

FACEBOOK NOTIFICATION – YOU’VE BEEN SERVED: WHY SOCIAL MEDIA SERVICE OF PROCESS MAY SOON BE A VIRTUAL REALITY

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I. INTRODUCTION

You have one new Facebook¹ message: You’ve been served. The last thing an individual thinks of when logging into his or her Facebook account or any other social media account is suddenly becoming part of a potentially expensive and time-consuming litigation. The rapid and powerful advances in digital technology and social media specifically, however, have created the possibility that service of process via social media—including service on social

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¹ FACEBOOK, <https://www.facebook.com> (last visited Oct. 30, 2013).

media platforms such as Facebook and Twitter²—may become a common and useful occurrence.

Imagine you are going about your day and you decide to check your Facebook account to see what information Facebook's News Feed³ will provide about your friends' latest adventures.⁴ Many times, the globe icon on your Facebook browser will be highlighted, indicating you have new notifications. What could the notification be? Perhaps someone commented on your exciting new photo, perhaps someone liked your witty status update, or perhaps you were just invited to the hottest bash of the summer. Think for a moment, however, if the notification instead informed you that you have been served legal documents, and it either attached those documents or directed you to a page with documents such as a summons and complaint. Specifically, imagine you opened up your new Facebook message and it was from a process server, informing you that you have been served, and the message attachments were a summons and complaint. This scenario may not seem as crazy as some individuals may think. Many people have likely heard of scenarios where a process server uses a unique tactic to serve legal papers upon individuals, such as in the middle of a concert⁵ or even at a baseball game.⁶ Several international courts and parties have already become acclimated to service of legal papers via social

² TWITTER, <https://twitter.com/> (last visited Oct. 30, 2013).

³ *What is News Feed?*, FACEBOOK, <http://www.facebook.com/help/210346402339221> (last visited Oct. 30, 2013). According to Facebook, News Feed is the center column of a Facebook user's home page and "is a constantly updating list of stories from people and Pages that you follow on Facebook. News feed stories include status updates, photos, videos, links, app activity and likes." *Id.*

⁴ Chances are this will not be the only time you check your Facebook account during the day. According to a recent study, smart phone users check Facebook nearly 14 times a day. *How Many Times a Day Do You Check Facebook From Your Smart Phone?*, PAC. BUS. NEWS (Honolulu, Haw.) (Mar. 29, 2013, 6:19AM), http://www.bizjournals.com/pacific/blog/morning_call/2013/03/how-much-time-do-you-really-spend-on.html. On average these smart phone users spend thirty minutes a day on Facebook. *Id.* These numbers are not just eye-opening; they are important to the issue of social media service of process because they show that people frequently log on to social media platforms such as Facebook, making it more likely—although not a certainty—that an attempt to serve an individual through Facebook will be successful.

⁵ Ashley Majeski, *Singer Ciara Gets Served Legal Papers in Middle of Concert*, TODAY (June 10, 2013, 5:43 PM), <http://www.today.com/entertainment/singer-ciara-gets-served-legal-papers-middle-concert-6C10272130>. While headlining the 2013 Los Angeles Gay Pride Festival, singer Ciara was handed legal papers by an audience member near the front of the stage as Ciara was performing a song. *Id.*

⁶ Tim Bontemps, *Red Sox Pitcher Served Papers by Yankees Fan Before Start*, N.Y. POST (Sept. 20, 2011, 10:46 PM), <http://nypost.com/2011/09/20/red-sox-pitcher-served-papers-by-yankees-fan-before-start/>. A few hours before he was scheduled to pitch for the Boston Red Sox, "pitcher Erik Bedard was served with papers from the Massachusetts Probate and Family Court in a child support case." *Id.*

media; and with U.S. courts now starting to grapple with the issue, this method of service appears to be on the horizon.

The purpose of this Article is to examine service of process in the U.S. via social media platforms such as Facebook, Twitter, and LinkedIn. The concept of serving legal papers via social media may be unconventional in U.S. jurisdictions, but it is not uncommon to foreign jurisdictions. After listing instances where international courts authorized social media service of process, this Article will examine some recent U.S. federal lawsuits where social media service of legal papers was contemplated and, in certain circumstances, allowed. These recent lawsuits may provide a basis for future U.S. courts to “greenlight” social media service of process under the right circumstances. Indeed, some states have contemplated social media service of process and one state recently proposed legislation to that effect, which this Article then examines. Given the recent attention to social media service of process, this Article provides recommendations to follow when seeking to utilize service of process via social media and why it may be more effective than most realize. While social media service of process is far from the accepted practice in U.S. courts, under the right circumstances, it may be an appropriate—and perhaps the only—method of locating an individual, to move a lawsuit forward and ensure the defendant—and justice—is served.

II. INTERNATIONAL COURTS EMBRACE SERVICE OF PROCESS VIA SOCIAL MEDIA

A. *Under the Proper Circumstances*

While social media service of process is a new concept to many U.S. courts (and likely confusing to courts with little knowledge of how social media works⁷), such process has been allowed numerous times in international courts in a variety of ways. These examples provide a framework of the factual cir-

⁷ Indeed, in the well known Occupy Wall Street action involving the subpoena of a Twitter account, *People v. Harris*, the Court noted:

In dealing with social media issues, judges are asked to make decisions based on statutes that can never keep up with technology. In some cases, those same judges have no understanding of the technology themselves. Judges must then do what they have always done—balance the arguments on the scales of justice. They must weigh the interests of society against the inalienable rights of the individual who gave away some rights when entering into the social contract that created our government and the laws that we have agreed to follow. Therefore, while the law regarding social media is clearly still developing, it can neither be said that this court does not understand or appreciate the place that social media has in our society nor that it does not appreciate the importance of this ruling and future rulings of courts that may agree or disagree with this decision.

cumstances under which social media service of process in U.S. courts is appropriate. An international sampling of social media service of process includes:

- In December 2008, an Australian Capital Territory Supreme Court judge allowed for service of court documents via Facebook.⁸ Defendants Carmel Rita Corbo and Gordon Poyser failed to keep up with payments on the \$150,000 loan they took out from mortgage provider MKM Capital (“MKM”).⁹ The defendants ignored emails from MKM’s law firm and did not attend an October 3, 2008, court appearance.¹⁰ The defendants’ Facebook profiles, meanwhile, provided the defendants’ date of birth, email addresses, and list of Facebook “friends,” and the defendants were Facebook “friends” with one another.¹¹ Such information satisfied the court that Facebook was an acceptable means of communicating with the defendants.¹² In allowing for service of process via Facebook, the judge did stipulate that the papers be sent via private message so that other individuals who visited the Facebook page could not read the contents of the legal papers.¹³
- Even the remedy of injunctive relief is no stranger to social media service of process. In October 2009, a United Kingdom High Court served an injunction on an anonymous Twitter user via Twitter.¹⁴ The issue first arose after an unknown Twitter user began tweeting at @blaneysblarney, which was the name of conservative blogger Donal Blaney’s blog.¹⁵ Blaney, an attorney, decided to ask for court intervention rather than seeking Twitter’s help.¹⁶ Blaney’s own experience with Twitter in trying to remove a fake Twitter account for a client left him with the impression that Twitter was slow to address the issue and even ignored his demand letters.¹⁷ As a result,

People v. Harris, 949 N.Y.S.2d 590, 597 (N.Y. Crim. Ct. 2012) (footnote omitted) (citation omitted).

