

1 SCOTT KAMBER (pro hac vice)  
 2 skamber@kamberedelson.com  
 3 DAVID A. STAMPLEY  
 4 dstampley@kamberedelson.com (pro hac vice)  
 5 KAMBEREDELSON, LLC  
 6 11 Broadway, 22nd Floor  
 7 New York, New York 10004  
 8 Telephone: (212) 920-3072  
 9 Facsimile: (212) 202-6364

ROBERT A. WEIKERT (State Bar No. 121146)  
 rweikert@nixonpeabody.com  
 TALLEY E. MCINTYRE (State Bar No. 203131)  
 tmcintyre@nixonpeabody.com  
 NIXON PEABODY LLP  
 One Embarcadero Center, 18th Floor  
 San Francisco, California 94111-3600  
 Telephone: (415) 984-8200  
 Fax: (415) 984-8300

7 JOSEPH H. MALLEY (pro hac vice)  
 8 LAW OFFICE OF JOSEPH H. MALLEY, P.C.  
 9 1045 North Zang Boulevard  
 10 Dallas, Texas 75208  
 11 Telephone: (214) 943-6100  
 12 Facsimile: (214) 943-6170

JASON C. KRAVITZ (*pro hac vice*)  
 jkravitz@nixonpeabody.com  
 NIXON PEABODY LLP  
 100 Summer Street  
 Boston, MA 02110-2131  
 Telephone: (617) 345-1000  
 Fax: (617) 345-1300

11 DAVID C. PARISI (SBN 162248)  
 12 SUZANNE HAVENS BECKMAN (SBN 188814)  
 13 dcparisi@parisihavens.com  
 14 shavens@parisihavens.com  
 15 PARISI & HAVENS LLP  
 16 15233 Valleyheart Drive  
 17 Sherman Oaks, California 91403  
 18 Telephone: (818) 990-1299  
 19 Facsimile: (818) 501-7852

17 Attorneys for Plaintiffs.  
 18 Additional counsel listed on signature pages

Attorneys for Defendant,  
 NEBUAD, INC.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

22 DAN VALENTINE, et al.,  
 23 Plaintiffs,  
 24 vs.  
 25 NEBUAD, INC., et al.,  
 26 Defendants.

No. C08-cv-05113 (TEH)  
**STIPULATION AND [PROPOSED]  
 ORDER REGARDING HEARING  
 DATE FOR DEFENDANT NEBUAD,  
 INC.'S MOTION TO DISMISS**

Hon. Thelton E. Henderson.  
 Complaint Filed: November 10, 2008  
 Trial Date: None Set

1 Pursuant to Local Rule 6-1, Plaintiffs and Defendant NebuAd, Inc. (“NebuAd”) hereby  
2 stipulate and agree as follows:

3 1. The hearing for NebuAd’s Motion to Dismiss (DKT. 4), currently on calendar for  
4 December 14, 2009 (DKT. 184), shall be continued to March 1, 2010, which is the same date as  
5 the next Case Management Conference. (*See* DKT. 180).

6 2. Plaintiffs filed their complaint on November 10, 2008. On December 22, 2008,  
7 NebuAd filed its motion to dismiss and re-noticed its motion on January 30, 2009. (DKT. 4). On  
8 January 30, 2009, Defendants Bresnan Communications, CenturyTel, Embarq, Knology, WOW!,  
9 and Cable One (collectively, “ISP Defendants”) also filed motions to dismiss and noticed them  
10 for March 9, 2009. (DKTs. 40, 44, 51, 52).

11 3. On February 13, 2009, plaintiffs filed their motion for jurisdictional discovery  
12 (DKT. 64), which was noticed for hearing on March 23, 2009. Plaintiffs filed their response to  
13 NebuAd’s motion to dismiss on February 17, 2009. (DKT. 65.)

14 4. The Court then stayed the defendants’ motions (DKT. 70), and on February 20,  
15 2009, referred the plaintiffs’ motion for jurisdictional discovery to Magistrate Judge Edward  
16 Chen. (DKT. 71). Judge Chen rescheduled the hearing on plaintiffs’ motion for jurisdictional  
17 discovery to March 25, 2009. (DKT. 72).

18 5. On February 20, 2009, plaintiffs and NebuAd filed a stipulation and proposed  
19 order regarding the hearing date for NebuAd’s motion to dismiss, proposing that the Court  
20 reschedule the hearing on NebuAd’s motion to dismiss to the same time that the ISP defendants’  
21 motion to dismiss would be heard. (DKT. 73). By Order dated February 24, 2009, the Court  
22 granted the parties’ request and placed NebuAd’s motion to dismiss on the same schedule as  
23 those of the ISP defendants. (DKT. 75). The purpose of the request was to allow for Magistrate  
24 Judge Chen’s resolution of pending jurisdictional discovery issues (*see* DKTs. 64, 70) and to  
25 coordinate the instant motion with the ISP defendants’ motions to dismiss, given the commonality  
26 of certain issues raised.

27 6. By Order dated March 26, 2009 (DKT. 90), Judge Chen ruled that plaintiffs could  
28 take jurisdictional discovery of NebuAd informally, and that such discovery was to be completed

1 within thirty (30) days of the Order. (DKT. 90, ¶ 1). Judge Chen also directed plaintiffs to file  
2 their oppositions to the motions to dismiss within forty-five (45) days of the Order and directed  
3 the ISP defendants to file their replies 14 days thereafter. (DKT. 90 ¶ 4).

