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10 Attorneys for Defendant
 FACEBOOK, INC.

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN FRANCISCO DIVISION

15 DANIEL M. MILLER,

16 Plaintiff,

17 v.

18 FACEBOOK, INC. and YAO WEI YEO,

19 Defendants.

Case No. CV-10-00264 (WHA)

**DECLARATION OF JULIO C.
 AVALOS IN SUPPORT OF
 FACEBOOK INC.'S CONSENT TO
 ENTRY OF PROTECTIVE ORDER**

1 I, Julio C. Avalos, declare as follows:

2 1. I am over 18 years of age and make this Declaration upon personal knowledge of
3 the facts set forth below except as to those matters stated on information belief, and as to those
4 matters, I believe them to be true. If called upon to testify, I could and would testify competently
5 as the matters set forth herein.

6 2. I am an attorney licensed to practice law under the laws of the State of California
7 and am an associate with the law firm of Orrick Herrington & Sutcliffe, attorneys for Defendant
8 Facebook, Inc. (“Facebook”) in the above-captioned matter. This declaration is filed in support
9 of Facebook’s Consent to Entry of Protective Order.

10 3. I have been working to get a stipulated protective order on file in this matter for
11 over a month. At the time that Plaintiff filed the instant motion for protective order, the parties
12 had already come to an agreement on the terms of the protective order. The Court’s intervention
13 is unnecessary and the latest attempt by Plaintiff to force expensive motion practice in this
14 litigation.

15 4. On October 13, 2010, I wrote to opposing counsel Brian Hancock with respect to a
16 joint protective order that we were attempting to draft and come to an agreement on. Given the
17 sensitive nature of the discovery targeted and likely to be targeted in this litigation, I suggested
18 that our protective order needed to have “different categories of protected documents.” “So for
19 instance,” I wrote, “we’re proposing that rather than having one catch-all category, we would
20 have a base level of protection for documents marked CONFIDENTIAL and then a higher-level
21 of protection for documents marked HIGHLY CONFIDENTIAL.” A true and correct copy of this
22 e-mail is attached hereto as Exhibit A.

23 5. Later that day, Mr. Hancock responded, “As described in your e-mail below, I
24 have no problem with confidentiality distinctions. I look forward to receiving the approved mark-
25 ups from your client.” A true and correct copy of this e-mail is attached hereto as Exhibit B.

26 6. I e-mailed a proposed draft of the protective order to Mr. Hancock on October 19,
27 2010. A true and correct copy of this e-mail, with attachment, is attached hereto as Exhibit C.
28

1 With the exception of some minor edits, the protective order was taken from the Northern District
2 of California's form standard protective order governing litigations with sensitive information.

3 7. On October 22, 2010, Mr. Hancock responded with a multi-page objection to my
4 draft. Other than taking issue with some redactions that Facebook had made to the Court form,
5 Mr. Hancock objected primarily to certain standard Northern District provisions regarding the
6 vetting of expert witnesses and the inspection of sensitive source code. A true and correct copy
7 of this e-mail is attached as Exhibit D.

8 8. On October 27, 2010, I wrote to Mr. Hancock and alerted him that "a meet and
9 confer may be required" on a couple of his objections. "Both of the provisions," I noted, "are
10 taken virtually verbatim from the Northern District of California's standard protective order for
11 cases in which there is highly sensitive material at issue." I provided Mr. Hancock with a link to
12 the form order. A true and correct copy of this e-mail is attached as Exhibit E.

13 9. We continued working on the language of the protective order during the next
14 week and a half. On November 11, 2010, I wrote to Mr. Hancock and told him that our protective
15 order had a gap with respect to source code inspection logs. In that e-mail, I cited to an October
16 20, 2010 Central District of California opinion that I had recently run across and that highlighted
17 a possible pitfall associated with the missing provision in our protective order. A true and correct
18 copy of my e-mail to Mr. Hancock, along with the Central District opinion referenced in the e-
19 mail, is attached hereto as Exhibit F.

20 10. Following that e-mail, Mr. Hancock responded that he was open to my edit. A
21 true and correct copy of this e-mail is attached hereto as Exhibit G. That was the last
22 communication I had with Mr. Hancock in any form prior to the filing of the instant motion for a
23 protective order or the concurrently-filed letter brief seeking to compel discovery responses. The
24 court's intervention could have and should have been avoided here.

25 I declare under penalty of perjury under the laws of the United States that the foregoing is
26 true and correct.

27 Executed this 23rd day of November 2010 at Menlo Park, California.

28 /s/ Julio C. Avalos
Julio C. Avalos