

1 COMES NOW Plaintiff Daniel M. Miller (“Plaintiff”), pursuant to Civil Local Rule 6-3,
2 and moves this Court to enlarge the time set forth in the Court’s First Amended Case Management
3 Order (Dkt. No. 98) by which fact and expert discovery is to be completed, dispositive motions are
4 to be filed, the final pre-trial conference is to be conducted, and the trial of this matter is to be had.
5 Good cause for the requested relief, as well as the Plaintiff’s proposed extensions of time, are set
6 forth in detail as follows:
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8 1. This action was originally filed in the United States District Court for the Northern
9 District of Georgia on October 9, 2009.
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11 2. Following extensive motion practice initiated by Facebook, in which this matter
12 was transferred to the Northern District of California and Facebook sought (by way of numerous
13 submissions filed with the Court) to have this action dismissed with prejudice prior to the advent
14 of discovery, the Case Management Conference in this matter was held on May 27, 2010.
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16 3. On that same date, the Court entered its initial Case Management Order (Dkt. No.
17 55) setting the following deadlines pertinent to this Motion and referring this matter to Magistrate
18 Judge Bernard Zimmerman for mediation: (a) Non-expert discovery cut-off date: January 31,
19 2011; (b) Deadline for designation of experts and disclosure of expert reports: July 31, 2011
20 (apparently a typographical error that was corrected and amended to “January 31, 2011” per the
21 Court’s First Amended Case Management Order (Dkt. No. 98)); (c) Dispositive Motion Deadline:
22 March 3, 2011; (d) Final Pre-Trial Conference: April 18, 2011; and (e) Trial Date: April 25, 2011.
23 On May 27th, the Court also issued its Order (Dkt. No. 56) granting in part and denying in part the
24 Plaintiff’s Motion for Leave to Amend Complaint and ordering that the Plaintiff file an amended
25 complaint conforming with the Court’s order by noon on June 4, 2010 and serve Defendant Yeo
26 with the amended complaint by July 30, 2010. On June 3, 2010, the Plaintiff filed his Second
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1 Amended Complaint (Dkt. No. 58). Judge Zimmerman set the Settlement Conference for June 22,
2 2010.

3 4. On June 21, 2010, Facebook filed a second motion to dismiss (Dkt. No. 62) in
4 which it sought to have the Plaintiff's Second Amended Complaint dismissed with prejudice (Dkt.
5 No. 62). Briefing as to Facebook's motion was completed on July 22, 2010. The Court denied
6 Facebook's motion and vacated the scheduled hearing in its Order dated July 23, 2010 (Dkt. No.
7 69).

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9 5. On July 8, 2010, in compliance with the Court's May 27th Order, the Plaintiff filed
10 his Proof of Service of the Second Amended Complaint on Defendant Yeo.

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12 6. On July 21, 2010, the Plaintiff propounded and served his First Consolidated
13 Discovery Requests on Facebook.

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15 7. On August 4, 2010, Facebook filed yet another motion to dismiss (Dkt. No. 70) in
16 which it sought to have the Plaintiff's Second Amended Complaint dismissed with prejudice for
17 the alleged failure to perfect service of the complaint on Defendant Yeo. Briefing as to
18 Facebook's motion was completed on September 2nd and a hearing had on September 16th. On
19 September 21, 2010, the Court denied this motion (Dkt. No. 80).

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21 8. In the meantime, on August 9, 2010, Facebook filed its Answer to Plaintiff's
22 Second Amended Complaint and asserted Counterclaims against the Plaintiff (Dkt. No. 71) which
23 were answered by the Plaintiff on August 30th (Dkt. No. 73).

