**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF TEXAS**
**WACO DIVISION**

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| EXPRESS MOBILE, INC.,<br><br>*Plaintiff,*<br><br>v.<br><br>FACEBOOK, INC.,<br><br>*Defendant.* | Case No. 6:20-cv-00803-ADA<br><br>Jury Trial Demanded |

**PLAINTIFF EXPRESS MOBILE, INC.'S PRELIMINARY INFRINGEMENT CONTENTIONS AND IDENTIFICATION OF PRIORITY DATES**

Plaintiff Express Mobile, Inc. ("Plaintiff" or "Express Mobile") serves its preliminary infringement contentions and identification of priority dates ("Disclosure") on Defendant Facebook, Inc. ("Defendant" or "Facebook"), (regarding U.S. Patent No. 6,546,397 (the "'397 Patent"), U.S. Patent No. 7,594,168 (the "'168 Patent"), U.S. Patent No. 9,928,044 (the "'044 Patent"), U.S. Patent No. 9,471,287 (the "'287 Patent") and U.S. Patent No. 9,063,755 (the "'755 Patent") (collectively, the "patents-in-suit").

Express Mobile bases this Disclosure on its current knowledge, understanding, and belief as to the facts and information available as of the date of this Disclosures. Express Mobile has not yet completed its investigation, collection of information, discovery, or analysis relating to this action, and additional discovery, including discovery from Facebook and third parties, may lead Express Mobile to amend, revise, and/or supplement this Disclosure. Express Mobile specifically reserves the right to amend, revise and/or supplement this Disclosure and/or accompanying exhibits in accordance with any Orders of record in this matter, and Federal Rule of Civil Procedure 26(e), as additional documents and information become available and investigation proceed. Express Mobile further reserves the right to amend its Preliminary



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Infringement Contentions, including the claims asserted, based on any proceeding(s) before the United States Patent and Trademark Office, if any, regarding any Express Mobile patent. Express Mobile reserves the right to supplement, modify or amend this Disclosure to include additional products or services made, used, sold, or offered for sale in or imported into the United States by Facebook.

This Disclosure is made without prejudice to any position Express Mobile may take with respect to claim construction. Express Mobile reserves its right to supplement this Disclosure and exhibits based on the Court's claim construction. Express Mobile further reserves the right to introduce and use such supplemental materials at trial.

The information in this Disclosure is not an admission regarding the scope of any claims or the proper construction of those claims or any claims contained therein. The production of documents accompanying this Disclosure is not an admission that such documents are admissible and Express Mobile does not waive any objections regarding admissibility. Express Mobile reserves the right to supplement its production of documents accompanying this disclosure upon identification or receipt of additional documents, including documents from third parties.

## I. PRELIMINARY INFRINGEMENT CONTENTIONS

Express Mobile's preliminary infringement contentions are attached hereto as Exhibits A1-E7. At this stage, Express Mobile provides charts for the following claims of the Asserted Patents:

**'397 patent**

- '397 patent on Facebook.com, Facebook's mobile application, Facebook's Pages features, Facebook's Ads platform, Facebook's Creator Studio, Facebook's Workplace platform, and Facebook's Analytics platform: claim 1 (Exhibits A1-A6)



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**’168 patent**

- ’168 patent on Facebook.com, Facebook’s mobile application, Facebook’s Pages features, Facebook’s Ads platform, Facebook’s Creator Studio, and Facebook’s Workplace platform: claims 1-4 and 6 (Exhibits B1-B5)

**’755 patent**

- ’755 patent on Facebook Stories features, Facebook’s Marketplace features, Facebook’s Creator Studio, Facebook’s Business Suite and Ad Center, and Facebook’s Analytics platform: claims 1-3, 5-7, and 11 (Exhibit C1, and C3-C6)
- ‘755 patent on Facebook’s Pages features: claims 1, 2, 5, 6, and 11 (Exhibit C2)
- ‘755 patent on Facebook’s Workplace platform: claims 1, 2, 5-7, and 11 (Exhibit C7)

**’287 patent**

- ‘287 patent on Facebook’s Stories features, Facebook’s Marketplace features, Facebook’s Creator Studio, Facebook’s Business Suite and Ad Center, and Facebook’s Analytics platform: claims 1-3, 5-7, 11, and 12 (Exhibit D1, and D3-D6)
- ‘287 patent on Facebook’s Pages features and Facebook’s Workplace platform: claims 1, 2, 5, 6, 11, and 12 (Exhibits D2 and D7)

