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12
13 UNITED STATES DISTRICT COURT
14
15 NORTHERN DISTRICT OF CALIFORNIA
16
17 SAN JOSE DIVISION
18

19 FACEBOOK, INC., and MARK ZUCKERBERG,

20 Plaintiffs,

21 v.

22 CONNECTU LLC, (now known as CONNECTU,
23 INC.), ET AL.,

24 Defendants.

CASE NO. C 07-01389 RS

**DEFENDANTS' MOTION FOR
RELIEF PURSUANT TO FED. R. CIV.
P. 56(f)**

Date: February 20, 2008
Time: 9:30 a.m.
Dept.: 4
Judge: Hon. Richard Seeborg

(Filed Concurrently with a Civil L.R. 6-3
Application requesting that this Rule 56(f)
Motion be decided before Defendants file
their opposition to Plaintiffs' motion for
partial summary judgment, filed on January
8, 2008)

TABLE OF CONTENTS

	Page
NOTICE OF MOTION.....	1
MEMORANDUM OF POINTS AND AUTHORITIES	1
I. INTRODUCTION	1
II. RELEVANT BACKGROUND FACTS.....	4
A. History of This Proceeding	4
B. The Motion for Summary Judgment.....	4
C. Defendants' Need for Discovery to Respond to the Motion and Plaintiffs' Continual Attempts to Stall the Discovery Process	5
D. Defendants' Newly Discovered Evidence Regarding Plaintiffs' Unclean Hands is Relevant to Defendants' Affirmative Defense of Unclean Hands.....	6
E. Defendants Wayne Chang and David Gucwa Appeared in this Case in September 2007, and Have not Had Sufficient Time to Investigate the Claims or Conduct Discovery	7
III. ARGUMENT.....	7
A. Leave to Conduct Discovery Is Appropriate When Discovery Is Necessary for a Party to Respond to a Summary Judgment Motion	7
B. Discovery Is Needed From Plaintiffs Regarding Defendant's Liability Under California Penal Code § 502(c) and CAN-SPAM Act Claims	8
1. California Penal Code § 502(c).....	8
2. The CAN-SPAM Act.....	9
C. Defendants Need Additional Discovery to Develop an Affirmative Defense of Unclean Hands Based on Documents Recently Produced by Plaintiffs in the Massachusetts Action.....	10
D. Defendants Need Additional Discovery to Depose Plaintiffs' Expert Chris Shiflit.....	11
E. Defendants Gucwa and Chang Were Only Recently Brought Into this Litigation and Need Additional Time to Propound Discovery Requests Before Responding to Plaintiffs' Summary Judgment Motion	11
IV. CONCLUSION.....	12

CASES AND AUTHORITIES

Cases: Page(s)

<i>Celotex Corp. v. Catrett</i> 477 U.S. 317, 106 S. Ct. 2548, 91 L.Ed.2d 265 (1986).....	8
<i>McCormack V. Fund American Cos., Inc.</i> 26 F.3d 869 (9th Cir. 1994)	8
<i>State of California v. Campbell</i> 138 F.3d 772 (9 th Cir. 1998)	7
<i>Stears Airport Equip Co. v. FMC Corp.</i> 170 F.3d 518 (5 th Cir. 1999)	8
<i>Visa International Service Assoc. v. Bankcard Holders</i> 748 F.2d 1472 (9 th Cir. 1986)	8, 10

Authorities:

15 U.S.C. § 7704(a)(1).....	4, 9
15 U.S.C. § 7704(b)	9
15 U.S.C. § 7704(g)(1)	9
California Penal Code:	
Section 502(c)	4, 8, 9
Section 501(e)	9
CAN-SPAM Act	4, 5, 7, 9, 10
Federal Rules of Civil Procedure:	
Rule 30(b)(6).....	2, 10
Rule 56(f)	1, 7, 8, 9, 10, 11

1 **NOTICE OF MOTION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on February 20, 2008 at 9:30 a.m. or soon thereafter as
4 counsel may be heard by Magistrate Judge Richard Seeborg of above entitled Court, located at 280
5 South First Street, San Jose, California, Defendants will and hereby do move this Court for an Order
6 postponing the due date for Defendants' Opposition to Plaintiffs' Motion for Partial Summary
7 Judgment, filed on January 8, 2008 at least until this Rule 56(f) motion is decided.