⁸ Bonnie Malkin, *Australian Couple Served with Legal Documents via Facebook*, TELEGRAPH (U.K.) (Dec. 16, 2008, 11:42 AM), <http://www.telegraph.co.uk/news/newstoppers/howaboutthat/3793491/Australian-couple-served-with-legal-documents-via-Facebook.html>.

⁹ *Id.*

¹⁰ *Id.* Additionally, one of MKM’s lawyers stated that the defendants were not available at their residence and no longer worked at their last known place of employment, per certain documents. *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *High Court Serves Injunction via Twitter*, TELEGRAPH (U.K.) (Oct. 1, 2009, 6:38PM), <http://www.telegraph.co.uk/technology/twitter/6252166/High-Court-serves-injunction-via-Twitter.html>.

¹⁵ Catherine Mayer, *Injunction by Twitter: Stopping a Web Impostor*, TIME (Oct. 3, 2009), <http://www.time.com/time/world/article/0,8599,1927554,00.html>.

¹⁶ *Id.*

¹⁷ *Id.*

at 6:30 p.m. on October 1, 2009, in response to Blaney's petition, the English High Court sent a direct message on Twitter to the impostor @blaneysblarney: "You are hereby ordered by the High Court of Justice to read and comply with the following order."¹⁸ The message included a link to a web page with the demand to desist from the misleading tweets and by clicking on the link the unknown impostor's personal IP address may be ascertained.¹⁹ This was the first known injunction delivered via Twitter.²⁰

- In February 2012, United Kingdom High Court Judge Nigel Teare allowed legal documents to be served via Facebook.²¹ Plaintiffs AKO Capital LLP and AKO Master Fund brought a \$2.1 million claim against their broker TFS Derivatives ("TFS"); one of its employees, Fabio De Biase; and former AKO Capital LLP employee, Anjam Ahmad.²² TFA served its claim on Mr. De Biase at his last known address, but with questions as to whether he was still living there, asked the court to allow service via Facebook.²³ Judge Teare questioned whether TFS could verify the subject Facebook account was actually Mr. De Biase's, and whether he checked it.²⁴ The court ultimately approved service of process via the Facebook account when it heard that Mr. De Biase was Facebook friends with other TFS employees and the account appeared active because Mr. De Biase had recently accepted a few Facebook friend requests.²⁵

Therefore, service of process via social media is not an entirely unheard of concept after receiving authorization in foreign courts.²⁶ The above examples

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Joanna Stern, *You've Been Served. . . Via Facebook*, ABC NEWS (Feb. 23, 2012, 11:58AM), <http://abcnews.go.com/blogs/technology/2012/02/youve-been-served-via-facebook/>.

²² Katherine Rushton, *Legal Claims Can Be Served Via Facebook, High Court Judge Rules*, TELEGRAPH (U.K.) (Feb. 21, 2012, 11:56 AM), <http://www.telegraph.co.uk/finance/newsbysector/mediatechnologyandtelecoms/9095489/Legal-claims-can-be-served-via-Facebook-High-Court-judge-rules.html> (The investment managers claim that TFS Derivatives overcharged commission and sought to recover those funds from the broker. TFS Derivatives denied the allegations and then claimed that if it was held liable, it should be entitled to recover some of the subject funds from defendants Ahmad and De Biase).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ At the same time, however, even in the international realm, allowing service of legal process via social media is not a given. In a recent case, rapper Tramar Dillard, better known as Flo Rida, was about to avoid a lawsuit after being served papers via Facebook. Zayda Rivera, *Flo Rida Avoids Lawsuit After Being Served Papers on Facebook*, NEW YORK DAILY NEWS (Aug. 20, 2013, 12:58 PM), <http://www.nydailynews.com/entertainment/music-arts/flo-rider-avoids-legal-sanctions-served-papers-facebook-article-1.1431745>. Flo Rida allegedly no showed a headliner spot at a 2011 Australian music festival despite being paid \$377,000 up front. *Id.* When concert

provide evidence for U.S. courts and lawmakers that social media service of legal documents is possible and may be appropriate under the right circumstances.

III. U.S. LEGAL AUTHORITY WARMS UP TO SERVICE OF PROCESS VIA SOCIAL MEDIA

Recently, U.S. courts—at least those situated in New York—have shown a willingness to consider, if not accept, service of process via social media as well as other legal documents under the right circumstances. The proceeding cases could help open the door for more courts to endorse service of process via social media (either as a stand-alone method of service or in conjunction with other forms of service like email) or service of other legal documents via social media after a party has already appeared.

A. *Fortunato v. Chase Bank USA, N.A. Considers Service of Process via Social Media*

In 2012, the Southern District of New York considered service of process via social media and, while not outright endorsing such a method of service, showed some willingness to consider such a unique method and shined some attention on the issue. In *Fortunato v. Chase Bank USA, N.A.*,²⁷ the Southern District of New York considered defendant Chase Bank USA, N.A.’s (“Chase”) motion to extend time to complete service of a third-party complaint and for authorization to serve the third-party defendant using alternate methods, one of which was via Facebook.²⁸ Plaintiff Lorri J. Fortunato (“Lorri”) alleged in an amended complaint that someone fraudulently opened a Chase credit card account in her name and then racked up debt on the account without her authorization or knowledge.²⁹ Chase then started collection proceedings for the unpaid debts against Lorri on March 4, 2009, by executing service of process at an address in Carmel, New York, an address Lorri claimed to have never lived

promoters sued Flo Rida and his management for claims including breach of contract, however, the promoters looked to Facebook because of service challenges. *Id.* In September 2012, a Justice ruled in favor of social media service of legal papers due to difficulties in serving Flo Rida personally, but Flo Rida’s attorneys appealed, claiming the summons was not validly served and the judge lacked the jurisdiction to serve the summons via Facebook. *Id.* A Justice upheld Flo Rida’s appeal, stating “[t]he evidence did not establish, other than by mere assertion, that the Facebook page was in fact that of Flo Rida and did not prove that a posting on it was likely to come to his attention in a timely fashion.” *Id.*

²⁷ *Fortunato v. Chase Bank USA, N.A.*, No. 11 Civ. 6608(JFK), 2012 WL 2086950, at *1 (S.D.N.Y. June 7, 2012).

