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9	Attorneys for Plaintiff FACEBOOK, INC.	
10	UNITED STATES DISTRICT COURT	
11	NORTHERN DISTRICT OF CALIFORNIA	
12	OAKLAND DIVISION	
13	FACEBOOK, INC.,	Case No. 4:11-cv-01805-SBA
14	Plaintiff,	
15	V.	DECLARATION OF JEFFREY T. NORBERG IN SUPPORT OF
16	VARIOUS, INC.; GMCI INTERNET	FACEBOOK'S MOTION FOR EXPEDITED DISCOVERY AND
17 18	OPERATIÓNS, ÍNC.; TRAFFIC CAT, INC.; FRIENDFINDER NETWORKS INC.; and DOES 1-100,	MOTION TO SHORTEN TIME
19	Defendants.	
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28 Cooley LLP		Norberg Decl. iso Facebook's Mot.
ATTORNEYS AT LAW PALO ALTO		FOR EXPEDITED DISCOVERY & SHORTEN TIME CASE No. 4:11-cv-01805-SBA

I, Jeffrey T. Norberg, declare as follows:

- 1. I am an attorney with Cooley LLP, counsel of record in this action for Plaintiff Facebook, Inc. ("Facebook"). I make this declaration in support of Facebook, Inc.'s Motion for Expedited Discovery. I have personal knowledge of the facts contained within this declaration, and if called as a witness, could testify competently to the matters contained herein.
- 2. Attached hereto as Exhibit A is a true and correct copy of a partial list of domains, created at my direction on May 3, 2011, which appear to be or have been at one time associated with the defendants' affiliate program.
- 3. Since the creation of the Exhibit A, I have learned of at least two additional websites that use the FACEBOOK trademark as a domain or mark, and which appear to be members of the defendants' affiliate program: <a href="www.facebooksextubes.com">www.facebooksextubes.com</a> (Caution Adult Content).
- 4. Attached hereto as Exhibit B is a true and correct copy of a screen print from <a href="https://www.facebooksextubes.com">www.facebooksextubes.com</a>, which I captured on May 11, 2011 (Caution Adult Content). This screen print, as well as the screen prints that follow in the rest of this Declaration, have been altered to obscure pornographic images and the identities of individuals appearing in any photographs.
- 5. Attached hereto as Exhibit C is a true and correct copy of a copy of the WHOIS database information for the www.facebooksextubes.com site.
- 6. Attached hereto as Exhibit D is a true and correct copy of a screen print from <a href="https://www.face-book-of-sex.com">www.face-book-of-sex.com</a>, which I created on May 11, 2011 (Caution Adult Content).
- 7. Attached hereto as Exhibit E are true and correct copies of screen prints from the website <a href="www.getiton.com">www.getiton.com</a> (Caution Adult Content), which I captured on May 11, 2011. To reach the site depicted in Exhibit E, I first navigated to <a href="www.face-book-of-sex.com">www.face-book-of-sex.com</a> and then clicked on the GetItOn advertisement that appears in Exhibit D. Clicking on that advertisement caused my browser to redirect to defendant Various, Inc's Get It On website depicted in the screenshots in Exhibit E.
  - 8. Attached hereto as Exhibit F is a true and correct copy of the WHOIS database

information for the website www.face-book-of-sex.com.

- 9. Attached hereto as Exhibit G is a true and correct copy of a screen print of the <a href="https://www.facebookofsex.com">www.facebookofsex.com</a> site, which I captured on May 12, 2011. After capturing this screen print, I logged into the facebookofsex.com site and my browser was redirected to defendant Various, Inc.'s website: <a href="https://www.xmatch.com">www.xmatch.com</a> (Caution Adult Content).
- 10. Attached hereto as Exhibit H is a true and correct copy of Facebook's Proposed First Set of Requests for Production to Defendants.
- 11. Attached hereto as Exhibit I is a true and correct copy of Facebook's Proposed First Set of Interrogatories to Defendants.
- 12. Attached hereto as Exhibit J is a true and correct copy of Facebook's Proposed Notice of Deposition of Friendfinder Networks, Inc.
- 13. Attached hereto as Exhibit K is a true and correct copy of a letter sent on April 14, 2011 from Michael Rhodes, attorney of record for Facebook, to David Bloom, General Counsel of defendant Various, Inc. This letter was hand delivered, along with a copy of the Complaint, to Mr. Bloom on April 14, 2011.
- 14. Following the filing of this complaint, Mr. Rhodes and I participated in several calls and e-mails with counsel for the defendants for the purpose of settling this matter. In addition to those communications, I participated in two meet and confer calls with counsel for the defendants.
- 15. The first call took place on April 18, 2011 between myself on behalf of Facebook, and Floyd Mandell and Ira Rothken, counsel for defendants. During that call, I told Messrs. Mandell and Rothken, among other things, that Facebook intended to move for expedited discovery if the defendants did not comply with the demands outlined in Mr. Rhodes' April 14 letter (Exhibit J). Despite this, the defendants have not complied with many of those demands, including the demand that defendants "[o]btain the transfer to Facebook of all infringing domain names held by affiliates; or **provide the full contact information for all affiliates who have registered infringing domain names**, plus \$10,000 per domain name to cover Facebook's recovery costs." Ex. J at 2, item 3 (emphasis added).

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- 16. Following that call, Mr. Rhodes and I participated in several additional telephonic and e-mail exchanges with counsel for defendants, held for the purpose of discussing settlement. Those discussions did not produce a settlement and, on May 12, 2011, I held two calls with Mr. Mandell and other counsel for the defendants for the purpose of attempting to resolve this dispute without the need for Court intervention. Those conversations did not result in a resolution of this matter. Attached hereto as Exhibit L is a true and correct copy of an e-mail exchange between myself and Mr. Mandell regarding these discussions.
- During my final call with Mr. Mandell, I proposed that the parties agree to an expedited briefing schedule for this motion as follows: Facebook's opening brief to be filed May 12, 2011; defendants' opposing brief to be filed May 18, 2011; Facebook's reply brief to be filed by May 20, 2011; and a hearing to be held, if necessary, on May 24, 2011 or as soon thereafter as is convenient for the Court. Mr. Mandell did not agree to the proposed expedited briefing schedule.
- 18. Pursuant to Local Rule 6-3, I further declare that Facebook is seeking an order shortening time to hear this motion to ensure that Facebook's motion can be heard in time to allow Facebook to identify and serve the Doe Defendants with the Complaint in advance of a motion for preliminary injunction, which Facebook intends to file after identification of the Doe Defendants. Absent an order shortening time to hear the motion, Facebook will suffer additional harm as the identification of the Doe Defendants will be further delayed and enable the Doe Defendants to continue infringing the FACEBOOK trademark.
- 19. There has been one prior time modification in this case: Facebook has agreed to extend the deadline for the Named Defendants to respond to the Complaint until May 23, 2011. The requested modification of the schedule will not affect any other deadlines in the case.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Palo Alto, California on this 12<sup>th</sup> day of May, 2011.

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/s/ Jeffrey T. Norberg Jeffrey T. Norberg

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