4 7. Plaintiffs filed their consolidated opposition to the ISP defendants' motions to  
5 dismiss on May 8, 2009. (DKTs. 110, 111). Accordingly, NebuAd's reply in support of its motion  
6 to dismiss was due May 22, 2009, the same date as the replies of the ISP defendants.

7 8. On May 18, 2009, NebuAd's former counsel filed a motion to withdraw as counsel  
8 for defendant, NebuAd, Inc., explaining that NebuAd had executed an assignment for the benefit  
9 of creditors and had no officers or employees with whom counsel could interact in defense of this  
10 litigation. (DKT. 121). On the same date, NebuAd's former counsel filed a motion to stay the  
11 litigation pending resolution of the motion to withdraw. (DKT. 122).

12 9. On May 21, 2009, the parties stipulated that the time for the ISP defendants to file  
13 their replies in support of the motions to dismiss was extended to May 28, 2009, making  
14 NebuAd's reply in support of its motion to dismiss also due on May 28, 2009. (DKT. 124).

15 10. On May 28, 2009, NebuAd moved for an extension of time to file its reply (DKT.  
16 131). On May 29, 2009, the Court granted NebuAd's motion for an extension of time and ordered  
17 that the time for NebuAd to file a reply brief was enlarged until after the Court resolved  
18 NebuAd's former counsel's pending motion to withdraw and motion to stay. (DKT. 135).

19 11. On October 6, 2009, the Court granted NebuAd counsels' motion to withdraw and  
20 denied its motion to stay. (DKT. 167).

21 12. On October 9, 2009, NebuAd's current counsel appeared in the case. (DKTs. 169,  
22 170). The parties appeared before this Court on November 16, 2009 for a Case Management  
23 Conference. The Court set the next Case Management Conference for March 1, 2010. (DKT.  
24 180). The Court set the date for NebuAd's reply in support of its motion to dismiss for November  
25 30, 2009.

26 13. On November 30, 2009, NebuAd filed its reply in the instant motion (DKT. 183),  
27 and re-noticed the motion for hearing on December 14, 2009. (DKT. 184.)  
28

1 14. Plaintiffs' principal counsel are unavailable on December 14, 2009 owing to prior  
2 personal commitments and a death in the family that requires attendance at a funeral in Chicago  
3 on Monday, December 14.

4 15. In addition, plaintiffs represent that they intend to file an amended complaint in  
5 this matter by the middle of next week, prior to a third-party deposition at which the parties  
6 expect to meet and confer in person and discuss the effect of the amended complaint on progress  
7 in this matter.

8 16. In light of the imminent filing of the amended complaint, the unlikelihood that a  
9 hearing on defendant's motion to dismiss under the first complaint would be fully dispositive in  
10 this matter, and the importance of conserving the resources currently available to NebuAd for its  
11 defense in this matter, the parties respectfully request the Court's endorsement of the stipulation  
12 herein.

13  
14 Dated: December 10, 2009

Respectfully submitted,  
KamberEdelson, LLC

15  
16 By: /s David A. Stampley

17 DAVID A. STAMPLEY  
18 Attorneys for Plaintiffs

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21 Nixon Peabody LLP

22  
23 Dated: December 10, 2009

24 By: /s Talley E. McIntyre

25 TALLEY E. MCINTYRE  
26 Attorneys for Defendant  
27 NebuAd, Inc.  
28

1 ALAN HIMMELFARB (SBN 90480)  
2 KAMBEREDELSON, LLC  
2757 Leonis Boulevard  
3 Los Angeles, California 90058  
Telephone: (323) 585-8696  
4 Facsimile: (323) 585-6195

5 Attorney for Plaintiffs

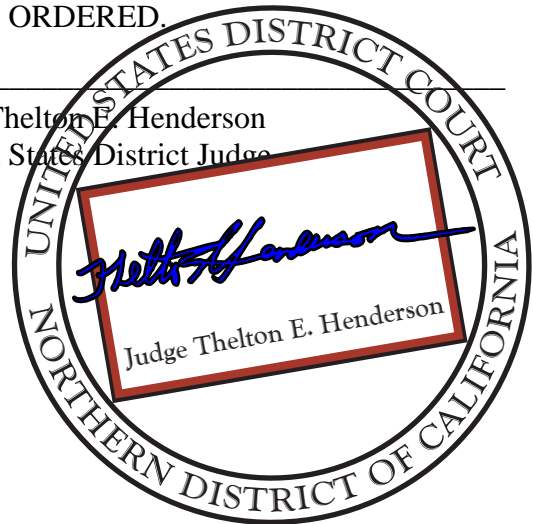
6 BRIAN J. PANISH (SBN 116060, N.D. Cal. adm. pending)  
panish@psblaw.com  
7 RAHUL RAVIPUDI (SBN 204519, N.D. Cal. adm. pending)  
ravipudi@psblaw.com  
8 PANISH, SHEA & BOYLE, LLP  
9 11111 Santa Monica Boulevard, Suite 700  
Los Angeles, California 90025  
10 Telephone: (310) 477-1700  
11 Facsimile: (310) 477-1699

12 Attorneys for Plaintiff Dan Valentine

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14 PURSUANT TO STIPULATION, IT IS SO ORDERED.

15 Dated: 12/11/09

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Hon. Thelton E. Henderson  
United States District Judge



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