

EXHIBIT D

Dalton, Amy

From: Brian Hancock [bdhancock@hgdllawfirm.com]
Sent: Friday, October 22, 2010 11:58 AM
To: Avalos, Julio
Cc: Gray, Thomas; Metanat, Morvarid; Dalton, Amy; Kim, Elizabeth
Subject: RE: Miller v. Facebook, Inc. & Yeo/Past Due Discovery Responses

Dear Counsel,

I've reviewed Facebook's proposed revisions to the Court's Standard Form Protective Order, and I have the following comments:

- 1) Under Paragraph 3 entitled "Scope", I do not understand why the language "However, the protections conferred...to the Designating Party" has been deleted. Please provide your reasoning for this. In the absence of any reasonable justification for this deletion, the Plaintiff would ask that the deleted language be re-inserted as provided for in the Court's Form Order.
- 2) Under Paragraph 4 entitled "Duration", the Plaintiff is not in agreement with Facebook that a dismissal without prejudice should not be deemed a "final disposition" within the meaning of the order. The Plaintiff would ask that the Form Order be restored in this regard and that the confidentiality provisions should remain in effect after a dismissal without prejudice until a Designating Party agrees otherwise in writing or a court otherwise directs as provided for in the Court's Form Order.
- 3) Under Paragraph 5 entitled "Designating Protected Material", the Plaintiff does not agree with Facebook's deletion of "must take" in the Form Order's language in Section 5.1 in lines 8-9 and replacing it with "will take" nor does the Plaintiff agree with Facebook's deletion of the language that reads "Mass, indiscriminate...the Designating Party to sanctions." It is the Plaintiff's position that mass, indiscriminate, and routinized confidentiality designations should be prohibited, as provided for in the Court's Form Order, and the Plaintiff will not agree to such practices under any circumstances.
- 4) The Plaintiff is in disagreement with the language added to the Court's Form Order by Facebook under new Sections 7.4(b)-(c). Such a scheme as embodied in 7.4(b)-(c) is likely to create unnecessary disputes, resulting in delays and increased costs in time and money, over which experts can see what designated information when any concerns about the improper disclosure of proprietary information by, or to, experts or other individuals in connection with this litigation can be assuaged, and the producing party protected, by the requirement that all individuals, including experts, who are to review designated information must execute the "Acknowledgement and Agreement to be Bound" form attached as Exhibit "A" ten (10) days before disclosure of the protected information by the receiving party to that individual or expert and that an executed copy of this form be provided to the designating party before any disclosure by the receiving party is made. This procedure (which has been used in numerous patent infringement matters in which I've been involved without incident or problems arising), in connection with the restrictions on those individuals who are even allowed to see designated information, as set forth in Paragraphs 7.2, 7.3, and 8(b), make the procedure proposed by Facebook in 7.4(b) and (c) unnecessary and provide fertile ground for petty, and assuredly costly, disputes that can just as easily be avoided by the much simpler means proposed herein.
- 5) The Plaintiff is in disagreement with the language added to the Court's Form Order by Facebook under new Section 8(c). These restrictions are unnecessary, in light of the protections already discussed and provided for in the Court's Form Order and the unobjectionable language added by Facebook, and are unduly burdensome to the Plaintiff. It is essential that the parties be able to obtain copies of relevant source code at issue in this litigation during discovery subject, of course, to the confidentiality designations, and restrictions pertaining thereto, to which the parties have agreed (e.g. "Highly Confidential- Source Code"). The Plaintiff should not be prohibited from obtaining comprehensive copies of relevant source code, nor should the Defendants. Protections are in place to insure that protected source code is not improperly disseminated pursuant to the "Highly Confidential" designations and the restrictions on who is qualified to view such information. Please provide some reasonable justification for the inclusion of Section 8(c) in the Court's Form Order. In the absence of such justification, the Plaintiff cannot agree to Facebook's proposed Section 8(c).

Also, on a minor note, the footnote on Page 14 has a typo (should be “its” instead of “is”).

Should you have any questions or comments, please do not hesitate to contact me. I look forward to hearing from you concerning these issues.

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@hgdllawfirm.com

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From: Avalos, Julio [mailto:javalos@orrick.com]
Sent: Tuesday, October 19, 2010 6:15 PM
To: Brian Hancock
Cc: Gray, Thomas; Metanat, Morvarid; Dalton, Amy; Kim, Elizabeth
Subject: RE: Miller v. Facebook, Inc. & Yeo/Past Due Discovery Responses

Brian,

Please find attached Facebook's proposed edits to the protective order. We had an issue with respect to tracking changes in the document. In order to allow you to pinpoint our changes, we went ahead and ran a comparison between our proposal and the original court document. This comparison is also attached hereto. The original document is on the left column, with our proposed draft on the right. Lines highlighted in red have been redacted; material underlined in blue has been added.