8 Defendants' assertions are based upon this Motion, including the following Memorandum
9 and Points and Authorities, and the accompanying Declaration of Scott R. Mosko, the Notice of
10 Joinder filed by Defendant David Gucwa, including the accompanying declaration in that Joinder of
11 Valerie Wagner, all the pleadings in the case, and such other arguments and evidence as may
12 properly come before the Court.

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. INTRODUCTION**

15 Pursuant to Fed. R. Civ. P. 56(f), Defendants ConnectU, Inc., Pacific Northwest Software,
16 Inc., Wayne Change, and Winston Williams¹ (collectively "Defendants") move the Court for leave
17 to take discovery necessary for Defendants to respond to the Motion for Partial Summary Judgment
18 ("Plaintiffs' Motion") filed on January 7, 2008 by Plaintiffs Facebook, Inc. and Mark Zuckerberg
19 (collectively "Plaintiffs"). The specific discovery set forth below, will provide evidence establishing
20 both that Plaintiffs' motion is frivolous, and that Defendants are entitled to judgment. Moreover, as
21 also set forth below, Plaintiffs have interfered with Defendants' efforts to obtain at least some of this
22 necessary evidence, and instead have effectively rushed to file their motion in an attempt to prevent
23 Defendants from completely investigating exculpatory evidence and relying on it to the fullest extent
24 possible. If Plaintiffs' motion is heard before Defendants are allowed to complete their discovery
25 efforts, Defendants' due process rights will have been violated.

26
27
28 ¹ Defendant David Gucwa joins in this motion and counsel for Mr. Gucwa, Valerie Wagner
submits a declaration in support of this motion.

1 For at least the following five reasons outlined below, Plaintiffs' motion for summary
2 judgment should not be heard before Defendants complete the specific discovery set forth below.
3 First, Defendants expect to take at least one Rule 30(b)(6) deposition concerning the operation and
4 set-up of the servers and systems Plaintiffs' have previously utilized and currently utilize in the
5 operation of the websites at issue in this action. Plaintiffs have specifically interfered with
6 Defendants' efforts in obtaining this discovery. In August, 2007, Defendants propounded document
7 requests seeking the technical information detailing of each systems utilized by Plaintiffs. Plaintiffs
8 have played games with their production obligations regarding this discovery. As set forth in more
9 detail below, Plaintiffs never produced new documents in response to these discovery requests until
10 nearly 3 months after this discovery was propounded. Thereafter they refused to acknowledge this
11 discovery was complete until two days after their summary judgment motion was filed, when they
12 served an additional 80 documents. Defendants need reasonable time to complete their review of
13 these documents. Moreover, the preliminary analysis of the documents shows that Plaintiffs were
14 evasive in their production, which may likely result in a motion to compel. Once a complete
15 production has occurred, Defendants will notice and take a Rule 30(b)(6) deposition, and elicit
16 specific evidence negating some or even all of the claims for relief asserted in Plaintiffs' Second
17 Amended Complaint.

18 Second, in the Massachusetts Action, Defendants' discovery efforts to obtain mirror images
19 of the hard drives of Adam D'Angelo's computers, which efforts commenced in mid 2005, finally
20 resulted in production of source code in November 2007, but only after the Court in that action
21 *ordered* the Plaintiffs to produce the hard drives. (Mosko Declaration, Exhibit F) The source code
22 revealed that in June of 2004, Plaintiff Mark Zuckerberg repeatedly attempted to hack into
23 ConnectU's website, located at <http://www.connectu.com>, and thereby gain unauthorized access to
24 ConnectU's computer systems. Here again, Plaintiffs played games with Defendants in purposefully
25 delaying the production of this evidence, effectively hoping to eliminate it from being considered in
26 this case by filing their summary judgment motion. Defendants need time to complete their forensic
27 analysis. Thereafter, Defendants expect to notice at least two depositions, specifically Facebook
28 employee, Adam D'Angelo, and Plaintiff Mark Zuckerberg. The Santa Clara County Superior Court

1 had earlier issued an Order compelling Mr. Zuckerberg's attendance after he improperly walked out
2 of his earlier deposition. Defendants have not rescheduled Mr. Zuckerberg's deposition because
3 they have been waiting for Plaintiffs to complete the outstanding discovery, which, as demonstrated,
4 they have yet to do. Plaintiffs' hacking of Defendants' website will both negate some or all of the
5 claims for relief and will most likely allow Defendants to file an affirmative counterclaim.