²⁸ *Id.*

²⁹ *Id.*

at.³⁰ After obtaining a default judgment against Lorri, Chase started proceedings to garnish her wages on May 24, 2010, eventually satisfying the full default judgment amount.³¹ In the subject action, Lorri brought claims against Chase for violating the Fair Credit Reporting Act, conversion, and abuse of process.³²

Relevant to the service of process via social media issue, after granting Chase's motion to transfer the case from New York Supreme Court to the Southern District of New York, the court granted Chase leave to implead Lorri's daughter, Nicole Fortunato ("Nicole"), into the action.³³ Chase alleged in a November 30, 2011, third-party complaint that Nicole opened the Chase credit card account in Lorri's name, listed her own Carmel, New York, address in the credit card application, and then charged the \$1,243.09 that was eventually garnished from Lorri's wages.³⁴ In attempting to serve Nicole, Chase hired an investigator but was unable to find her or her address of residence.³⁵ As a result, Chase sought the court's approval for service of process via Facebook, email, publication, and delivery to Lorri.³⁶

The court noted that New York Civil Practice Law and Rules ("CPLR") Section 308(5) allows for service "in such manner as the court, upon motion without notice, directs" where traditional methods of service are "impracticable."³⁷ The court added that service under CPLR Section 308(5) requires the impracticability showing "but does not require proof of due diligence or of actual prior attempts to serve a party under the other provisions of the statute."³⁸ The court noted that Chase's process server made several attempts to

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.* (Chase brought claims against Nicole for indemnification, breach of contract, contribution, fraud, unjust enrichment, and account stated.) *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* (internal quotation marks omitted). In discussing service of process, the court wrote that under New York CPLR 308:

In New York, service of process may be effected by: (1) personal service; (2) delivery to "a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served" and mail; (3) service on an agent; or (4) so-called "nail and mail" service.

Id.

³⁸ *Id.* This point pursuant to the New York statute may be important for future instances where social media service of process is considered. In theory (in New York at least), a party does not have to show that traditional methods of service of process failed before seeking social media service of process.

serve Nicole at an address in Shandaken, New York, to no avail.³⁹ Chase then hired an investigator to find Nicole, whose search included social media websites.⁴⁰ Among the investigator's findings⁴¹ was what she believed to be Nicole's Facebook profile, which listed a personal email address and a residence in Hastings, New York.⁴² Since the court was satisfied that normal service methods were impracticable under CPLR Section 308,⁴³ the Court had to decide on an alternate service method. In doing so, the court noted that "[c]onstitutional due process requires that service of process be 'reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'"⁴⁴

The court held that it could not agree with Chase that service of process via private Facebook message, email to the Facebook email address, and delivery of the summons and complaint to Lorri were "all reasonably calculated to notify Nicole of these proceedings."⁴⁵ The court noted that Facebook service of process "is unorthodox to say the least" and it was not aware of any other court authorizing such a method for service of process.⁴⁶ The court also expressed its concern with proper authentication and differentiated Chase's request from cases where email service was allowed because a movant presented at least some facts to indicate the person to be served would likely receive the summons and complaint at the target email address.⁴⁷ The court held here that Chase failed to "set forth any facts that would give the Court a degree of certainty that the Facebook profile its investigator located is in fact maintained by Nicole or that the email address listed on the Facebook profile is

³⁹ *Id.* at *2 (The process server tried to serve Nicole once on January 19, 2012; twice on January 25, 2012; and twice on January 26, 2012. The process server reported "there were 'no obvious signs that the premises were being regularly accessed.'").

⁴⁰ *Id.* The investigator also searched the Department of Motor Vehicles records, New York State Department of Corrections records, voter registration records, and publicly accessible wireless phone provider records. *Id.*

⁴¹ The investigator found four possible addresses for Nicole: the aforementioned Shandaken address, a Patterson, New York address that did not actually exist, a Wingdale, New York address which actually belonged to Lorri, and a Newburgh, New York address that Nicole did not own. *Id.*

⁴² *Id.*

⁴³ *Id.* The court noted the numerous attempts at personal service, the diligent search for an alternate residence, plus "Nicole's history of providing fictional or out of date addresses to various state and private parties . . ." *Id.*

⁴⁴ *Id.* (alteration in original) (quoting *Philip Morris USA Inc. v. Veles Ltd.*, No. 06 Civ. 2988(GBD), 2007 WL 725412, at *2 (S.D.N.Y. Mar. 12, 2007)).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

operational and accessed by Nicole.”⁴⁸ The court voiced its concern further by noting that “anyone can make a Facebook profile using real, fake, or incomplete information, and thus, there is no way for the Court to confirm whether the Nicole Fortunato the investigator found is in fact the third-party defendant to be served.”⁴⁹

Having denied social media service of process directly, the court then considered alternate service of process via publication, under CPLR section 316(a).⁵⁰ The court noted that Chase wanted to serve Nicole by publishing notice in a local newspaper in Hastings, New York—where the Facebook profile at issue lists Nicole’s location—and in the *New York Times*.⁵¹ While the court wrote that under the circumstances, “a local newspaper [was] the most likely means by which to apprise Nicole of the third-party complaint,”⁵² it reiterated its concern about the true owner of the Nicole Fortunato Facebook profile.⁵³ Ultimately, the court authorized service of the third-party complaint via publication in local newspapers not only in Hastings, New York—the location in the Nicole Fortunato Facebook profile—but in local newspapers in the four other cities the Chase investigator believed Nicole may be living.⁵⁴

The decision in *Fortunato* was interesting for several reasons. First, the court questioned the authenticity of the Facebook profile, which suffered from an apparent lack of sufficient information to authenticate it as Nicole’s. However, additional facts confirming the authenticity of the social media account—what if, for example, Nicole and Lorri were Facebook “friends” or had messaged one another on Facebook before the lawsuit began, as many family members do—may have warmed the court to service of process via Facebook. Furthermore, while the court denied Chase’s application to serve the third-party complaint via email, Facebook, and other methods,⁵⁵ it did grant alternate service by publication and, in doing so, allowed for a service method that relied on information *obtained* from social media. Specifically, the court gave some def-

⁴⁸ *Id.*

⁴⁹ *Id.* The court added that, given Lorri and Nicole’s estrangement, it was “similarly skeptical that delivery of the summons and complaint to Lorri is reasonably calculated to apprise Nicole of the proceedings against her.” *Id.* at *3.

⁵⁰ *Id.* The court noted that CPLR section 316(a) “provides for service by publication ‘in two newspapers, at least one in the English language, designated in the order as most likely to give notice to the person to be served, for a specified time, at least once in each of four successive weeks.’” *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* The court noted that the Nicole Fortunato Facebook profile’s Hastings, New York location was at least fifty miles away from the four addresses Chase’s investigator found when searching for Nicole. *Id.*

⁵⁴ *Id.* These cities were Shandaken, Patterson, Wingdale, and Newburgh, New York. *Id.*

⁵⁵ *Id.*

erence to the investigator's findings that the Nicole Fortunato Facebook profile contained a location in Hastings, New York, and incorporated that location into the five locations for service via publication.⁵⁶ In some regard then, service of process was at least impacted by social media.

