

EXHIBIT E

Brian Hancock

From: Brian Hancock
Sent: Friday, September 10, 2010 10:56 AM
To: Avalos, Julio
Cc: Chatterjee, I. Neel; 'Gray, Thomas'
Subject: Facebook's Past Due Discovery Responses

Julio,

Receipt of your correspondence dated September 9th is acknowledged. If it is Facebook's position that it should not have to comply with its discovery obligations under the Federal Rules of Civil Procedure until there has been a ruling by the Court on Facebook's Rule 41(b) Motion to Dismiss (even though I'm not aware of any legal authority of any nature whatsoever that would support such a position or authorize Facebook to shirk its discovery obligations simply because it's filed a 41(b) motion that's not yet been resolved), then in the interests of cooperation and in the hope of avoiding the necessity for Court involvement, **I would ask that Facebook provide me with a period of time in which it will respond to the Plaintiff's discovery requests following a denial of Facebook's motion, should that occur.** Plaintiff's discovery requests to Facebook were propounded on July 21st and were due on August 20th. To date, Facebook has not provided a single substantive answer or document in response to these requests. The non-expert discovery cut-off date in this case is January 31, 2011, a little over four months away. It is important that we receive full and thorough responses and document production from Facebook as soon as possible. If Facebook is unwilling to provide a time period in which it will respond to the Plaintiff's discovery requests in the event that the Court denies Facebook's motion, then I see no alternative but to file a motion to compel with the Court immediately following the hearing on the 16th and seek whatever sanctions are available to my client under the law. Facebook's responses are delinquent, there is no legal authority authorizing this delinquency, and should Facebook shun the Plaintiff's attempts to reasonably obtain some estimate as to when responses can be expected (so that the Plaintiff is not left to rely on Facebook's vague assurances that it will "abide by its discovery obligations" at some unknown time in the future following the September 16th hearing), then I can only conclude that Court action, which I'd rather avoid, will be necessary.

As to your unfounded accusations towards my client concerning a "campaign to unnecessarily drive up costs" in this litigation and misuse of "the discovery process in order to extract settlement prior to dismissal", the absurdity, impropriety, and unprofessionalism of these statements render them undeserving of a response. However, I will say that I can't see how routine discovery requests, such as those served on Facebook, are part of any "campaign" to unnecessarily drive up Facebook's costs in defending this litigation when you and your colleagues have on at least one occasion communicated to Plaintiff's local counsel, Mr. Sperlein, that you are handling this matter on a fixed fee, and at the hearing on May 27th, Mr. Chatterjee represented to the Court that, "to be candid, I don't think Facebook has had that much documentation." (p. 28). Surely, lawyers working on a fixed fee for a client that has very little documentation to produce would not result in any significant increase in costs, certainly not an increase that would "extract a settlement prior to dismissal." But like I said, the absurdity of your comments render them undeserving a response.

Should you have any questions, please do not hesitate to contact me. In the interest of avoiding Court involvement, I hope to hear from you in the immediate future concerning the time period in which Facebook will respond to the Plaintiff's First Consolidated Discovery Requests should the Court deny Facebook's Rule 41(b) Motion to Dismiss.

Sincerely,

Brian D. Hancock, Esq.
Heninger Garrison Davis, LLC
2224 1st Avenue North
Birmingham, AL 35203
(205) 327-9112 (direct)
(205) 326-3336 (office)
(205) 326-3332 (fax)
bdhancock@hqdlawfirm.com

The contents of this e-mail message and any attachments are confidential and are intended solely for addressee. The information may also be legally privileged. This transmission is sent in trust, for the sole purpose of delivery to the intended recipient. If you have received this transmission in error, any use, reproduction or dissemination of this transmission is strictly prohibited. If you are not the intended recipient, please immediately **notify** the sender by reply e-mail or phone and **delete** this message and its attachments, if any.