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8 **Attorneys for Plaintiff,**
9 **Windy City Innovations, LLC**

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

12 WINDY CITY INNOVATIONS, LLC,

13 Plaintiff,

14 v.

15 FACEBOOK, INC.,

16 Defendant.

Case No. 4:16-cv-01730-YGR

**PLAINTIFF WINDY CITY INNOVATIONS,
LLC’S WRITTEN STATEMENT
EXPLAINING FAILURE TO COMPLY
WITH THE COURT’S STANDING ORDER
PURSUANT TO ORDER AT DKT. 143**

Date: January 25, 2019

Time: 2:01 p.m.

Ctrm: Courtroom 1, Fourth Floor

The Honorable Yvonne Gonzalez Rogers

19
20 Plaintiff Windy City Innovations, LLC (“Windy City”), by and through its counsel
21 Warren McCarty, respectfully submits this written statement in response to the Court’s January
22 23, 2019 Order to Show Cause (Dkt. 143).

23 Windy City and its counsel Mr. McCarty sincerely apologize for failing to recognize and
24 appreciate the Court’s distinction between letter and brief formatting and represent this will not
25 happen again. Windy City and its counsel place the utmost importance on careful compliance
26 with Local and Federal Rules, as well as with this Court’s standing orders. In preparing its
27 response, Windy City’s counsel studied the Court’s Standing Order in Civil Cases with every
28 intention of complying with the requirements therein. Nonetheless, Windy City mistakenly

1 understood that formatting its response using a case-caption style document similar to
2 Facebook's initial letter complied with the Court's rules. This mistake was entirely ours,
3 inadvertent, and not for the purpose of circumventing the Court's Standing Order.

4 Throughout this litigation, counsel for Windy City have worked diligently to comply with
5 the local rules and the Court's standing orders for all filings, and they in no way intended to
6 circumvent the Court's orders in filing its Response (Dkt. 141). Immediately after this action was
7 transferred into this Court in 2016, counsel for Windy City collected and reviewed all applicable
8 standing orders and local rules, as well as the District's Guidelines for Professional Conduct.
9 Moreover, during the first Case Management Conference held in this Court on July 25, 2016,
10 Windy City's counsel Messrs. Brad Caldwell and Warren McCarty observed the Court stressing
11 to counsel in an unrelated case the importance of carefully following Your Honor's standing
12 orders. Since that time, Windy City has routinely consulted the applicable standing orders in this
13 Court to ensure compliance therewith, tracked updates to the Court's orders, and cited to the
14 Court's orders in its pleadings where applicable.

15 On Tuesday January 15, 2019, Facebook filed a letter requesting a pre-filing conference
16 for its Motion for Summary Judgment (Dkt. 140). Immediately after receiving this letter, counsel
17 for Windy City, including Mr. McCarty, repeatedly reviewed the portion Your Honor's Standing
18 Order to ascertain the appropriate manner for responding to Facebook's letter:

19 Within three (3) business days after receipt of the letter, any adversary
20 wishing to oppose the motion must file a written response addressing the
21 substance of the moving party's letter, with a copy to Chambers and the
22 moving party. This response shall also be limited to three single-spaced
23 pages, *including* any attached exhibits or supporting papers.

24 Mr. McCarty, as well as other attorneys and staff at Caldwell Cassady & Curry, worked
25 diligently in the ensuing days to draft a response to Facebook's letter that conformed to the
26 Court's Standing Order requirements above. The response was drafted with formatting that
27 mirrored the formatting used by Facebook, under the mistaken assumption that this complied
28 with the Court's Standing Order for a response. Windy City made certain to file its response
within three business days after receipt of Facebook's letter and limit the argument to three
single-spaced pages. Further, given that Facebook requested a pre-filing hearing to occur on

1 Friday January 25, 2019, Windy City arranged for staff at Caldwell Cassady & Curry to prepare
2 and FedEx copies to the Court over the weekend so they would neither be delayed nor lost
3 through failed delivery attempts on the Dr. Martin Luther King, Jr. holiday.

4 In drafting Windy City's response, Mr. McCarty and others at Caldwell Cassady & Curry
5 paid careful attention to Your Honor's requirement that the response address the substance of the
6 moving party's letter. Facebook's letter requested summary judgment on six different grounds.
7 Windy City worked diligently to provide the Court with a response directly and substantively
8 addressing each of these six grounds—including citation to authorities where necessary to
9 respond to Facebook's authorities, explanation of evidence undermining Facebook's six grounds,
10 and citation to Your Honor's Standing Order to address whether Facebook should even be
11 allowed to file its proposed motion. To assist the Court, Windy City included headings in its
12 response that mirrored the order of issues presented in Facebook's letter.

13 In retrospect, Windy City should have formatted its filing using letterhead instead of
14 using a case-caption as a cover page. Windy City in no way intended to circumvent the Court's
15 Standing Order, including the requirement that its response be limited to three single-spaced
16 pages. Windy City and its counsel sincerely apologize to the Court and its staff for failing to
17 meet the Court's expectations, and for falling short in its efforts to comply with the Court's
18 Standing Order. After reviewing this submission and conducting the show cause hearing, if the
19 Court feels that action needs to be taken, Windy City respectfully asks that, instead of
20 sanctioning counsel, the Court strike its submission at Dkt. 141 and direct Windy City to file a
21 reformatted response.

22 Windy City has paid, and continues to pay particular attention to the Court's orders. Any
23 failure to comply with the Court's Standing Order in this instance was entirely inadvertent and
24 not intended as a way to skirt the Court's rules regarding pre-filing summary judgment
25 conferences. Windy City's counsel take very seriously their duties and responsibilities as officers
26 of the Court, and likewise endeavor to avoid burdening the Court with unnecessary disputes.

27 A declaration of Mr. McCarty further detailing Windy City and its counsel's efforts to
28 comply with the Court's Standing Order is attached hereto as Exhibit 1.

1 Dated: January 25, 2019

Respectfully submitted,

2
3 /s/ Warren J. McCarty, III
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