6 Third, individual defendants Wayne Chang and David Gucwa have only recently been named
7 as parties to this action. Their answers were filed less than four months before Plaintiffs filed their
8 motion for summary judgment. The parties have stipulated that the discovery efforts in the
9 Massachusetts case will apply and can be used in this case. (Mosko Declaration, Exhibit E, at
10 Stipulations, paragraph 1) Over one hundred thousand pages of documents have been produced, not
11 to mention 7 CDs, some of which include source code with hundreds of thousands of lines. While
12 Mr. Chang is represented by the same counsel as ConnectU, Mr. Gucwa has separate counsel. As
13 set forth in the declaration of Valerie Wagner, counsel for Mr. Gucwa, who is joining this motion,
14 Mr. Gucwa needs a reasonable amount of time to review the production and activities occurring
15 prior to his entry into this action.

16 Fourth, Plaintiffs' motion is supported by an expert's declaration who has previously never
17 been disclosed. Most troubling is that half of the documents attached to this declaration have never
18 been produced, despite the fact that they appear responsive to document requests propounded at least
19 4 months ago. Defendants request appropriate time to fully evaluate the declaration, and the
20 documents upon which the expert relies. Moreover, Defendants are entitled to and will seek the
21 expert's deposition once a full analysis of his assertions is completed.

22 Fifth, Plaintiffs attach an additional 60+ documents in support of their motion and include
23 what appears to be a factual declaration signed by Mark Zuckerberg. Defendants request a
24 reasonable time to evaluate these documents, and thereafter, to depose the declarants.

25 For all of these reasons, Defendants request that the Court deny Plaintiffs' Motion, or, in the
26 alternative, stay the opposition briefing and the hearing of Plaintiffs' motion so that Defendants can
27 engage in at least the above discovery to obtain additional facts to support their opposition to
28 Plaintiffs' Motion.

1 In support of this Motion, Defendants submit herewith the Declaration of Scott R. Mosko
2 (“Mosko Declaration”), detailing Plaintiffs’ stalling tactics and outstanding discovery they seek.
3 Moving Defendants are informed that David Gucwa will file a joinder to this motion, that will be
4 supported by a Declaration of Valerie Wagner, his counsel.

5 **II. RELEVANT BACKGROUND FACTS**

6 **A. History of This Proceeding**

7 This is a retaliatory action in response to the Massachusetts Action. From day one,
8 Plaintiffs have utilized this Court, at the expense of those involved, in an attempt to delay the proper
9 litigation of the Massachusetts Action, and to deplete Defendants’ resources. Plaintiffs Motion is yet
10 another attempt to exhaust Defendants’ resources.

11 **B. The Motion for Summary Judgment**

12 Instead of allowing discovery to be completed, in keeping with its pattern of
13 diversionary tactics, Plaintiffs filed a Motion for Summary Judgment on January 7, 2008, little more
14 than one month after Plaintiffs produced over 5000 documents in response to Defendants’ Second
15 Request for the Production of Documents. (Mosko Decl. Exh. M) At the time this motion was filed,
16 Plaintiffs continued to assert that their document production was incomplete, virtually stalling
17 Defendants’ further discovery efforts related to the issues that these documents raised, and
18 effectively preventing Defendants from moving to compel production. (*Id.*) Demonstrating further
19 games-playing tactics, Plaintiffs made an additional production two days after their summary
20 judgment motion was filed, despite the fact that the document demand was propounded in August,
21 2007. (*Id.* at Exhs. P and D) Plaintiffs now seek summary judgment that:

- 22 1. All Defendants violated California Penal Code § 502(c); and,
- 23 2. Defendants ConnectU, Inc. and Pacific Northwest Software, Inc. violated the
24 CAN-SPAM Act, 15 U.S.C. § 7704(a)(1).

25 In support of its Motion, Plaintiffs provide two fact-related declarations. The
26 declaration of Plaintiffs’ expert, Chris Shiflet (“Shiflet Declaration”), includes thirty-eight (38)
27 paragraphs spanning eleven (11) pages.
28

1 **C. Defendants’ Need for Discovery to Respond to the Motion and Plaintiffs’**
2 **Continual Attempts to Stall the Discovery Process**

3 In order for Defendants to respond to Plaintiffs’ Motion, Defendants need discovery,
4 in the form of interrogatories and/or depositions of at least Mr. Shiflet, Mr. D’Angelo and Mr.
5 Zuckerberg. (*See Mosko Decl. at ¶ 18*) Moreover, Defendants likely need to depose numerous
6 individuals regarding the content of Plaintiffs’ recently produced documents. Such discovery goes
7 to the heart of Plaintiffs’ Motion – allegations that Defendants ConnectU and PNS violated the
8 CAN-SPAM Act.

