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9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA  
 11 SAN FRANCISCO DIVISION

13 DANIEL M. MILLER,  
 14 Plaintiff,  
 15 v.  
 16 FACEBOOK, INC. and YAO WEI YEO,  
 17 Defendants.

Case No. 3:10-CV-00264 (WHA)

**DECLARATION OF KRISTA HOLT  
 IN SUPPORT OF MOTION FOR  
 SUMMARY JUDGMENT RE  
 BREACH OF CONTRACT  
 COUNTERCLAIM**

18 **HIGHLY CONFIDENTIAL--ATTORNEYS' EYES ONLY**  
 19 REDACTED

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I, Krista Holt, declare as follows:

1. I am an expert in Intellectual Property valuation and damages. I make this declaration in support of Facebook’s Motion for Summary Judgment for Breach of Contract Claim. Except as otherwise noted, I have personal knowledge of the facts stated herein and if called as a witness, could and would competently testify thereto.

**A. Qualifications.**

2. I received a bachelor’s degree in Psychology from Wake Forest University and a master’s degree in Business Administration from the University of Louisville.

3. I am the Vice President for the Kenrich Group and lead their Intellectual Property Practice. The Kenrich Group is an integrated consulting firm specializing in litigation and valuation services for Intellectual Property, Commercial Damages, Construction, Government Contracting, Utilities, Financial Institutions and Business Consulting.

4. As part of my job responsibilities, I often provide economic testimony, valuation and strategic counseling in infringement matters. I have been qualified as an expert and testified on issues in relation to economic damages, lost profits, reasonable royalties, competition, industry trends, valuation of Intellectual Property, and management practices.

5. I have lectured on a variety of Intellectual Property topics for the American Bar Association, Licensing and Executives Society, DRI, Harvard Law, and various other organizations and universities.

6. My writing has been published in The Trademark Reporter and the IPL Newsletter.

7. A true and correct copy of my professional biography, including a list of the cases in which I have testified and my publications, are attached hereto as **Exhibit A**.

**B. Summary of Analysis.**

8. I have been asked to provide opinions regarding damages Facebook, Inc. (“Facebook”) has suffered as a result of Daniel M. Miller’s (“Miller”) breach of the forum selection clause contained in Facebook’s Terms of Use by initiating this action in the Northern District of Georgia instead of the Northern District of California.

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9. The recovery of damages associated with Mr. Miller’s Breach of Contract includes expenses and attorneys fees related to the transfer of the venue from the Northern District of Georgia to the Northern District of California. I reserve the right to update my opinion regarding this matter, should any relevant information come to light after my declaration is submitted.

10. Facebook received Mr. Miller’s Complaint filed in the Northern District of Georgia on October 9, 2009. In response, on December 2, 2009, Facebook filed a Motion to Transfer Venue based on the agreements on its website. The change of forum motion was granted on January 15, 2010. As a result of Mr. Miller’s alleged failure to abide by Facebook’s forum selection as stated on its website, the amount of actual fees related to the Motion to Transfer Venue is [REDACTED]. Additionally, the amount of actual expenses related to the Motion to Transfer Venue is [REDACTED]. Miscellaneous expenses are legal research, court costs, and word processing fees. Facebook’s in-house attorneys worked additional hours related to the Motion to Transfer Venue. I have not accounted for that time in my analysis.

**C. Detailed Analysis**

**1. Fees and Expenses**

11. In calculating the attorneys’ fees and expenses incurred by Facebook in transferring this action to California, I performed two different computations—one based on actual billing rates and hours worked, and one based on billing rates and actual hours worked as measured by billing rate resources regularly relied upon by experts such as myself. As a result of Mr. Miller’s alleged failure to abide by Facebook’s forum selection as stated on its website, Facebook’s outside counsel and paralegals worked a total of [REDACTED] hours in relation to Facebook’s Motion to Transfer Venue. In addition, Facebook’s in-house counsel spent a total of 21 hours related to the Motion to Transfer Venue.<sup>1</sup>

12. Attached hereto as **Exhibit B** is a true and correct copy of the breakdown of attorney and paralegal time and costs associated with the Motion to Transfer venue.

13. In my first computation, I multiplied the actual hours worked on this matter by

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<sup>1</sup> Facebook’s in-house attorney, Mr. Craig Clark, spent [REDACTED] hours looking for local counsel and [REDACTED] hours working on legal pleadings and research for a total of [REDACTED] hours related to the change of venue. Mr. Clark graduated from law school in 2003.

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2 Facebook's attorneys and paralegals by their respective billing rates.<sup>2</sup> This analysis includes the  
3 expenses outlined in Exhibit B and amounts to [REDACTED].<sup>3</sup>

4 14. Attached hereto as **Exhibit C** is a true and correct copy of a chart I produced  
5 which reflects the actual fees and expenses incurred by Facebook's outside counsel related to  
6 Facebook's Motion to Transfer Venue.<sup>4</sup>

7 15. In my second computation, I substituted the actual billing rates for the billing rates  
8 for associates, partners, and paralegals based upon average rates determined.<sup>5</sup> This alternative  
9 analysis includes the miscellaneous expenses outlined amounts to [REDACTED].

10 16. Attached hereto as **Exhibit D** is a true and correct copy of a chart I produced  
11 which reflects the total fees and expenses incurred by Facebook based on hours worked and  
12 reasonable billing rates for attorneys and paralegals, as related to Facebook's Motion to Transfer  
13 Venue.

14 **D. Materials Considered**

15 17. In reaching the opinions and conclusions discussed herein, I have considered  
16 and/or relied upon the following materials:

- 17 • Actual Fees and Expenses Incurred
- 18 • Estimated Fees and Expenses Incurred
- 19 • Average National Billing Rate
- 20 • Summary of Attorney Time re Georgia
- 21 • Billing Survey, A Special Report, National Law Journal, December 6,  
22 2010
- 23 • 2010 National Utilization and Compensation Survey Report
- 24 • Facebook In-house Attorney Time

25 18. I reserve the right to modify or supplement my opinion upon the Parties'

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27 <sup>2</sup>This analysis includes actual billing rates for all of Facebook's outside counsel and paralegals.

28 <sup>3</sup> This total figure does not include pre-judgment interest.

<sup>4</sup> This total figure does not include pre-judgment interest.

<sup>5</sup> These estimated attorneys' and paralegal fees are based on data provided by the National Law Journal 2010, 2010 National Utilization and compensation Survey Report (Section 3-Paralegal Billing Rates), and the National Association of Legal Assistants, October 2010. See **Exhibit D**.

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introduction of additional evidence.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 3 day of March, at Washington, DC.

  
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Krista Holt