

1 I. NEEL CHATTERJEE (STATE BAR NO. 173985)
 nchatterjee@orrick.com
 2 THOMAS J. GRAY (STATE BAR NO. 191411)
 tgray@orrick.com
 3 JULIO C. AVALOS (STATE BAR NO. 255350)
 javalos@orrick.com
 4 ORRICK, HERRINGTON & SUTCLIFFE LLP
 1000 Marsh Road
 5 Menlo Park, CA 94025
 Telephone: 650-614-7400
 6 Facsimile: 650-614-7401

7 Attorneys for Defendant
 FACEBOOK, INC.

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. 5:10-CV-00264 (WHA)

**DECLARATION OF THOMAS J.
 GRAY IN SUPPORT OF FACEBOOK,
 INC.' MOTION TO DISMISS
 PURSUANT TO FED.R.CIV.P. 41(B)**

Date: September 16, 2010
 Time: 8:00 A.M.
 Court: Courtroom 9, 19th Floor
 Judge: Honorable William Alsup

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I, Thomas J. Gray, declare as follows:

1. I am a partner with the law firm of Orrick, Herrington & Sutcliffe LLP, counsel for defendant Facebook, Inc., in this matter. I make this declaration, based on my own personal knowledge, in support of Facebook, Inc’s Motion to Dismiss Pursuant to Fed.R.Civ.P. 41(b).

2. Attached hereto as **Exhibit A** is a true and correct copy of the May 26, 2010, Declaration of Douglas Bridges.

3. Attached hereto as **Exhibit B** is a true and correct copy of relevant excerpts of the May 27, 2010, Reporter’s Transcript of Hearings in this matter.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 4th day of August, 2010 at Orange County, California.

/s/ Thomas J. Gray /s/
Thomas J. Gray

EXHIBIT A

1 I, Douglas L. Bridges, declare as follows:

2 1. My name is Douglas L. Bridges. I am over eighteen years of age and am
3 competent to testify about the matters set forth herein. I have personal knowledge of the matters
4 set forth herein.
5

6 2. I am an attorney at Heninger Garrison Davis, LLC, 1 Glenlake Parkway, Suite 700,
7 Atlanta, Georgia, 30328, the law firm representing Plaintiff Daniel M. Miller.
8

9 3. After filing the Complaint in the Northern District of Georgia, we performed a
10 diligent search to find Defendant Yao Wei Yeo so that we could serve the complaint upon Mr.
11 Yeo.

12 4. We had previously communicated with Mr. Yeo through an address at a dormitory
13 at Cornell University in Ithaca, NY.
14

15 5. When attempting communication with that dormitory at a later date, we were told
16 that Mr. Yeo had graduated and was no longer living in New York.

17 6. We performed a diligent search on the Internet for any information regarding Mr.
18 Yeo.

19 7. Attached hereto as Exhibit A is a complete corpus of information related to Mr.
20 Yeo.
21

22 8. In September, 2009, Mr. Yeo's company, Zwigglers, informed Apple Computer
23 that it believed a third party, Aaron Ardiri, was infringing Zwigglers' common law "copyright" in
24 ChainRxn.

25 9. As a result of Zwigglers' complaint to Apple, Apple sent an email to Aaron Ardiri
26 noticing him of the allegation of infringement and providing Mr. Ardiri a contact phone number to
27 discuss the alleged infringement with Zwigglers.
28

1 10. Mr. Ardiri provided Plaintiff Miller with the Zwigglers contact phone number that
2 was provided to Mr. Ardiri.

3 11. Attached hereto as Exhibit B is a true and correct copy of the email from Mr. Ardiri
4 to Plaintiff Miller.

5 12. I attempted to contact Zwigglers through this contact phone number; however, no
6 person ever answered the phone number.
7

8 13. The voice mail system associated with the contact phone number was not
9 configured, so no message could be left at the contact phone number.

10 14. After receiving the phone number, I engaged Intelius, Inc. to perform a reverse
11 phone number look-up based upon the contact phone number and provide a report regarding the
12 look-up (“the Intelius report”).
13

14 15. A true and correct copy of the Intelius report is attached hereto as Exhibit C.

15 16. The Intelius report provided a previous owner of the contact phone number and a
16 current owner of the phone number, neither of which were Mr. Yeo.
17

18 17. I also engaged MLQ Attorney Services to locate an address for Mr. Yeo.

19 18. MLQ Attorney Services did not find any public addresses or telephone numbers for
20 Mr. Yeo.

21 19. MLQ Attorney Services searched the Internet for public information related to Mr.
22 Yeo and provided entirely duplicative information from the Internet as that included in Exhibit A.
23

24 20. After filing suit, I had discussions with Mr. Craig W. Clark, in-house IP counsel for
25 Defendant Facebook, Inc.
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21. During my discussions with Mr. Clark, he represented that Facebook would not oppose discovery efforts against Facebook regarding information on Mr. Yeo if Plaintiff Miller would dismiss his suit against Facebook.

22. After the Court in the Northern District of Georgia transferred the matter to the Northern District of California, Mr. Clark again represented that Facebook, Inc. would not oppose discovery efforts against Facebook for information regarding Yeo if Plaintiff Miller would dismiss his suit against Facebook.

I declare under penalty of perjury that the foregoing is true and correct.

