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11 [ADDITIONAL PARTIES AND COUNSEL
 12 LISTED ON SIGNATURE PAGES]

13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO DIVISION

15 DAN VALENTINE, *et al.*,
 16
 Plaintiffs,
 17
 vs.
 18 NEBUAD, INC., *et al.*
 19
 Defendants.

Case No. C08 05113 TEH (EMC)

**STIPULATION AND [PROPOSED]
 ORDER RESCHEDULING INITIAL
 CASE MANAGEMENT CONFERENCE
 TO A DATE THIRTY DAYS AFTER THE
 RESOLUTION OF THE DEFENDANTS'
 PENDING MOTIONS TO DISMISS**

Complaint Filed: November 10, 2008
 Trial Date: None Set

DAVIS WRIGHT TREMAINE LLP

28

1 Pursuant to Local Rule 6-1, Plaintiffs and Defendants Bresnan Communications, Cable
2 One, CenturyTel, Embarq, Knology, and WOW! (collectively, the “ISP Defendants”) and Defendant
3 NebuAd hereby stipulate and agree as follows:
4

5 1. This putative class action complaint proceeding was filed on November 10,
6 2008. That same day the Court issued an Order scheduling the Initial Case Management Conference
7 for February 23, 2009. (DE #2) Other deadlines (including the times to “meet and confer,” file an
8 ADR certification and stipulation, file a Rule 26(f) Report, make initial disclosures, and file a Joint
9 Case Management Statement, were set for February 2 and 16, 2009. (DE # 2)
10

11 2. On December 22, 2008 Defendant NebuAd filed a motion to dismiss. (DE # 4)
12 In addition, stipulations extending the ISP Defendants’ response dates and rescheduling the hearing on
13 Defendant NebuAd’s motion were filed in December and early January (DE ## 3, 7 and 8).
14

15 3. Thereafter, on January 6, 2009, the Clerk issued a Notice rescheduling the
16 Initial Case Management Conference for April 6, 2009, which automatically moved the other
17 deadlines to March 16 and 30, 2009. (DE # 9)
18

19 4. On January 30, ISP Defendants each filed Motions to Dismiss (DE ## 40, 44,
20 51, 52,) and Defendant Bresnan filed a Motion to Compel Arbitration. (DE # 42) Hearings on all
21 motions were noticed for March 9. On February 13 Plaintiffs filed their Motion for Jurisdictional
22 Discovery (DE # 64) which was noticed for hearing on March 23. Plaintiffs thereafter filed
23 oppositions to Defendant NebuAd’s and the ISP Defendants’ motions, referencing their Motion for
24 Jurisdictional Discovery (DE ## 65, 66 and 67)
25

26 5. The Court then stayed the Defendants’ motions (DE # 70) and on February 20
27 referred the Plaintiffs’ Motion for Jurisdictional Discovery to Magistrate Judge Edward Chen.
28

1 (DE #71) Judge Chen rescheduled the hearing on Plaintiffs' Motion for Jurisdictional Discovery to
2 March 25. (DE #72)

3
4 6. By Order dated March 26, 2009 (DE # 90), Judge Chen ruled that Plaintiffs
5 may take jurisdictional discovery of Defendant NebuAd informally, which is to be completed within
6 thirty (30) days of the Order. (DE # 90, ¶ 1) At the hearing (Judge Chen also directed that Plaintiffs
7 may commence merits discovery of Defendant NebuAd only. (DE # # 90, ¶ 2; 94 (minute order))
8 Judge Chen ruled that no initial disclosures between the Plaintiffs and the ISP Defendants may be had,
9 and no discovery against the ISP Defendants may commence, until after the court resolves the pending
10 motions to dismiss. (DE # 90, ¶¶ 3, 5)

11
12 7. To that end, Judge Chen directed Plaintiffs to file their oppositions to the
13 motions to dismiss within forty-five (45) days of the Order and that the ISP Defendants file their
14 replies 14 days thereafter. (DE # 90, ¶ 4)

15
16 8. Because the Defendants' motions to dismiss and compel arbitration are being
17 stayed pending Plaintiffs' receipt of jurisdictional discovery and the parties' completion of the briefing
18 on the Defendants' pending motions to dismiss, which will likely extend into May, it would be
19 unnecessary and wasteful for the parties to discuss initial disclosures, case management, ADR, and
20 related issues, or prepare a Case Management Statement prior to the resolution of Defendants' motions
21 to dismiss. However, unless the initial Case Management Conference is rescheduled, the parties
22 would have to appear for the initial Case management Conference next week, well before the hearing
23 on or resolution of the Defendants' motions to dismiss. Judge Chen urged the parties to stipulate to
24 delaying the case management conference. (DE # 93 (transcript) at pp. 51-54)

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26 9. Accordingly, the Parties hereby stipulate to rescheduling the initial Case
27 Management Conference to a date thirty (30) days after the resolution of Defendants' motions to
28 dismiss.

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Dated: April 1, 2009

By: _____ /s/ _____

Alan Himmelfarb
KAMBEREDELSON LLC
Attorneys for Plaintiffs

Dated: April 1, 2009

By: _____ /s/ _____

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By: _____ /s/ _____

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~~PROPOSED~~ ORDER

Pursuant to the above stipulation, IT IS SO ORDERED.

Dated: 04/02, 2009

The Hon. Thelton E. Henderson
United States District Court