If you have any proposed edits of your own, please go ahead and make them in the .doc file, with track changes on.

Thanks,

Julio


ORRICK
JULIO AVALOS
attorney at law
ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 MARSH ROAD
MENLO PARK, CA 94025-1015

From: Brian Hancock [<mailto:bdhancock@hgdlawfirm.com>]
Sent: Wednesday, October 13, 2010 3:11 PM
To: Avalos, Julio
Cc: Gray, Thomas; Dalton, Amy
Subject: RE: Miller v. Facebook, Inc. & Yeo/Past Due Discovery Responses

Julio,
Thank you for this information. As described in your e-mail below, I have no problem with the confidentiality distinctions. I look forward to receiving the approved mark-ups from your client.

Thanks,

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@hgdlawfirm.com

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From: Avalos, Julio [<mailto:javalos@orrick.com>]
Sent: Wednesday, October 13, 2010 1:32 PM
To: Brian Hancock
Cc: Gray, Thomas; Dalton, Amy
Subject: RE: Miller v. Facebook, Inc. & Yeo/Past Due Discovery Responses

Brian,

My Outlook says that I replied to you yesterday at 3:10 p.m. PST, but I don't see the e-mail in my sent mail. I apologize if you're receiving a duplicate e-mail.

We have sent our proposed markup of the protective order to the client and are awaiting their sign-off. The major edit that we have made to the order relates to creating different categories of protected documents. So for instance we're proposing that rather than having one catch-all category, we would have a base level of protection for documents marked CONFIDENTIAL and then a higher-level of protection for documents marked HIGHLY CONFIDENTIAL. Highly confidential documents would be, with limited exceptions, attorneys' eyes only. In addition to attorneys, such documents

might be disclosed to experts to whom disclosure is reasonably necessary for this litigation and who have signed an acknowledgment to be bound by the PO, the court and its personnel, court reporters, and the author of the document or the original source of the information.

While we await our client's feedback on the PO, perhaps we could get started discussing any issues that you anticipate with respect to this new category of protection.

You have also asked about an anticipated timeline within which we expect to supplement our discovery responses. We are in the process of collecting responsive information and expect to be interviewing possible custodians of records later this week. We are aiming to serve supplemental responses shortly thereafter.


ORRICK
JULIO AVALOS
attorney at law

ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 MARSH ROAD
MENLO PARK, CA 94025-1015
tel/ 650.289.7184
javalos@orrick.com
www.orrick.com

From: Brian Hancock [<mailto:bdhancock@hgdlawfirm.com>]
Sent: Tuesday, October 12, 2010 3:01 PM
To: Avalos, Julio
Cc: Gray, Thomas
Subject: RE: Miller v. Facebook, Inc. & Yeo/Past Due Discovery Responses

Julio,
What's the status of the PO?

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@hgdlawfirm.com

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From: Avalos, Julio [mailto:javalos@orrick.com]
Sent: Friday, October 08, 2010 10:48 AM
To: Brian Hancock
Cc: Gray, Thomas
Subject: Re: Miller v. Facebook, Inc. & Yeo/Past Due Discovery Responses

Brian,

I apologize for the delay with the PO. I got into a fairly serious car wreck and haven't been able to mark it up. I'm hoping to send it to you later today or Monday.

Thanks,

Julio

From: Avalos, Julio
Sent: Tuesday, October 05, 2010 09:44 PM
To: 'Brian Hancock' <bdhancock@hgdllawfirm.com>
Subject: RE: Miller v. Facebook, Inc. & Yeo/Past Due Discovery Responses

Brian,

I'll work up the Word document and send to you tomorrow. Thanks

From: Brian Hancock [mailto:bdhancock@hgdllawfirm.com]
Sent: Tuesday, October 05, 2010 11:41 AM
To: Avalos, Julio
Subject: Re: Miller v. Facebook, Inc. & Yeo/Past Due Discovery Responses

Julio,

I'm afraid I don't. I'm going to be in trial until Thursday. Would you mind drawing up a Word copy incorporating my previously discussed revision to the standard order and then including Facebook's edits to the standard order and then forwarding for my review? Does Facebook have any edits?