May 26, 2010

/s/ Douglas L. Bridges

Date

Douglas L. Bridges

EXHIBIT B

United States District Court
Northern District of California
Before The Honorable William Alsup

Daniel M. Miller,)
)
 Plaintiff,)
)
 vs.)
)
 Facebook, Incorporated,)
 et al.,)
)
 Defendant.)
 _____)

No. C10-264 WHA

San Francisco, California
Thursday, May 27, 2010

Reporter's Transcript Of Proceedings

Appearances:

For Plaintiff: The Law Office of D. Gill Sperlein
584 Castro Street, Suite 879
San Francisco, California 94114
By: D. Gill Sperlein, Esquire

For Defendant: Orrick, Herrington & Sutcliffe
1000 Marsh Road
Menlo Park, California 94025
By: Indra Neel Chatterjee, Esquire

**Reported By: Sahar McVickar, RPR, CSR No. 12963
Official Reporter, U.S. District Court
For the Northern District of California**

(Computerized Transcription By Eclipse)

1 **THE COURT:** I've given you a lot of time to get him
2 in the case, and you never got him in the case, and now you
3 say, well, ask the lawyer in Georgia.

4 **MR. SPERLEIN:** Well, let me just respond to two
5 things.

6 First of all, I understand what you said. I fully
7 tried to anticipate all of the questions that you would have.
8 I spent an hour on the phone yesterday with co-counsel,
9 followed up with e-mails, and really tried to get answers to
10 any questions that you might ask. And I apologize that there
11 were a few that I couldn't respond to. I perhaps should have
12 been -- drilled them a little bit further.

13 **THE COURT:** I want to know, did somebody get in
14 touch with Mr. Yeo by e-mail, say, in the last seven months?

15 **MR. SPERLEIN:** I can say no to that. I know that
16 there was this earlier e-mail exchange through the plaintiff
17 before counsel was in the case. I don't know if it was any
18 earlier, but certainly after they filed the case, my impression
19 is that they were not able to contact him at all.

20 Now, I think we can find him. Like I said earlier,
21 we can look at where his game currently resides and know where
22 those servers are and go to that company that hosts those
23 servers and say, who is -- who do these files belong to. Most
24 likely, he has some sort of payment with them, so -- and an
25 address, and whatnot, but we can't just go to them and ask them

1 that, we need a subpoena.

2 **THE COURT:** Why -- in other cases the plaintiff
3 comes to me right at the outset, I sign an order that gives
4 them the right to go to the -- what is it called, IPO?

5 **MR. SPERLEIN:** ISP, sir.

6 **THE COURT:** And they turn that information over by
7 court order.

8 You know, seems to me like that should have been
9 done in this case a long time ago, and that there is an **aura**
10 **about this case that you are trying to just go after the deep**
11 **pockets and make life miserable for them** and make these
12 grumbling noises about Mr. Yeo without doing anything to bring
13 him into the case, and that has not such a good flavor to it.

14 **MR. SPERLEIN:** I absolutely --

15 **THE COURT:** So if I allow this case to go forward,
16 maybe it's going to go to the Court of Appeals. And maybe the
17 guy from Georgia will get on an airplane and come out here and
18 go to the Ninth Circuit. He is not spending the money
19 prosecuting this case if it's worth so much money.

20 **MR. SPERLEIN:** Your Honor, irrespective of what
21 co-counsel has done to this point, I can give you my word that
22 shall we go forward, we will take immediate steps to identify
23 where Mr. Yao is and get him served. I certainly desire to
24 have him in this case. I think he is important to the factual
25 record, and I want him before the Court.

1 **THE COURT:** All right. I'm going to change the
2 subject. Without prejudice to possibly tossing the entire case
3 out, I'm going to give you your case management order. I got
4 to get this at some point.

5 All initial disclosures have already been done, but
6 I'm going to give you to June 4th to do them. Leave to add any
7 disclosures are just, you know, you list what -- you don't have
8 to produce anything. You just have to disclose it. Like
9 employment file on plaintiff or contract with Mr. Yeo. You
10 have to list what you are going to rely on.

11 Leave to add any new parties or pleading amendments
12 and to serve Yeo is going to be July 30.

13 **MR. SPERLEIN:** July 30?

14 **THE COURT:** Yes. If he is not in the case by then,
15 I may just throw the whole thing out.

16 Expert -- I'm sorry, fact discovery cutoff, January
17 31. Expert designations, January 31. Last date to file
18 summary judgment, March 3. Final pretrial conference,
19 March 18th. Jury trial, March -- final pretrial conference,
20 April 18th, next year. Jury trial on April 25. This case will
21 be referred to Judge Bernard Zimmerman for mediation and
22 settlement.

23 Okay, anyone want to talk me out of those dates?

24 **MR. SPERLEIN:** Just check one thing.

25 March 3rd deadline to file summary judgment motions,

CERTIFICATE OF REPORTER

I, Sahar McVickar, Official Court Reporter for the United States Court, Northern District of California, hereby certify that the foregoing proceedings were reported by me, a certified shorthand reporter, and were thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said proceedings as bound by me at the time of filing. The validity of the reporter's certification of said transcript may be void upon disassembly and/or removal from the court file.

/s/ Sahar McVickar

Sahar McVickar, RPR, CSR No. 12963

Thursday, June 3, 2010