1 2 3 4 5 6 7 8	I. NEEL CHATTERJEE (STATE BAR NO. 17 nchatterjee@orrick.com THOMAS GRAY (STATE BAR NO. 191411) tgray@orrick.com THERESA A. SUTTON (STATE BAR NO. 2 tsutton@orrick.com JULIO C. AVALOS (STATE BAR NO. 44763 javalos@orrick.com ORRICK, HERRINGTON & SUTCLIFFE LL 1000 Marsh Road Menlo Park, CA 94025 Telephone: 650-614-7400 Facsimile: 650-614-7401 Attorneys for Defendant	11857) 370)		
9	FACEBOOK, INC.			
10	UNITED STATES DISTRICT COURT			
11	NORTHERN DISTRICT OF CALIFORNIA			
12	SAN FRANCISCO DIVISION			
13				
14	DANIEL M. MILLER,	Case No.	5:10-CV-00264 (WA)	
15	Plaintiff,		OOK, INC.'S MOTION FOR STRATIVE RELIEF,	
16	V.	PURSUA	NT TO CIVIL LOCAL 11, FOR CONTINUANCE OF	
17	FACEBOOK, INC. and YAO WEI YEO,		ANAGEMENT	
18	Defendants.	Date:	May 27, 2010	
19		Time: Court:	8:00 A.M. Courtroom 9, 19th Floor	
20		Judge:	Honorable William Alsup	
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20			FACEROOK'S MOTION FO	

I. REQUESTED RELIEF

Pursuant to Civil L.R. 7-11, Facebook, Inc. respectfully requests that the Court continue the May 27, 2010, Case Management Conference until a date and time convenient to the Court after defendant Yeo appears and the Court resolves the currently-pending Motion for Leave to Amend Complaint. Dkt. No. 44. At this point, the case is at its earliest stages, and a Case Management Conference is premature.

II. <u>BACKGROUND</u>

Plaintiff filed a complaint on October 9, 2009, asserting various claims of copyright and trademark infringement against Yao Wei Yeo and Facebook, Inc. Dkt. No. 1. Defendant Yeo has not been served with the complaint. Facebook filed a Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(6) on February 2, 2010. Dkt. No. 25. Plaintiff amended his complaint the day before Facebook's Motion was to be heard. Dkt. No. 37.

On March 31, 2010, the Court granted Facebook's Motion to Dismiss the complaint. Dkt. No. 43. In that Order, the Court offered plaintiff an opportunity to explain why an amended complaint would cure the deficiencies identified in its Order. *Id.* at 8. At the hearing on Facebook's Motion to Dismiss, Facebook's counsel informed the Court that defendant Yeo had not yet been served, as required by Fed.R.Civ.P. 4(m). The Court then instructed plaintiff to file a motion for an extension of time in which to serve defendant Yeo and explain what measures he had taken to locate him. 3/18/10 Hr'g Tr. 19:13-14. **Plaintiff never filed such a motion**.

Nonetheless, on April 14, 2010, plaintiff filed a Motion for Leave to Amend Complaint, in which he purports to cure those deficiencies. Dkt. No. 44. Facebook opposed that motion, which is set for hearing on May 27, 2010. Dkt. No. 46. **Plaintiff did not file a reply to Facebook's Opposition**.

On April 15, 2010, the Court issued a Notice rescheduling the Case Management Conference from April 15 to May 27. Dkt. No. 45. On May 18, 2010, plaintiff's counsel contacted Facebook to meet and confer pursuant to Fed.R.Civ.P. 16. Declaration of Theresa A. Sutton in Support of Facebook's Motion for Administrative Relief, ¶ 2. In response, Facebook suggested that the parties seek to continue the Case Management Conference until the Court

1	resolves the currently-pending Motion. Id. Plaintiff refused to so stipulate. Id.		
2	III. <u>DISCUSSION</u>		
3	Facebook respectfully requests that the Court reschedule the Case Management		
4	Conference until the currently-pending Motion for Leave to Amend Complaint is resolved and		
5	Defendant Yeo is served and makes an appearance. Holding a Case Management Conference		
6	before all defendants appear and the parties know which claims are at issue is a waste of judicial		
7	resources.		
8	Plaintiff has revised his complaint twice. Dkt. Nos. 37, 44. He has not followed the		
9	Court's instructions. 3/18/10 Hr'g Tr. 19:13-14. He has not filed a reply in support of his Motion		
10	for Leave to Amend. Although he has not yet served defendant Yeo, a claim for direct copyright		
11	infringement against him remains in the complaint. Dkt. No. 44. Proceeding with this case		
12	before Mr. Yeo is served and before this case even has an operative complaint is inefficient.		
13	Mr. Yeo is a necessary party. His absence makes difficult (perhaps impossible) proceeding with		
14	discovery or efficiently managing this case.		
15	Until the Court finally determines the propriety of the proposed amended complaint,		
16	proceeding with a Case Management Conference makes little sense. This case is not ready for		
17	case management.		
18	IV. <u>CONCLUSION</u>		
19	Facebook respectfully requests that the Court reschedule the May 27, 2010, Case		
20	Management Conference to a date and time convenient to the Court after defendant Yeo appears		
21	and the currently-pending Motion for Leave to Amend Complaint is resolved.		
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23	Dated: May 19, 2010 ORRICK, HERRINGTON & SUTCLIFFE LLP		
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25	/s/ Theresa A. Sutton /s/ Theresa A. Sutton		
26	Attorneys for Defendant FACEBOOK, INC.		
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