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 9 FACEBOOK, INC.

10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 12 OAKLAND DIVISION

13 FACEBOOK, INC.,

14 Plaintiff,

15 v.

16 VARIOUS, INC.; GMCI INTERNET  
 17 OPERATIONS, INC.; TRAFFIC CAT, INC.;  
 18 FRIENDFINDER NETWORKS INC.; and  
 DOES 1-100,

19 Defendants.

Case No. 4:11-cv-01805-SBA

**FACEBOOK’S MOTION FOR AN  
 ORDER TO SHORTEN TIME FOR  
 HEARING MOTION FOR EXPEDITED  
 DISCOVERY**

Date: TBD  
 Time: TBD  
 Courtroom: 1, 4<sup>th</sup> Floor  
 Judge: Hon. Sandra Brown Armstrong

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**NOTICE OF MOTION AND MOTION**

Please take notice that on \_\_\_\_\_ at \_\_\_ p.m. or as soon thereafter as the matter may be heard in Courtroom 1 located at Fourth Floor, 1301 Clay Street, Oakland, California, before Honorable Sandra Brown Armstrong, Plaintiff Facebook, Inc. (“Facebook”), hereby moves this Court for an order shortening time for this Court to hear its Motion for Expedited Discovery pursuant to Civil Local Rule 6-3. This motion is supported by the following Memorandum of Points and Authorities, the Declaration of Jeffrey Norberg in Support of Facebook’s Motion for Expedited Discovery (“Norberg Decl.”), and Facebook’s Motion for Expedited Discovery, filed concurrently herewith.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. BACKGROUND**

Facebook filed this suit to enjoin defendants’ use of the brand FACE BOOK OF SEX for an online “adult” networking service and affiliate program under the brand FACE BOOK OF SEX. Defendants’ mark, websites and affiliate program are a deliberate and blatant attempt to imitate and trade upon the success of the famous Facebook brand, and infringe the FACEBOOK trademark. Association with defendants’ pornographic websites tarnishes Facebook’s reputation and abuses the trust of Facebook users. Defendants operate a widespread infringing affiliate network that pays third party website operators (the “Doe Defendants”) to direct traffic to defendants’ adult networking sites (including facebookofsex.com), encouraging these sites to use materials that dilute and infringe the FACEBOOK Marks.

Facebook filed its Complaint on April 13, 2011. The Complaint was served on Defendants Various, Inc., Traffic Cat, Inc. and FriendFinder Networks, Inc. on April 14, 2011, and on Defendant GMCI Internet Operations, Inc. on April 18, 2011. (D.I. 10, 11, 12, and 15). The Court has set an Initial Case Management Conference for July 21, 2011 (D.I.9) and Facebook has agreed to extend the time for Named Defendants to respond to the complaint until May 23, 2011. Norberg Decl. ¶19. Facebook met and conferred with counsel for defendants before filing this motion, but the defendants have refused to stipulate to this request. Norberg Decl. ¶ 17.

1           **II.     FACEBOOK WILL BE PREJUDICED AND IS AT RISK OF SUBSTANTIAL**  
2           **HARM IF AN ORDER SHORTENING TIME TO HEAR ITS MOTION FOR EXPEDITED**  
3           **DISCOVERY IS NOT GRANTED**

4           Facebook seeks expedited discovery to identify those Doe Defendant third party website  
5 operators that are part of Defendants’ affiliate network, and to build a more complete record in  
6 support of an anticipated motion for preliminary injunction. Facebook’s need for this information  
7 is urgent: Facebook cannot serve the Doe Defendants with the Complaint or move for an  
8 injunction against the Doe Defendants until it learns their true identities. Norberg Decl. ¶15.  
9 Pursuant to Local Rule 7-2(a) motions must be noticed no fewer than 35 days from the filing date.  
10 Under the usual timetable for noticed motions, Facebook’s motion could not be noticed for  
11 hearing until June 21, 2011. However, pursuant to the Court’s current Calendar, the earliest date  
12 on which Facebook’s motion could be heard is October 11, 2011.<sup>1</sup>

13           Facebook will be prejudiced if an order shortening time to hear its motion for expedited  
14 discovery is not granted because Facebook cannot effectively move for a comprehensive  
15 preliminary injunction until all parties, including the Doe Defendants, are identified and served in  
16 this Action. The Doe Defendants are responsible for a significant amount of the alleged  
17 infringing conduct as they form part of the network that promotes and advertises Named  
18 Defendants’ websites. Any further delay in identifying these defendants delays Facebook’s  
19 comprehensive preliminary injunctive relief, thereby increasing the ongoing irreparable harm  
20 being caused by the defendants’ infringing activities.

21           Moreover, the requested shortening of time will only help to advance the schedule for this  
22 case because, if the motion for expedited discovery is granted, Facebook will be able to more  
23 quickly identify and serve the Doe Defendants, thereby allowing the entire case to proceed with  
24 all necessary parties present.

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<sup>1</sup> As indicated by Hon. Brown Armstrong’s Case Calendar Scheduling Notes found at:  
<http://www.cand.uscourts.gov/CEO/cfd.aspx?7128>.

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**III. PROPOSED SCHEDULE ON MOTION FOR EXPEDITED DISCOVERY**

Facebook requests that the Court adopt the following briefing and hearing schedule for the motion for expedited discovery:

- Defendants to file opposition: May 18, 2011
- Facebook to file reply: May 20, 2011
- Hearing: May 24, 2011 at 1:00 p.m. or as soon as possible thereafter

**IV. CONCLUSION**

For the foregoing reasons, Facebook respectfully requests that the Court grants its Motion for an Order Shortening Time.

Dated: May 12, 2011

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/s/ Jeffrey T. Norberg  
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