

EXHIBIT C

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,

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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


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