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6 *Attorneys for Defendant*
 MATCH.COM, LLC,
 7 erroneously sued as Match.com

8
 9 UNITED STATES DISTRICT COURT
 10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11
 12 JANE DOE, individually, and on
 behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 MATCH.COM,

16 Defendant.

Case No. CV11-3795 SVW (JEMx)

Hon. Stephen V. Wilson

Filed as Class Action

**OBJECTION TO PLAINTIFF'S
 REQUEST TO ALLOW
 WITNESSES AT THE MAY 23, 2011
 PRELIMINARY INJUNCTION
 HEARING**

Hearing Date: May 23, 2011
 Hearing Time: 1:30 p.m.
 Courtroom: 6

Action filed: April 13, 2011

1 **OBJECTION TO REQUEST TO ALLOW WITNESSES AT HEARING**

2 Defendant Match.com, LLC (“Match”) respectfully submits this objection to
3 Plaintiff’s request to allow witnesses at the preliminary injunction hearing set for
4 May 23, 2011 at 1:30 p.m. (Docket No. 14.) There is no basis for live testimony at
5 this hearing.

6 In the Ninth Circuit, live testimony “is rarely allowed” on a motion for
7 preliminary injunction. Schwarzer, et al., *California Practice Guide: Federal Civil*
8 *Procedure Before Trial*, § 13:160 (Rutter 2011), citing *Stanley v. University of S.*
9 *Cal.*, 13 F.3d 1313, 1326 (9th Cir. 1994) (“the refusal to hear oral testimony at a
10 preliminary injunction hearing is not an abuse of discretion if the parties have a full
11 opportunity to submit written testimony and to argue the matter”). Here, Plaintiff
12 has had a full opportunity to submit written testimony in support of her motion.
13 Indeed, she has submitted four declarations.¹

14 Live testimony is particularly unnecessary where, as here, “the movant is
15 proceeding on a legal theory which cannot be sustained, because then there could
16 be no showing of a likelihood of success on the merits.” *Bradley v. Pittsburgh Bd.*
17 *of Educ.*, 910 F.2d 1172, 1175-76 (3d Cir. 1990). As set forth in detail in Match’s
18 opposition to Plaintiff’s motion (Docket No. 15), Plaintiff has not even attempted to
19 provide a legal basis for the injunctive relief she seeks, much less demonstrated a
20 likelihood of success on the merits.

21 Even if the Court were disposed to allow live testimony as appropriate under
22 the circumstances, the particular testimony offered by Plaintiff will not assist the
23 Court in any way. Plaintiff asks this Court to permit live testimony from four
24 witnesses. In each case, the testimony would be either redundant or irrelevant—or
25 both:

26 _____
27 ¹ This is not one of the “highly unusual cases” in which live testimony would be
28 appropriate, such as where “facts are bitterly contested” or where “there is a
presumption of irreparable harm (e.g., in Title VII employment discrimination
cases).” Schwarzer at § 13:162.

- 1 • The first two witnesses—Plaintiff and her purported expert, Russell Mallette—
2 are being offered to testify “as to [their] declaration[s] filed in support of the
3 Motion for Preliminary Injunction.” (Request at 2:1-6.) Plaintiff does not state
4 why such duplicative testimony is necessary or even whether, much less how, it
5 would differ materially from the written testimony already submitted.
- 6 • The third witness, Mandy Ginsberg (incorrectly spelled “Ginsburg” by
7 Plaintiff), is President of Match’s U.S. operations. Plaintiff would have Ms.
8 Ginsberg, a resident of Dallas, Texas, testify regarding “the number of prior
9 rapes and/or sexual assaults that have occurred on Match.com dates reported to
10 Defendant,” as well as “the size of Match.com and its expansion into China and
11 other global regions.” (Request at 2:16-19.) Plaintiff does not attempt to
12 explain how these topics are relevant to her pending motion. They are not. But
13 even assuming for the sake of argument that these topics were relevant, Ms.
14 Ginsberg would not be the appropriate person to testify about them. Plaintiff
15 does not explain why Ms. Ginsburg, Match’s most senior U.S. executive, should
16 be compelled to travel to testify in person. Moreover, Ms. Ginsberg has not
17 submitted a declaration in this case, and therefore there is nothing on which
18 Plaintiff may cross-examine her.
- 19 • Finally, Plaintiff “intend[s] to call one more witness for five minutes on direct.”
20 (Request at 2:18-19.) Plaintiff does not even identify this mystery witness,
21 much less the subject of his or her testimony or why it would be relevant or
22 necessary.

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1 Match respectfully requests that the Court deny Plaintiff's request in its
2 entirety.

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4 Dated: May 17, 2011

MANATT, PHELPS & PHILLIPS, LLP
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JOSEPH E. LASKA

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By: /s/ Robert H. Platt

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Robert H. Platt

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Attorneys for Defendant

MATCH.COM, LLC,

erroneously sued as Match.com

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