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November 19, 2010

The Honorable William H. Alsup  
United States District Judge  
450 Golden Gate Avenue  
San Francisco, CA 94102

Re: *Daniel M. Miller v. Facebook, Inc. and Yao Wei Yeo*  
In the United States District Court for the Northern District of California  
Civil Action No.: 5:10-CV-00264-WHA

Dear Judge Alsup:

Pursuant to Paragraph 25 of the Court's "Supplemental Order to Order Setting Initial Case Management Conference in Civil Cases Before Judge William Alsup", the Plaintiff seeks to compel Defendant Facebook, Inc., ("Facebook") in the above-styled action to fully respond to Plaintiff's First Consolidated Discovery Requests, and hereby submits the following:

On July 21, 2010, the Plaintiff propounded his First Consolidated Discovery Requests to Facebook (attached hereto as Plaintiff's Exhibit "A"). Pursuant to Rules 33 and 34, Fed. R. Civ. P., Facebook's responses to these requests were due on August 20, 2010. On August 26<sup>th</sup>, Facebook served its Responses to Plaintiff's Consolidated Discovery Requests on undersigned counsel (attached hereto as Plaintiff's Exhibit "B"). These "responses" were comprised solely of objections to each of the Plaintiff's thirty-three (33) requests and did not contain a single, substantive response, or any factual information whatsoever. On August 30<sup>th</sup>, undersigned counsel wrote to Facebook's counsel requesting that Facebook provide substantive, factual information in response to the Plaintiff's requests within fourteen (14) days so as to avoid having to seek court intervention. This correspondence was intended to comply with the "meet and confer" requirements set forth in Rule 37(a)(1), Fed. R. Civ. P., and Civil Local Rule 37-1(a), and it was stated therein that should Facebook contend that this correspondence failed to comply with these rules, to please notify undersigned counsel as to the basis for this contention and all legal authority supporting same. Additionally, it was requested that should Facebook desire a telephonic "meet and confer", to please provide undersigned counsel with a date and time within the next ten days upon which Facebook's counsel was available. Furthermore, in the event that Facebook was refusing to respond to these requests in the absence of a Protective Order being entered by the Court, undersigned counsel requested that Facebook specify which requests it was refusing to respond to on such grounds and that Facebook submit

a proposed Protective Order to undersigned counsel for review. Lastly, it was communicated to Facebook's counsel that should Facebook feel a telephonic conference between the parties was necessary with regard to a proposed Protective Order, to please provide a date and time within the next ten days upon which they were available to confer. (Plaintiff's August 30<sup>th</sup> correspondence is attached hereto as Plaintiff's Exhibit "C").

Facebook ignored the August 30<sup>th</sup> letter. On September 7<sup>th</sup>, undersigned counsel again requested, via electronic mail, that Facebook respond to the August 30<sup>th</sup> letter at its earliest convenience. On September 9<sup>th</sup>, Facebook responded in a written letter stating that the Plaintiff's "consolidated" requests were substantively defective and premature as was the Plaintiff's requests to meet and confer. Facebook further stated that given Facebook's pending Motion to Dismiss pursuant to Rule 41(b), Fed. R. Civ. P., (Dkt. No. 70), Facebook saw no reason "to expend time and resources discussing discovery requests or drafting proposed protective orders that will likely soon be moot", but should the Plaintiff's Second Amended Complaint survive Facebook's latest motion to dismiss, then Facebook would abide by its discovery obligations. Facebook concluded this letter by stating that it "refuses to join in Plaintiff's continued campaign to unnecessarily drive up the cost of this litigation" and that "rather than misusing the discovery process in order to extract a settlement prior to dismissal", the Plaintiff "should wait out the five court days remaining before the September 16<sup>th</sup> hearing." (Facebook's September 9<sup>th</sup> correspondence is attached hereto as Plaintiff's Exhibit "D"). On September 10<sup>th</sup>, undersigned counsel responded with a lengthy e-mail wherein the Plaintiff requested, in the interests of cooperation and in the hope of avoiding Court involvement, that Facebook provide undersigned counsel with a period of time in which it will respond to the Plaintiff's discovery requests should the Court deny Facebook's Rule 41(b) motion to dismiss. Undersigned counsel also responded to Facebook's unfounded and baseless accusations that the Plaintiff was engaged in a "campaign to unnecessarily drive up costs" and misuse "the discovery process in order to extract a settlement prior to dismissal." (Plaintiff's e-mail correspondence dated September 10<sup>th</sup> is attached hereto as Plaintiff's Exhibit "E").