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25 9. On August 26th, Facebook served its Responses to the Plaintiff's First Consolidated
26 Discovery Requests which were comprised solely of objections to each of the Plaintiff's thirty-
27 three (33) requests and did not contain a single, substantive response, or any factual information
28 whatsoever. On August 30th, undersigned counsel wrote to Facebook's counsel requesting that

1 Facebook provide substantive, factual information in response to the Plaintiff's requests. The
2 history of communications between counsel concerning this matter was set out in great detail in
3 Plaintiff's November 19th letter brief to the Court seeking to compel Facebook's responses to this
4 discovery (Dkt. No. 86), and due to the page limitation applicable to this Motion pursuant to Civil
5 Local Rule 6-3, is not repeated here. In sum, Facebook took the position that it would not respond
6 to the Plaintiff's discovery requests until the Court had ruled on its most recent motion to dismiss.
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8 10. On September 22nd, the day after the Court denied Facebook's motion, undersigned
9 counsel wrote to Facebook's counsel requesting that Facebook fully comply with the Plaintiff's
10 outstanding discovery requests. Facebook's position was that it was unwilling to produce any
11 documentation, or provide substantive information, in response to Plaintiff's discovery requests
12 until a Protective Order had been entered by the Court. By September 28th, the parties had begun
13 negotiating a mutually agreeable protective order to govern discovery in this matter. However,
14 these negotiations had not been concluded by November 19, 2010, when the Plaintiff, in light of
15 rapidly approaching deadlines set forth in the Court's Case Management Order, filed a Motion for
16 Entry of Protective Order (Dkt. No. 85) (to which Facebook consented on November 23rd), and the
17 Protective Order proposed by the Plaintiff was entered on November 23, 2010 (Dkt. No. 92). (The
18 reasons for the delay in negotiating a mutually agreeable protective order are set out in detail in
19 Plaintiff's November 19th letter brief seeking to compel discovery responses from Facebook (Dkt.
20 No. 86) and Facebook's response to same (Dkt. No. 93) as well as Plaintiff's Motion for Entry of
21 Protective Order (Dkt. No. 85)).
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25 11. On October 19, 2010, Facebook had propounded and served its First Interrogatories
26 and Requests for Production on Plaintiff, and the Plaintiff's written discovery requests had been
27 outstanding since July 21st. In an attempt to extra-judicially dispose of the issues raised in
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1 Plaintiff's November 19th letter brief, the parties agreed to exchange documents and information
2 responsive to all outstanding discovery requests on December 17, 2010.

3 12. In response to the Plaintiff's discovery requests, Facebook has produced
4 approximately 23,500 pages of documents in a TIFF image format. However, no electronic
5 content, such as OCR text or metadata, for these image files is present whereby the Plaintiff can
6 effectively, and expeditiously, review these documents using document review software and
7 keyword and terms searches. On January 6, 2011, counsel for the Plaintiff and Facebook
8 conducted a two-hour "meet and confer" to try and resolve this issue, among others. The Plaintiff
9 is also working with an outside vendor to try and convert these image files into an electronically
10 searchable format. However, at present, the Plaintiff is still unable to review Facebook's
11 production without reviewing each page of the 23,500 page production individually.

12 13. In light of this matter's procedural history as set forth above and the additional time
13 needed to address the aforementioned issues and complete all fact and expert discovery, the
14 Plaintiff requests that the Court enlarge those existing deadlines set forth in Paragraphs 3, 4, 9, 10,
15 and 11 of its First Amended Case Management Order by a period of two (2) months. Facebook
16 has previously stipulated and agreed to the relief requested herein (Dkt. No. 97). The proposed
17 extension of deadlines, and the effect these extensions would have on the case schedule, is
18 included in undersigned counsel's Declaration filed contemporaneously herewith as Exhibit "A".
19 There have been no previous time modifications in this matter (other than the correction of a
20 typographical error contained in the Court's initial Case Management Order), and no prejudice
21 would result to either party were the Court to extend existing deadlines as requested.
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WHEREFORE PREMISES CONSIDERED, the Plaintiff respectfully seeks an Order for the relief herein requested and further specified in Exhibit "A" filed contemporaneously herewith.

Dated: January 11, 2011

Respectfully submitted,

s/ Brian D. Hancock
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