9 In addition, the Court should grant this motion because of Plaintiffs’ gamesmanship
10 and its continual attempts to stall Defendants’ efforts to obtain discovery. For example, ConnectU
11 served a Request for Production of Documents on August 24, 2007. (*See Id.*: Exhibit D) Although
12 Plaintiffs served their objections to the Requests one month later, Plaintiffs did not produce a single
13 new document until November 30, 2007, more than *three months* after ConnectU served its requests.
14 (*See Id.*: Exhibit M) Instead, after continual prodding from Defendants, Plaintiffs referred
15 Defendants to previously produced documents, and informed Defendants that documents would be
16 produced “on a rolling basis.” (*See Id.*: Exhibits G and H) Finally, on November 30, 2007,
17 Plaintiffs produced 5000 documents in response to Defendants’ Requests. (*See Id.*: Exhibit M) But
18 Plaintiffs explicitly stated in the letter enclosing the documents that they “would continue to produce
19 responsive documents, if any, on a rolling basis” and that they would notify Defendants when they
20 were “reasonably certain their production is complete.” (*See Id.*) Despite their promises, it was
21 clear again that Plaintiffs’ words were nothing more than a diversionary stalling tactic, because as of
22 the date of the filing of Plaintiffs’ Motion, Plaintiffs had not confirmed that their production was
23 complete. Counsel for both sides participated in a meet and confer conference on December 24,
24 2007, and counsel for Plaintiffs still refused to confirm whether or not production was complete.
25 (*See id.*: Exhibit O) On January 9, 2007, two days *after* Plaintiffs’ filed their summary judgment
26 motion, Defendants received from Plaintiffs over one hundred fifty (150) additional pages that
27 Plaintiffs claimed were responsive to ConnectU’s August 24, 2007 Document Request. (*See Id.*:
28 Exhibit P) In addition, Plaintiffs identified more than one thousand (1000) previously produced

1 pages that they claimed responsive to Defendants Requests. (*See Id.*: Exhibits G and H) In the letter
2 accompanying the documents, Plaintiffs indicated that “they believe” the additional documents
3 complete Plaintiffs’ production in response to ConnectU’s August 24, 2007 Document Request, but
4 that they reserved the right to supplement their production. (*See Id.*: Exhibit P)

5 In sum, it took Plaintiffs more than three (3) months to produce new documents in
6 response to Defendants’ Request. Plaintiffs then refused to confirm that production was complete,
7 and in fact, continued to produce additional relevant documents *even after* the filing of their
8 summary judgment motion.

9 Defendants should be given the opportunity to carefully review all of the documents
10 produced or referenced as relevant in response to Defendants Requests, and, be granted the
11 opportunity to depose, at least, Mark Zuckerberg, and possibly other witnesses, depending upon the
12 results of Defendants’ complete analysis of the documents. These documents and the subsequent
13 deposition testimony are directly relevant to Plaintiffs’ Motion. They will establish that Plaintiffs
14 are not entitled to rely upon one or more of the statutes alleged in the Second Amended Complaint.

15 **D. Defendants’ Newly Discovered Evidence Regarding Plaintiffs’ Unclean Hands is**
16 **Relevant to Defendants’ Affirmative Defense of Unclean Hands**

17 In the Massachusetts Action, on August 31, 2005, ConnectU served its Second Set of
18 Interrogatories on Plaintiffs. (*See Mosko Decl.* at Exhibit A) In those interrogatories, ConnectU
19 asked Plaintiffs to identify all hard drives in the possession, custody or control of Mark Zuckerberg
20 and/or Facebook. Plaintiffs answered these interrogatories in October 2005, and provided
21 supplemental answers in December 2005, but Plaintiffs failed to fully respond. After continual
22 prodding from ConnectU, and at significant expense, on September 13, 2007, the Court in the
23 Massachusetts Action *ordered* Plaintiffs to produce additional relevant computer hard drives,
24 including the hard drive of Adam D’Angelo. In response to this Order, on November 13, 2007,
25 Plaintiffs produced source-code from January 2004 that they claimed was only recently discovered.
26 (*See Mosko Decl.* at Exhs. B, C, I and J) Included in this source code was an archived file
27 implicating Mark Zuckerberg and perhaps others at Facebook in repeated attempts to hack into
28 ConnectU’s website.

