers hereby inform the Court that they are unable to comply with the Superior Court's order because compliance with the Superior Court's order would violate the SCA. Providers have consistently maintained this position before the Superior Court, this Court, and the Supreme Court.

Providers stand ready to produce the information Defendants have requested, if and when they receive a lawful request for the information that complies with the SCA. For example, the SCA allows for the production of a person's private content with the consent of the sender or recipient of the communication, or in response to a lawful search warrant. *Id.* at §§ 2702(b), 2703(c). Thus, as the Supreme Court noted, Defendants may ask the "Superior Court [to] compel [Ms. Lee] to consent to disclosure by a provider," or the Superior Court may seek to determine whether "the prosecution [would] issue a search warrant under the Act, on behalf of a defendant." *Facebook, Inc. v. Superior Court* ("*Hunter II*"), 4 Cal. 5th 1245, 1291 n.47 (2018).

Further, if the Superior Court evaluates those possibilities and determines they are not viable means of obtaining the content Defendants seek, the Superior Court may exercise its considerable trial management discretion to impose limitations on the prosecution at trial. For example, the Superior Court could prohibit the prosecution from calling the witness whose communications are at issue or limit her testimony (*see, e.g., Davis v. Alaska*, 415

U.S. 308, 320 (1974)), issue adverse jury instructions correcting for the absence of evidence (*People v. Cooper*, 53 Cal. 3d 771, 811 (1991)), or force the prosecution to choose between issuing a search warrant and facing adverse consequences (*General Dynamics Corp. v. United States*, 563 U.S. 478, 484-85 (2011)). If the prosecution declines to assist Defendants in obtaining necessary records in a manner that complies with the SCA, the proper remedy lies against the prosecution, not Providers.

Providers note that this Court has granted Providers' Petition for a Writ of Mandamus and is positioned to review the lawfulness of the Superior Court's May 1, 2019 Order under the SCA. Providers reserve all rights to continue challenging the legality of the order in those proceedings and in any other appellate proceedings that may become necessary.

Very truly yours,

Joshua S. Lipshutz
Gibson, Dunn & Crutcher LLP

James G. Snell
Perkins Coie LLP

Counsel for Petitioners Facebook, Inc.
and Twitter, Inc.

Attachment 6

FILED
San Francisco County Superior Court

JUL 23 2019

CLERK OF THE COURT

BY: _____ Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
County of San Francisco

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. Lee Sullivan and Derrick Hunter, Defendants.	Case No. 13035657 & 13035658 ORDER TO SHOW CAUSE RE CONTEMPT

ORDER TO SHOW CAUSE RE CONTEMPT

To Facebook, Inc. and Twitter, Inc.

YOU ARE HEREBY ORDERED to appear before the above-entitled court in Department 21, located at 850 Bryant Street, San Francisco, California, on July 24, 2109, at 3 p.m., to show cause, if any, why you should not be adjudged guilty of contempt of court, and punished accordingly, for the acts of willful disobedience of the order of the above-entitled court, as provided in section 1209(a)(5) of the California Code of Civil Procedure, and as more fully described in your letter to the California Court of Appeal dated July 22, 2019. A copy of your letter is attached and shall be served on you with a copy of this order and by this reference incorporated as though fully set forth.

Dated: July 23, 2019

JUDGE CHARLES CROMPTON
SAN FRANCISCO SUPERIOR COURT

Superior Court of California

County of San Francisco

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

Lee Sullivan and Derrick Hunter,

Defendant.

Case Number: 13035657 & 13035658

CERTIFICATE OF SERVICE BY MAIL
(CCP 1013a (4))

I, JORY LATORRE, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On JULY 23, 2019, I served the attached NOTICE TO APPEAR, by sending an electronic letter copy thereof, addressed as follows:

GIBSON, DUNN & CRUTCHER LLP
Joshua S. Lipshutz, Bar No. 242557
jlipshutz@gibsondunn.com

PERKINS COIE LLP
James G. Snell, Bar No. 173070
JSnell@perkinscoie.com

John R. Tyler, *admitted pro hac vice*
RTyler@perkinscoie.com

Anna M. Thompson, *admitted pro hac vice*
AnnaThompson@perkinscoie.com

and, I then sent the electronic letter on that date following standard court practices.

Dated: JULY 23, 2019

T. MICHAEL YUEN, Clerk

By: _____
JORY LATORRE, Deputy Clerk