Sent from my iPhone

On Oct 5, 2010, at 12:37 PM, "Avalos, Julio" <javalos@orrick.com> wrote:

Brian,

Do you have a word document of the protective order with your proposed edit? It would be easier to exchange markups in a common file.

attorney at law

ORRICK, HERRINGTON & SUTCLIFFE LLP

1000 MARSH ROAD
MENLO PARK, CA 94025-1015

tel 650.289.7184

javalos@orrick.com

www.orrick.com

From: Brian Hancock [mailto:bdhancock@hgdlawfirm.com]
Sent: Friday, October 01, 2010 11:56 AM
To: Avalos, Julio
Subject: RE: Miller v. Facebook, Inc. & Yeo/Past Due Discovery Responses

Ok. Thanks.

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@hgdlawfirm.com

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From: Avalos, Julio [mailto:javalos@orrick.com]
Sent: Friday, October 01, 2010 10:48 AM
To: Brian Hancock
Subject: Re: Miller v. Facebook, Inc. & Yeo/Past Due Discovery Responses

Brian,

I'll confirm with my client, but I think we can accept this edit.

I'll send you any proposed edits from our side, if any, by Tuesday.

Thanks,

Julio

From: Brian Hancock [mailto:bdhancock@hgdllawfirm.com]
Sent: Tuesday, September 28, 2010 04:20 PM
To: Avalos, Julio
Subject: RE: Miller v. Facebook, Inc. & Yeo/Past Due Discovery Responses

Julio,

The only mark-up I have is to Paragraph 5.2(b). I would request that it read as follows:

“for testimony given in deposition or in other pretrial or trial proceedings, unless otherwise designated before the close of a deposition, pre-trial or trial proceeding, testimony given therein shall be treated as “CONFIDENTIAL” for at least fifteen (15) calendar days after the final transcript has been sent by the court reporter to counsel for the Producing Party whose information has been disclosed (or until such other date as may be agreed upon by the parties.) Receipt of rough transcripts shall not trigger this 15-day period. Such testimony may be designated “CONFIDENTIAL” during the 15-day (or other agreed) period by written notice to all counsel indicating the specific testimony to be designated (by page and line or other specific reference). Unless so designated, any confidentiality is waived after the expiration of the 15-day (or other agreed) period, unless otherwise stipulated or ordered.”

This should relieve the parties of having to identify on the record, before the close of the deposition and without the benefit of a transcript, which testimony should appropriately be designated as confidential. The Plaintiff has no other proposed mark-ups to the Standard Order. Should Facebook have any mark-ups or revisions, please provide me with a copy of same for my review at your earliest convenience.

Should you have any questions or comments, please do not hesitate to contact me.

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@hgdlawfirm.com

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From: Avalos, Julio [mailto:javalos@orrick.com]
Sent: Tuesday, September 28, 2010 5:08 AM
To: Brian Hancock
Subject: RE: Miller v. Facebook, Inc. & Yeo/Past Due Discovery Responses

Mr. Hancock,

We are generally amenable to the Standard Model Protective Order. In order to begin exchanging edits, please send us a document file containing the order along with any markups that you may have.

Julio

From: Brian Hancock [mailto:bdhancock@hgdlawfirm.com]
Sent: Wednesday, September 22, 2010 8:14 AM
To: Chatterjee, I. Neel; Gray, Thomas; Avalos, Julio; Sutton, Theresa A.
Subject: FW: Miller v. Facebook, Inc. & Yeo/Past Due Discovery Responses

As an addendum to the previous email (see below), the Plaintiff is willing to stipulate to the entry of the Standard Model Protective Order last updated on June 9, 2010, that is provided by the Court on its website.

<http://www.cand.uscourts.gov/cand/form.nsf/7813fd3053452aef88256d4a0058fb31/5e428ee77bf8e03b88256dd3005d9450?OpenDocument>

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@hgdlawfirm.com

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From: Brian Hancock
Sent: Wednesday, September 22, 2010 8:31 AM
To: Chatterjee, I. Neel; 'Gray, Thomas'; Avalos, Julio; Sutton, Theresa A.
Subject: Miller v. Facebook, Inc. & Yeo/Past Due Discovery Responses

Dear Counsel,

Facebook's responses to Plaintiff's First Consolidated Discovery Requests are more than a month past due. Please have your client fully respond to these requests within the next ten (10) days so as to avoid having to involve the Court. If it is Facebook's position that it cannot produce all responsive documents requested until the entry of a protective order, please forward a draft of the desired protective order for my review within the next five (5) days.

Should Facebook be unwilling to comply with these demands, please let me know immediately so that the Plaintiff can take appropriate action with the Court. Please contact me should you have any questions or comments.

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@hgdlawfirm.com

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