While the court in *Fortunato* held that "a local newspaper [was] the most likely means by which to apprise Nicole of the third-party complaint,"⁵⁷ many would argue that service of the third-party complaint via Facebook message would actually be more likely to apprise Nicole Fortunato than a local newspaper. Many people would agree that these days, the chance that an individual checks his or her Facebook profile is much higher than the chance that the same individual reads the newspaper, much less a *local* newspaper. Ironically, if the individual did read the newspaper, they may read from an internet browser or by clicking on a post in their Facebook news feed rather than by thumbing through the local newspaper in its printed paper form. Indeed, research shows that young adults, for example, see news on social networking sites nearly 2.5 times more than young adults who read a newspaper in print or digital format.⁵⁸ The trend thus appears to be that individuals will eventually be more likely to be apprised of a lawsuit on social media platforms than in print newspapers. In any regard, *Fortunato* shed light on the possibility of service of process via social media, even if its holding meant that social media service was not quite ready for the spotlight.

B. F.T.C. v. PCCare247 Inc. Allows for Service of Motions and Other Post-Complaint Documents via Social Media

Service of process via social media received additional "notice," so to speak, when the Southern District of New York again tackled the issue in *F.T.C. v. PCCare247 Inc.*⁵⁹ While service of a summons and complaint via social media was not directly at issue this case, *F.T.C.* helped advance the con-

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *In Changing News Landscape, Even Television is Vulnerable*, PEW RES. CENTER FOR PEOPLE & PRESS (Sept. 27, 2012), <http://www.people-press.org/2012/09/27/in-changing-news-landscape-even-television-is-vulnerable/>. Specifically, "[a]mong adults younger than age 30, as many saw news on a social networking site the previous day (33%) as saw any television news (34%), with just 13% having read a newspaper either in print or digital form." *Id.* Among the other interesting findings from the survey which would support social media service: only 23% of Americans said they read a print newspaper the day before, down from 47% in 2000; 55% of New York Times readers read the paper on a computer or mobile device, while only 41% read the print edition; and 19% of the public said they saw news or news headlines on social networking sites the day before in 2012, up from 9% in 2010. *Id.*

⁵⁹ *FTC v. PCCare247 Inc.*, No. 12 Civ. 7189(PAE), 2013 WL 841037 (S.D.N.Y. Mar. 7, 2013).

cept of service of process via social media and provided additional groundwork for future courts to allow this method of service of process.

In *F.T.C. v. PCCare247 Inc.*, the plaintiff, the Federal Trade Commission (“FTC”), moved for leave to serve documents other than the summons and complaint by alternative service—Facebook and email—on several defendants located in India.⁶⁰ The FTC brought the action alleging that the defendants ran a scheme that operated largely out of Indian call centers and tricked American customers into spending money to fix computer problems that were not real.⁶¹ The five India-based defendants were allegedly centrally involved with the scheme.⁶² After the court entered a temporary restraining order enjoining the defendants’ business and freezing some of their assets, the FTC then submitted the summons, complaint, and other documents to the Indian Central Authority for service on the defendants pursuant to Federal Rules of Civil Procedure (“FRCP”) 4(f)(1) and The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (“the Convention”).⁶³ Notably, a process server personally delivered the summons and complaint to all five of the defendants—although the Indian Central Authority had yet to serve the defendants via the Convention—and the defendants even retained counsel for a preliminary injunction hearing.⁶⁴ The defendants then failed to comply with the preliminary injunction terms, but on January 3rd, and 6th, of 2013, defendant Vikas Agrawal emailed the FTC four times and blind carbon copied the court chambers’ email address.⁶⁵ Then on February 11, 2013, the FTC filed the instant motion and served the defendant via email and overnight mail.⁶⁶

⁶⁰ *Id.* at *1.

⁶¹ *Id.*

⁶² *Id.* Vikas Agrawal was the scheme’s mastermind and ran daily operations, Anuj Agrawal also played a key role in daily operations, and Parmeshwar Agrawal was a director of one of the corporate defendants and created a PayPal account for it. *Id.* The two corporate defendants in India were PCCare247 Solutions Pvt. Ltd. and Connexions IT Services Private Limited. *Id.*

⁶³ *Id.* The FTC sent the documents by email, Federal Express, and personal service via a process server as well. *Id.*

⁶⁴ *Id.* at *1-2. Although the court exempted certain assets from being frozen in issuing a preliminary injunction on November 16, 2012 so the defendants could pay their attorneys, the defendants still did not pay their attorneys and on January 14, 2013, the court granted the attorneys’ motions to withdraw as counsel. *Id.* at *2.

⁶⁵ *Id.* at *2.

⁶⁶ *Id.* The court issued an Order on March 1, 2013 directing the FTC to file a supplementary letter with specifics about the proposed service such as which emails, social media accounts, and publications the FTC wanted to use. *Id.* In the March 5, 2013 supplementary letter, the FTC noted the costs of service by publication and thus narrowed its request to first attempt service via email and Facebook. *Id.* at *3.

The court first analyzed the applicable legal standard for service of process on a party in a foreign country.⁶⁷ Next, the court considered whether international agreement prohibited service of process via email and Facebook.⁶⁸ Noting that service of process via Facebook is outside the scope of Article 10 of the Convention, India did not object to service of process via Facebook, and the court was not aware of any international treaty prohibiting service of process via Facebook, the court held that international agreement did not prohibit service via email and Facebook.⁶⁹ The court then analyzed whether service of process via email comports with due process, holding that such service is “reasonably calculated to provide [the] defendants with notice of future filings in this case.”⁷⁰ After examining service of process via email and determining it would comport with due process,⁷¹ the court turned its attention to the FTC’s proposal to serve the defendants via Facebook.⁷²

⁶⁷ *Id.* at *2-3. The court noted that under FRCP 4(f)(3), “a Court may fashion means of service on an individual in a foreign country, so long as the ordered means of service (1) is not prohibited by international agreement; and (2) comports with constitutional notions of due process.” *Id.* at *2 (quoting *SEC v. Anticevic*, No. 05 CV 6991(KMW), 2009 WL 361739, at *3 (S.D.N.Y. Feb. 13, 2009)) (internal quotation marks omitted). The court added that under FRCP 4(f), “service of process on foreign corporations may be made in the same manner as on individual defendants.” *Id.*

⁶⁸ *Id.* at *3. The court noted that the U.S. and India are signatories to the Convention. Article 10 of the Convention allows for alternative methods of service so long as the destination state has no objection to such methods. *Id.* While India has not objected to the means listed in Article 10, such an objection is limited to the methods actually enumerated in Article 10, and thus a court acting under FRCP 4(f)(3) is free to order alternative methods of service not specifically referenced in Article 10. *Id.* at *4. Service via email and Facebook are not listed in Article 10, nor has India specifically objected to them, the court noted. *Id.*

⁶⁹ *Id.* at *4. The court therefore held that it could authorize service via email and Facebook so long as due process was also satisfied. *Id.*

⁷⁰ *Id.* The court noted, “[c]onstitutional notions of due process require that any means of service be ‘reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’” *Id.* at *4 (quoting *SEC v. Anticevic*, No. 05 CV 6991(KMW), 2009 WL 361739, at *3 (S.D.N.Y. Feb. 13, 2009)) (internal quotation marks omitted).