**’044 patent**

- ‘044 patent on Facebook’s Stories features, Facebook’s Marketplace features, Facebook’s Creator Studio, Facebook’s Business Suite and Ad Center, and Facebook’s Analytics platform: claims 1-3, 5-7, 11, and 12 (Exhibits E1, and E3-E6)
- ‘044 patent on Facebook’s Pages features, and Facebook’s Workplace platform: claims 1, 2, 5, 6, 11, and 12 (Exhibit E2 and E7)

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## II. PRELIMINARY IDENTIFICATION OF THE PRIORITY DATE FOR EACH CLAIM OF THE ASSERTED PATENTS

Based on currently available information, Express Mobile identifies that the inventions of the ’397 and ’168 Patents were conceived by Steve Rempell at least as early as April 1999. Express Mobile further identifies that the inventions of the ’397 and ’168 Patents were reduced to practice by Steve Rempell at least as early as June 1999. Steve Rempell diligently worked to reduce the inventions of the ’397 and ’168 Patents to practice, including through source code development. Thus, each of the asserted claims of the ’397 and ’168 Patents are entitled to a priority date of at least as early as April 1999.

Based on currently available information, Express Mobile identifies that the inventions of the ’755, ’287, and ’044 Patents were conceived by inventors Steve Rempell, David Chrobak, and Ken Brown at least as early as January 12, 2008. Express Mobile further identifies that the inventions of the ’755, ’287, and ’044 Patents were reduced to practice thereafter by at least as early as November 11, 2008. For example, Express Mobile identifies provisional patent application No. 61/113,471, filed on November 11, 2008, as relevant to and supportive of the work related to the identified reduction to practice at least as early as November 11, 2008. Express Mobile further identifies that Steve Rempell, Ken Brown, and Dave Chrobak diligently worked to reduce the inventions of the ’755, ’287, and ’044 Patents to practice, including through source code and other technical development. Thus, each of the asserted claims of the ’755, ’287, and ’044 Patents are entitled to a priority date of at least as early as January 12, 2008. Alternatively, Express Mobile identifies that each of the asserted claims of the ’755, ’287, and ’044 Patents are entitled to a priority date of at least as early as November 11, 2008, which is the filing date of provisional patent application No. 61/113,471.



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Express Mobile's investigation relating to the conception and reduction to practice of the patented inventions is ongoing and it therefore reserves the right to supplement and/or modify this date as discovery in this case continues.

## III. DOCUMENT PRODUCTION ACCOMPANYING PRELIMINARY INFRINGEMENT CONTENTIONS

Subject to ongoing investigation and based on available information to date, non-privileged documents due with these Preliminary Infringement Contentions, including at least documents within Express Mobile's possession, custody, and/or control evidencing conception and reduction to practice for each claimed invention and a copy of the file history for each Patent-in-Suit, have been produced or are being produced. Express Mobile reserves the right to supplement its production and its identification of documents as additional discovery is conducted, including but not limited to third-party discovery evidencing conception and reduction to practice that may be produced in the ordinary course of these proceedings.

Express Mobile identifies XMO_0000001 – XMO_00000343 as being copies of the Patents-in-Suit.

Express Mobile identifies XMO_00000344 – XMO_00003581 as being copies of the file histories for the Patents-in-Suit.

As to the '397 and '168 patents, Express Mobile identifies XMO_00003614 – XMO_00006203 as evidencing the conception, reduction to practice, design, and development of each claimed invention.

As to the '755, '287, and '044 patents, Express Mobile identifies XMO_00006204 – XMO_00006543, XMO_00006544 – XMO_00006848, BROWN0000320 – BROWN0000401, BROWN0000587 – BROWN0001219, BROWN0005492 – BROWN0005524, BROWN0006788 – BROWN0006813, BROWN0007406 – BROWN0007416, BROWN0007419 – BROWN0007420, BROWN0007613 – BROWN0007637, BROWN0008370 – BROWN0008591,



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BROWN0010534 – BROWN0010567, BROWN0010597 – BROWN0014509 as evidencing the conception, reduction to practice, design, and development of each claimed invention.

Dated: February 5, 2021

/s/ *Robert F. Kramer*

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on February 5, 2021, a copy of the foregoing was served via email to all counsel of record.

By: /s/ *Adriana Cole*
Adriana Cole




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