Facebook ignored the Plaintiff's request that it provide some time period in which it would respond to the Plaintiff's discovery requests should the Court deny Facebook's Rule 41(b) motion to dismiss. On September 21, 2010, this Court denied Facebook's Rule 41(b) motion.

On September 22<sup>nd</sup>, via e-mail, undersigned counsel requested that Facebook fully respond to the Plaintiff's outstanding discovery requests. It was also communicated to Facebook's counsel that if it was Facebook's position "that it cannot produce all responsive documents requested until the entry of a protective order" to please forward a draft of the desired protective order to undersigned counsel for review within the next five (5) days. In the interest of cooperation and the hope that the parties could quickly resolve this issue without Court involvement, the Plaintiff stated that he was willing to stipulate to the entry of the Stipulated Protective Order for Standard Litigation form provided by the Court on its website, and the Plaintiff included a link thereto. (Plaintiff's e-mail correspondence dated September 22<sup>nd</sup> is attached hereto as Plaintiff's Exhibit "F"). Having received no response from Facebook by September 27<sup>th</sup>, the Plaintiff again sent an e-mail to Facebook's counsel

seeking confirmation that Facebook would fully be responding to the Plaintiff's discovery requests. It was communicated to Facebook that the September 22<sup>nd</sup> and 27<sup>th</sup> e-mail correspondence was intended to comply with the "meet and confer" requirements set forth in Rule 37(a)(1), Fed. R. Civ. P., and Civil Local Rule 37-1(a). (Plaintiff' e-mail correspondence dated September 27<sup>th</sup> is attached hereto as Plaintiff's Exhibit "G"). On September 28<sup>th</sup>, Facebook's counsel responded that they were "generally amenable to the Standard Model Protective Order", and that undersigned counsel should inform them of any mark-ups or revisions the Plaintiff wished to make. In response, the Plaintiff had only one mark-up concerning Paragraph 5.2(b) of the Standard Order which was communicated to Facebook's counsel that same day to which Facebook's counsel responded, on October 1<sup>st</sup>, that they thought they could accept this edit and would forward to undersigned counsel Facebook's proposed edits to the Standard Order by Tuesday, October 5<sup>th</sup>.

To date, no joint motion for entry of an agreed-upon protective order has been filed with the Court, and Facebook's dilatory approach to the entry of such an order continues to delay this process and frustrate the Plaintiff's efforts to diligently proceed with discovery in the face of rapidly approaching discovery cut-off deadlines. As of November 11<sup>th</sup>, the Plaintiff and Facebook were in agreement as to the terms of the proposed protective order, and counsel for Facebook was supposed to provide a finalized draft for undersigned counsel's review. To date, the Plaintiff has received nothing from Facebook, and the Plaintiff's requests that the parties proceed with discovery in accordance with the agreed-upon terms of the proposed protective order prior to formal entry of the order by the Court (in light of approaching deadlines) has been ignored by Facebook.

The Court's Case Management Order dated May 27, 2010, establishes a non-expert discovery cut-off of January 31, 2011. The Plaintiff served his First Consolidated Discovery Requests on Facebook four months ago and has yet to receive a single, substantive answer or responsive document. The Plaintiff has repeatedly conferred, or attempted to confer, with Facebook in the hopes of insuring that it complies with its discovery obligations under the Federal Rules of Civil Procedure. However, in the face of rapidly approaching deadlines, the Plaintiff cannot continue to wait for Facebook's compliance. Contemporaneous herewith, the Plaintiff is filing a Motion for Protective Order that incorporates all revisions to the Court's Stipulated Protective Order for Standard Litigation form agreed upon by the parties as set forth in correspondence between the parties dated September 22<sup>nd</sup> thru November 11, 2010.

The Plaintiff asks that the Court compel Facebook to fully respond to the Plaintiff's First Consolidated Discovery Requests.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Hancock", with a long horizontal line extending to the right.

Brian D. Hancock  
Counsel for the Plaintiff