⁷¹ *Id.* The court noted that service via email alone comports with due process where a plaintiff can show the email will likely reach the defendant. *Id.* The defendants in *F.T.C.* had an internet business and frequently used email to communicate. *Id.* The court noted that the FTC identified each individual defendant’s email address and said email addresses were “used for various tasks involved in the alleged scheme” *Id.* Furthermore, the court had “independent confirmation that at least one of these email accounts was recently in use by the specified defendant” as Vikas Agrawal used the subject email address to email the court four times on January 3 and 6, 2013. *Id.* As a result, the court held that the FTC “demonstrated a high likelihood that defendants will receive and respond to emails sent to these addresses. Service by email alone, therefore, would comport with due process.” *Id.*

⁷² *Id.* at *5.

According to the court, the FTC's Facebook service of process method was to send a Facebook message to each individual defendant's Facebook account and attach the relevant documents.⁷³ The defendants would then be able to view the messages the next time they logged into Facebook and, as the court noted, "depending on their settings, might even receive email alerts upon receipt of such messages."⁷⁴ The court noted that if the FTC had proposed to serve the defendants only via Facebook, "a substantial question would arise whether that service comports with due process."⁷⁵ The court then cited to the *Fortunato* court's concerns about authenticating whether the Facebook account actually belongs to the defendant.⁷⁶ The court found that the FTC set forth facts that supplied "ample reason for confidence that the Facebook accounts identified are actually operated by defendants."⁷⁷ Anuj and Parmeshwar Agrawal each registered their Facebook accounts using the email addresses previously noted and Vikas Agrawal registered his Facebook account with the same email address used to register iConnexions.com, a website key to the defendants' alleged scheme.⁷⁸ Also of note, Vikas and Anuj Agrawal listed on Facebook their job titles at the defendant companies as their professional activities and both are Facebook "friends" with Parmeshwar Agrawal.⁷⁹ Therefore, the FTC "demonstrated a likelihood that service by Facebook message would reach defendants."⁸⁰

The court acknowledged the "relatively novel concept" of Facebook service and the chance that the defendants "will not in fact receive notice by this means."⁸¹ The court noted, however, that the proposed Facebook service was "intended not as the sole method of service, but instead to backstop the service upon each defendant at his, or its, known email address."⁸² The court added that "history teaches that, as technology advances and modes of communication progress, courts must be open to considering requests to authorize service of process via technological means of then-recent vintage, rather than dismissing

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.* See also *supra* note 49 and accompanying text.

⁷⁷ *PCCare247 Inc.*, 2013 WL 841037, at *5.

⁷⁸ *Id.*

⁷⁹ *Id.* Interestingly, the weight the court places on the two individual defendants listing their job titles at the defendant companies as professional activities in their Facebook profiles would give credence to a future plaintiff attempting service via another digital platform known for listing an individual's job title and calls itself the "world's largest professional network"—LinkedIn. LinkedIn, <http://www.linkedin.com/> (last visited Oct. 30, 2013).

⁸⁰ *PCCare247 Inc.*, 2013 WL 841037, at *5.

⁸¹ *Id.*

⁸² *Id.*

them out of hand as novel.”⁸³ The court noted that alternative service methods are “all the more reasonable where, as here, the defendants demonstrably already have knowledge of the lawsuit.”⁸⁴ The court therefore held that the FTC’s proposal to serve the defendants by email and Facebook satisfied the due process inquiry, noting that “[w]here defendants run an online business, communicate with customers via email, and advertise their business on their Facebook pages, service by email and Facebook together presents a means highly likely to reach defendants.”⁸⁵ The court added that its intervention was warranted and the litigation must move forward and cannot wait five months or more for every motion to be served by the Indian Central Authority, which had until now not shown a disposition to act.⁸⁶ The court ultimately granted the FTC’s motion to serve the defendants via email and Facebook and granted the FTC leave to serve “motions and other post-complaint documents” to the defendants’ specified email addresses and by message to each of the individual defendants’ Facebook accounts.⁸⁷

While *PCCare247 Inc.* may not have been a ringing endorsement of social media service of process, it did help advance the concept of allowing for such alternative service on a more regular basis. Critics may point to the court’s emphasis in *PCCare247 Inc.* that alternative service was proposed via *both* email—already an accepted method by many courts—and Facebook, and the court’s concern that a Facebook-only service of process would raise questions about due process.⁸⁸ Furthermore, *PCCare247 Inc.*’s, extenuating circumstances of service—defendants in another country and an Indian Central Authority that was not quick to respond⁸⁹—likely helped warrant an alternative service method such as service of process via Facebook more so than usual. Even further, the defendants in *PCCare247 Inc.* at one point were represented

⁸³ *Id.* at *5. The court added that “[a]s the Ninth Circuit has stated, the due process reasonableness inquiry ‘unshackles the federal courts from anachronistic methods of service and permits them entry into the technological renaissance.’” *Id.* (quoting *Rio Properties, Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1017 (9th Cir. 2002)).

⁸⁴ *Id.* at *5.

⁸⁵ *Id.* at *6. The trend towards digital business and social media means that many companies, including those whose services do not necessarily occur over the internet, nonetheless “run an online business [and] communicate with customers via email.” Furthermore, whether by listing a company somewhere in his or her Facebook profile or uploading content that somehow includes or references a company, an individual is thus likely to “advertise their business on their Facebook page” and thus future parties will likely have an easier time analogizing the facts of their particular case to this one in some aspects. *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* at *5.

⁸⁹ *Id.* at *6.

by counsel,⁹⁰ thereby alleviating a typical social media service concern that the party to be served is not properly apprised of the litigation.

On the other hand, the court *did* authorize service of process via Facebook in this case for post-complaint documents. The *PCCare247 Inc.* decision may thus give parties additional recourse where a party initially appears but then is difficult to contact—except via social media. Therefore, *PCCare247 Inc.* may actually expand the acceptable grounds for service of process via social media. Furthermore, *PCCare247 Inc.* offered valuable insight into additional means of authentication for a social media account that would alleviate a court's concerns about due process. Among other things, a party seeking to use social media for service of process should consider presenting the court with facts such as: (i) the target defendant's social media account references an email address that is traceable to the defendant or was part of the underlying facts of the action; (ii) the target defendant's social media account lists a job title or other professional activity that is connected to another defendant; and (iii) multiple target defendants are connected in some way on a social media platform, such as Facebook "friends," Twitter "followers," or LinkedIn "connections."⁹¹ While time will tell if, and how, courts warm up to social media service, *PCCare247 Inc.* was a step forward in this direction.⁹²

⁹⁰ See *supra* text accompanying note 64.

⁹¹ See *supra* notes 78-79 and accompanying text.

⁹² Interestingly, the pro-social media service of process vibe *PCCare247 Inc.* offered took a slight speed bump but was eventually re-affirmed and further developed just months later in 2013. In *F.T.C. v Pecon Software Ltd.*, the Southern District of New York considered the FTC's motion for leave to serve documents including a summons and complaint via alternative methods – including Facebook once again – on defendants in five related cases, which were also related to *PCCare247 Inc.* *FTC v. Pecon Software Ltd*, Nos. 12 Civ. 7186 (PAE), 2013 WL 4016272, at *1 (S.D.N.Y. Aug. 7, 2013). Of relevance here, the court considered the FTC's proposal to serve several defendants via Facebook message. *Id.* at 8. In the related *Pecon Software Ltd.* case, the FTC sought to serve four individual defendants via Facebook message and "[t]o verify that the Facebook accounts at issue correspond to these four defendants, the FTC has compiled a table summarizing the information that its investigator obtained from Facebook." *Id.* In denying the FTC's motion to serve these four defendants via Facebook without prejudice to renew, the court held:

However, unlike in *PCCare247*, the FTC has not supplied the Court with actual screenshots of the defendants' Facebook pages. Many of the individual defendants in these cases bear common names. At times, the email addresses used by the individual defendants have varied, as have the corporate entities with which the defendants have identified. Thus, although the Court has no reason to question the sworn declaration of the FTC's investigator, the Court cannot say with confidence, without actually viewing the Facebook pages and verifying the information allegedly listed thereon, that service by Facebook message would be highly likely to reach defendants.

Id.

IV. LEGISLATIVE PROGRESS TOWARDS SERVICE OF PROCESS VIA SOCIAL MEDIA

In addition to courts slowly gravitating towards service of process via social media under the right circumstances, some states have proposed legislation or procedures that would allow for social media service of legal documents. Utah state courts, for one, appear to acknowledge the value of social media service of process, under the right circumstances. In discussing service of process, the Utah state courts website specifically references social media.⁹³ Utah notes that the Utah Rules of Civil Procedure (“URCP”) 4 governs service of process and that “[c]ourt rules require that the defendant or respondent be

As far as another related case, *F.T.C. v. Marczak*, No. 12 Civ. 7192 (PAE), the court denied without prejudice the FTC’s motion to serve an individual, Wahid Ali, by Facebook message. *Id.* The court noted that while the “FTC represents that Ali registered his Facebook account with the same email addresses that he used to set up PayPal accounts used in the alleged scheme . . . the Court cannot find verification on the record that Ali used these email addresses.” *Id.* at *8. Accordingly, the court’s ruling in *Pecon Software Ltd.* showed the importance of verifying information (or providing sufficient means for a court to do so) when seeking social media service. *Id.* A moving party is wise to consider that in addition to stating the relevant social media information for service purposes, that it provide “actual screenshots” of the subject party’s social media page in order for a court “verify[] the information allegedly listed thereon.” *Id.* at 8.

Just over a month later, the Southern District of New York once again considered Facebook service for numerous defendants and this time reached a decision that again confirms that under the proper circumstances, social media service of process may be a viable option. In *F.T.C. v. Pecon Software Ltd.*, the FTC again moved for leave to serve documents, including a summons and complaint, on defendants not only in the above-referenced cases, but in the *PCCare247, Inc.* action as well. *FTC v. Pecon Software Ltd.*, Nos. 12 Civ. 7186 (PAE), 2013 WL 5288897, at *1 (S.D.N.Y. Sept. 18, 2013). As to the *PCCare247, Inc.* action, the FTC sought to serve Anuj Agrawal, Parmeshwar Agrawal, PCCare247 Solutions Pvt. Ltd. and Connexions IT Services Private Limited with the summons and complaint by email and Facebook message. *Id.* The court held that “[j]ust as service of post-complaint documents was appropriate, service with the Summons and Complaint is appropriate at the same email addresses identified.” *Id.* As to Prateek Shah, a defendant, the FTC was granted leave to serve him by Facebook message and email where the facts included: Shah listing on his Facebook page Pecon Software Limited as his employer and his father Mahesh Shah, another Pecon director. *Id.* As to Shah’s father, the FTC’s obtaining six email addresses via investigative demands from Facebook, and the email address domain names being consistent with employment and school information listed on Shah’s Facebook account and in other sources. *Id.* at *2.

As for Wahid Ali, this time around, the court allowed service via Facebook message and email where in part: Ali used two of the email addresses to register a PayPal account and Facebook accounts that were part of the alleged scheme, Ali’s Facebook page listed one of the entities allegedly in the scheme as his employer, and “the email addresses associated with Ali’s Facebook account match[ed] the addresses [previously] identified.” *Id.* Therefore this case and its related actions eventually advanced the concept of social media service and also identified additional considerations – such as providing a court with visual evidence such as Facebook page screenshots – for a party to consider in seeking approval for social media service. *Id.*

⁹³ *Serving Papers (Service of Process)*, UTAH ST. CTS., http://www.utcourts.gov/howto/service/service_of_process.html (last updated May 17, 2013).

notified about the case, get copies of all the papers you file, and be given time to respond.”⁹⁴ URCP 4(d)(4) covers “other Service” and states:

Where the identity or whereabouts of the person to be served are unknown and cannot be ascertained through reasonable diligence, where service upon all of the individual parties is impracticable under the circumstances, or where there exists good cause to believe that the person to be served is avoiding service of process, the party seeking service of process may file a motion supported by affidavit requesting an order allowing service by publication or by some other means.⁹⁵

The Utah state courts website states that “[i]f you cannot find the person to be served after using reasonable diligence, or if you can show the court that the person is avoiding service, you can ask permission to serve the complaint and summons (or other document required to be served under URCP 4) by some other means.”⁹⁶

Notably, the Utah state courts website also enters into a somewhat detailed discussion of alternative service methods, including social media. The Utah state courts website states:

The alternative means chosen has to be the method most likely to give actual notice of the document being served. Serving someone by publishing the summons in a newspaper has been for many years the most common means of alternative service. However, the courts are more frequently using electronic communications and social media to publish the complaint and summons or to notify the person being served that the documents have been published.

Even though you cannot find the person to be served, you may know where they accept communications: email; mail to a friend or relative; a social network, such as Facebook; a text

⁹⁴ *Id.*

⁹⁵ UTAH R. CIV. P. 4(d)(4)(A) (West 2013). Section 4(d)(4)(B) further states:

If the motion is granted, the court shall order service of process by means reasonably calculated, under all the circumstances, to apprise the interested parties of the pendency of the action to the extent reasonably possible or practicable. The court’s order shall also specify the content of the process to be served and the event or events as of which service shall be deemed complete. Unless service is by publication, a copy of the court’s order shall be served upon the defendant with the process specified by the court.

Id. 4(d)(4)(B).

⁹⁶ *Serving Papers (Service of Process)*, *supra* note 93.

number or phone number; or a Twitter name. With the court's permission, you might be able to send the complaint and summons directly to the person by mail, email or social media.⁹⁷

The Utah state courts website even references Facebook and Twitter and states that with court authorization, service of process via social media is possible.⁹⁸ The Utah state courts website acknowledges social media service of process as a potentially viable means of service and may serve as an example to apprise parties of the availability of such a method for service of process going forward.

Of further interest, the state of Texas recently tried to take service of process via social media one step further and explicitly allow for this method of service in its laws. In February 2013, Texas Republican Jeff Leach proposed a bill that would allow lawsuits in Texas to be served via social media where traditional service methods fail.⁹⁹ Rep. Leach introduced Texas House Bill 1989 ("H.B. 1989"), which would authorize courts to approve social media service where regular methods such as hand-delivery or registered mail are unsuccessful.¹⁰⁰ The text of H.B. 1989 is as follows:

Sec. 17.031. SUBSTITUTED SERVICE THROUGH SOCIAL MEDIA WEBSITE.

- (a) If substituted service of citation is authorized under the Texas Rules of Civil Procedure, the court may prescribe as a method of service under those rules an electronic communication sent to the defendant through a social media website if the court finds that:

⁹⁷ *Id.* The website adds:

Because you are a party to the case, the court might order that a third person serve the documents and file proof of service on your behalf. For alternative service, this might mean the third person would mail or email the documents on your behalf, post the documents to a Facebook account, arrange for publication, or notify the person by phone or text that the documents have been published. *Id.*

⁹⁸ *Id.* There are a number of forms on the Utah state courts website that are required in order to ask the court for service via alternative methods, some of which reference social media directly. *Id.* For example, the Statement Supporting Motion for Alternative Service states in paragraph (6) that "I believe that the probability of actual notice is improved by communicating to the above-named person by:" and then lists "Social Network (such as Facebook) at _____ (name)" and "Twitter at _____ (name)", in addition to "Text message" and "Phone." STATEMENT SUPPORTING MOTION FOR ALTERNATIVE SERVICE, UTAH ST. CTS. 3 (2010), available at http://www.utcourts.gov/howto/service/docs/02_Statement_Supporting_Alternative_Service.pdf.

⁹⁹ Jess Davis, *Texas Bill Would Let Suits Be Served Via Facebook, Twitter*, LAW360 (Feb. 28, 2013, 4:33 PM), <http://www.law360.com/articles/419406/texas-bill-would-let-suits-be-served-via-facebook-twitter>.

¹⁰⁰ *Id.*

- (1) the defendant maintains a social media page on that website;
 - (2) the profile on the social media page is the profile of the defendant;
 - (3) the defendant regularly accesses the social media page account; and
 - (4) the defendant could reasonably be expected to receive actual notice if the electronic communication were sent to the defendant's account.
- (b) Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this section.¹⁰¹

H.B. 1989 is another step forward in social media service of process and embraces the concept. The proposed bill allows for social media service of process where traditional methods are unsuccessful—a running theme where social media service has previously been allowed versus allowing for such service as a first option—and lists a number of factors that are required for substitute social media service.¹⁰² Of course, one must get beyond the obvious first point, whether a defendant has a social media profile, to reach the more challenging second requirement—authenticating that the social media profile actually belongs to the right party¹⁰³—which is perhaps the central concern of courts grappling with social media service of process. While H.B. 1989 does not delve into detail about authenticating a social media profile, a party seeking to serve legal documents should present multiple factors that confirm the social media account is likely that of the defendant. The frequency with which a defendant accesses his or her social media account is listed as the third factor a court should find¹⁰⁴ and is important because a court is likely to be apprehensive about authorizing social media service if the otherwise authentic account has not been accessed by the party in some time. A party could verify the frequency of a defendant's social media use by observing newly-posted pictures, videos, news articles (with dates), or other posts on an individual's timeline. If such information is set behind a privacy wall, even an individual's

¹⁰¹ Jeff Leach, *Bill: H.B. 1989*, TEX. LEGISLATURE ONLINE, <http://www.legis.state.tx.us/tlodocs/83R/billtext/pdf/HB01989I.pdf#navpanes=0> (last visited Oct. 30, 2013). Section 2 of the proposed bill states that it takes effect on September 1, 2013. *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

profile picture could shed light on how recently a defendant accesses his or her social media account.¹⁰⁵

The final factor, that “the defendant could reasonably be expected to receive actual notice if the . . . communication were sent to the defendant’s account,”¹⁰⁶ may be the most open-ended of the factors. In theory, if the defendant has an account and regularly accesses it, he or she would be likely to receive actual notice of a social media service of process on his or her account. While there may be no exact method to showing a reasonable expectation of receiving actual notice of service of process via social media, presenting detailed and abundant evidence regarding a specific social media account is likely to help allay a court’s concerns. The ultimate fate of H.B. 1989 aside,¹⁰⁷ this proposed legislation is another step towards U.S. courts accepting social media service of legal papers under the right circumstances. Other states are likely to follow suit in the future.

V. BEST PRACTICES FOR SERVICE OF PROCESS VIA SOCIAL MEDIA

In light of recent legal authority trending towards authorizing service of process via social media, what are the takeaways for a party seeking to utilize this unique service method? A party who cannot locate a defendant by conventional methods or investigation should consider several factors when seeking service of process via social media, assuming the defendant’s alleged social media account can be found. It is critical for a party to gather ample evidence to assure a court that there is a strong likelihood that the targeted social media account belongs to the defendant and the defendant will receive the summons and complaint or other legal documents. A checklist of items a party should consider when requesting service of process via social media includes:

A. *Authentication of a Social Media Account via Content*

One common saying for social media professionals is “content is king,” and such a saying has added meaning when considering social media service of process. A party seeking to assure a court that a social media account belongs to a hard-to-find defendant may potentially have a treasure trove of facts and information to present to a court to help authenticate an account. On Facebook,

¹⁰⁵ For example, the individual’s profile picture could be a picture from a recent birthday or even from a recent event—such as a concert or vacation—that can be verified to a certain date. If the individual has changed his or her profile picture several times recently, that is also evidence of regular access to the social media account.

¹⁰⁶ Leach, *supra* note 96.

¹⁰⁷ According to the Texas Legislature Online, H.B. 1989 failed. Jeff Leach, *Bill: HB 1989*, TEX. LEGISLATURE ONLINE, <http://www.capitol.state.tx.us/BillLookup/BillStages.aspx?LegSess=83R&Bill=HB1989> (last visited Oct. 30, 2013).

for example, a search of an individual's profile may yield information such as photos, videos, relationship status, birthday, hometown, current city, education, work, languages spoken, and websites, to name a few.¹⁰⁸ Of course, if an individual has a unique name, the chances of finding what is believed to be the right profile will be easier than if an individual's name is something like "John Smith." Regardless, the more publicly available information¹⁰⁹—which depends on what information an individual makes available on a specific social media platform—to verify that the social media account likely belongs to the target defendant, the more likely a court will be convinced that service of process via social media will reach the targeted defendant.¹¹⁰

B. Putting the "Social" in Social Media Helps

In conjunction with finding and inspecting an individual's available social media content, a court may be put at further ease with respect to service of process via social media if there is evidence that the target social media account has recently, and frequently, been in use.¹¹¹ To the extent an individual's social media account is publicly visible, such as a Facebook profile timeline, it could reflect recent activity. For example, an individual may have recently attended an event (whose date can be independently verified), posted pictures from a recent event or even posted a news article that can at least give an indication of the last time the individual accessed the account. Any such information can complement social media account authentication by showing that the target individual actively uses his or her social media account, thereby increasing the chances that he or she will receive social media service of process and any corresponding documents.

¹⁰⁸ See generally FACEBOOK, <https://www.facebook.com> (last visited Oct. 30, 2013).

¹⁰⁹ See *What's Considered Public Information?*, FACEBOOK, <http://www.facebook.com/help/167709519956542> (last visited Oct. 30, 2013). There is always the possibility that an individual who is difficult to find has also made his or her social media account similarly difficult to find or examine. However, certain information for each social media platform is considered "public information" and is more likely to be accessible even if one is not "friends" or otherwise connected to the target individual. For example, on Facebook, public information may include items one shares on his or her timeline, including "name, gender, username, user ID . . . profile picture, cover photo and networks." *Id.* Ironically, Facebook's rationale for why such information is "available to anyone" includes statements such as "Your name, profile picture and cover photo help people recognize you" and "Listing your networks (such as your schools or workplace) allows others to find you more easily." *Id.* Thus, a social media platform like Facebook is designed to allow people to be found more easily, and such a rationale should be offered to any court when requesting social media service of process.

¹¹⁰ *FTC v. PCCare247 Inc.*, No. 12 Civ. 7189(PAE), 2013 WL 841037, at *5 (S.D.N.Y. Mar. 7, 2013).

¹¹¹ *Davis*, *supra* note 99.

C. *Social Media Account Authentication via Email and Messages*

As the court in *PCCare247 Inc.* showed, tying an individual's email address to a particular social media account, if possible, can be useful in confirming the social media account belongs to the correct individual.¹¹² If a moving party can show, as in *PCCare247 Inc.*, that an individual's social media account was registered with an email address used to previously communicate with the court or the moving party or was perhaps used in the underlying facts in the action, this may help authenticate the social media account for service of process purposes.¹¹³ Furthermore, certain social media platforms, such as Facebook, may actually allow one, under certain circumstances, to see if the target individual read the message containing legal documents.¹¹⁴ Accordingly, a party trying to convince a skeptical court to use social media service of process could attempt to further allay the court's concern by stipulating that in order for social media service to be considered effective by the court, the party must receive a notification from the social media platform that the message has actually been seen—almost the equivalent of a “social media affidavit of service” created by the social media platform itself.¹¹⁵

D. *Friendliness and Connections Helps*

A party seeking social media service of process can additionally authenticate a social media account by showing that the account has Facebook “friends,” Twitter “followers,” or LinkedIn “connections,” to name a few possibilities, that are easily tied to individuals or companies. For example, if a Facebook profile believed to be that of the potential defendant has “friends” that include other potential co-defendants,¹¹⁶ prospective witnesses, or other parties in litigation, this added level of connectivity may reduce the likelihood,

¹¹² *Id.*

¹¹³ *Id.* In some cases, a party may have already communicated with the defendant via a social media account prior to instituting the lawsuit. Such evidence should be presented to authenticate the account for service purposes.

¹¹⁴ *Sending a Message*, FACEBOOK, <http://www.facebook.com/help/316575021742112/#!/help/326534794098501/>, (last visited Oct. 30, 2013). For example, Facebook's Help Center states in response to the question of “How do I know if a friend has seen a message I sent?” that “When someone sees your most recent message, it will be marked as seen. That way, you always know who got the message, and who didn't.” *Id.* At the same time, however, there is always the concern that a social media user will not see a message. Indeed, Facebook's Help Center also states that one “can send messages to anyone on Facebook as well as to email addresses. Messages you send to people you're not connected to may arrive in their Other folder.” *Id.*

¹¹⁵ Such a proposal to use a “social media affidavit of service” could be offered in conjunction with information authenticating that the social media account belongs to the correct individual to be served.

¹¹⁶ *PCCare247 Inc.*, 2013 WL 841037, at *5.

in a court's eyes, that the social media account is fake or belongs to the wrong individual.

There are many potential avenues and sources of information that a party could conceivably find to convince a court that social media service of process or social media service of post-complaint documents would not run amok of due process or of state and federal laws. Indeed, it is conceivable that social media platforms themselves could get involved in the service of process business, under the right circumstances. Facebook, for example, states that “[m]essages you send to someone you’re not connected to on Facebook may arrive in their Other folder. You may have the option of paying to route these messages to their inbox. When this delivery option is available, you’ll see the price beneath your message.”¹¹⁷ Accordingly, some social media platforms may already have the functional equivalent of a digital process server in place, complete with payment options. As a theoretical example, Twitter could one day become a method of publication rather than newspapers.¹¹⁸ Users searching for an individual or company to serve could utilize hashtags such as #service, #serviceofprocess, or #SOP and even use Promoted Tweets¹¹⁹ to increase the odds of giving an individual or company proper notice of a lawsuit. While those theoretical scenarios could be remote in reality, the point is that social media has provided new and innovative methods for communication and spreading ideas and messages. There is no reason why, under the proper circumstances and with the proper consideration of a prospective party's rights, that the legal system cannot utilize social media to offer quicker, cheaper, and more efficient methods of dispensing justice.

VI. CONCLUSION

Social media service of process is an exciting yet frightening prospect. On one hand, it offers a new, quicker, and cheaper method of service than standard forms of service, such as personal service, or more costly alternative methods, such as publication. If the trending technology and times is such that individuals increasingly communicate and send information digitally and specifically via social media, then many will wonder why the courts should not keep up

¹¹⁷ *Sending a Message*, *supra* note 114.

¹¹⁸ Maureen Farrell, *Peter Thiel: Twitter Will Outlast the New York Times*, CNNMONEY (May 1, 2013, 12:00 AM), <http://money.cnn.com/2013/05/01/investing/twitter-thiel-andreessen/index.html> (PayPal co-founder Peter Thiel stated in a debate in 2013 that Twitter has a brighter future than the New York Times).

¹¹⁹ *Promoted Tweets*, TWITTER, <https://business.twitter.com/products/promoted-tweets-full-service> (last visited Oct. 30, 2013). In describing its Promoted Tweets service, Twitter notes that the benefits include “[g]et[ing] your most important Tweets in front of the right people” and “[t]arget[ing] Twitter users by keywords in timeline, interest, geography and device.” *Id.*

with the times. Even the *PCCare247 Inc.* court noted in analyzing social media service of process that “courts must be open to considering requests to authorize service via technological means of then-recent vintage, rather than dismissing them out of hand as novel.”¹²⁰

On the other hand, the speed and ease with which social media service of process is possible, coupled with the cloak of individual anonymity still available on many social media platforms, no doubt raises issues about whether such a novel service method would be sufficient for due process purposes. While courts are still grappling with incorporating social media into the legal process, a cautious yet open approach that considers all information available via a specific social media account and the extent to which authentication is possible seems prudent. This way, even in social media’s infant stages, the legal system can utilize the benefits of social media while best safeguarding against its potential dangers, and ensure justice is served, one Facebook message or Tweet at a time.

¹²⁰ *PCCare247 Inc.*, 2013 WL 841037, at *5.