1 (See *Id.* at ¶ 17) This provides strong evidence of Mark Zuckerberg's attempted unauthorized access
2 of ConnectU's website and computer systems, and supports Defendants' affirmative defense of
3 unclean hands. It further supports the basis for Defendants to assert an affirmative counterclaim at
4 least under the CAN-SPAM statute. Because this information was only recently made available to
5 Defendants, and because it is directly relevant to the Plaintiffs' Motion, Defendants need additional
6 time to depose Mr. Zuckerberg and/or Mr. D'Angelo regarding Mr. Zuckerberg's attempts to hack
7 into ConnectU's website. This evidence further supports Defendants' request for relief pursuant to
8 Rule 56(f).

9 **E. Defendants Wayne Chang and David Gucwa Appeared in this Case in**
10 **September 2007, and Have not Had Sufficient Time to Investigate the Claims or**
11 **Conduct Discovery**

12 Plaintiffs have had over two years to conduct discovery, research the law and evaluate
13 their case. Defendants Wayne Chang and David Gucwa, although known to Plaintiffs since before
14 the action was filed in 2005, did not formally appear until September, 2007. They now have the task
15 of reviewing an overwhelming amount of documents and computer code. The short time between
16 their entry into the case, and the filing of this summary judgment motion has not allowed them a full
17 opportunity to come up to speed, or conduct discovery. This summary judgment motion should be
18 stayed until these new defendants have sufficient time to prepare their defenses. *See* Joinder of
19 David Gucwa and the declaration of his counsel, Valerie Wagner.

20 **III. ARGUMENT**

21 **A. Leave to Conduct Discovery Is Appropriate When Discovery Is**
22 **Necessary for a Party to Respond to a Summary Judgment Motion**

23 Under Fed. R. Civ. P. 56(f), the Court may order a continuance to permit discovery if
24 necessary to enable the non-moving party to respond to a pending motion for summary judgment.

25 *State of California v. Campbell*, 138 F.3d 772, 779 (9th Cir. 1998). Rule 56(f) states:

26 Should it appear from the affidavits of the party opposing the motion that the
27 party cannot for reasons stated present by affidavit facts essential to justify the
28 party's opposition, the Court may refuse the application for judgment or may
order a continuance to permit affidavits to be obtained or depositions to be
taken or discovery to be had or may make such other order as is just.

1 The party requesting application of Rule 56(f) must show “(1) that they have set forth in affidavit
2 form the specific facts that they hope to elicit from further discovery, (2) that the facts sought exist,
3 and (3) that these sought-after facts are ‘essential’ to resist the summary judgment motion.” *Id.*
4 “[A] district court should continue a summary judgment motion upon a good faith showing by
5 affidavit that the continuance is needed to obtain facts essential to preclude summary judgment.” *Id.*
6 (citing *McCormack v. Fund American Cos., Inc.*, 26 F.3d 869, 885 (9th Cir. 1994).

7 Rule 56(f) motions “are generally favored, and should be liberally granted.” *Stears*
8 *Airport Equip. Co. v. FMC Corp.*, 170 F.3d 518, 534 (5th Cir. 1999). The Supreme Court has stated
9 that summary judgment is inappropriate unless the parties are allowed adequate time for discovery.
10 *Celotex Corp. v. Catrett*, 477 U.S. 317, 326, 106 S. Ct. 2548, 91 L.Ed.2d 265 (1986). The Court
11 noted in *Celotex* that “[a]ny potential problem with premature motions can be adequately dealt with
12 under Rule 56(f), which allows a summary judgment motion to be denied ... if the non-moving party
13 has not had an opportunity to make full discovery.” *Id.* The Ninth Circuit has held that “denial [of a
14 Rule 56(f) motion] is especially inappropriate where the material sought is also the subject of
15 outstanding discovery requests.” *Visa International Service Assoc. v. Bankcard Holders*, 748 F.2d
16 1472, 1475 (9th Cir. 1986).

17 **B. Discovery Is Needed From Plaintiffs Regarding Defendant’s Liability Under**
18 **California Penal Code § 502(c) and CAN-SPAM Act Claims**

19 **1. California Penal Code § 502(c)**

20 Plaintiffs allege that undisputed evidence exists establishing that Defendants have
21 violated Penal Code Section 502(c). As Plaintiffs point out in the summary judgment motion, the
22 statute makes it unlawful for any person to perform the following acts:

23 (2) Knowingly accesses and without permission takes, copies, or makes use of any
24 data from a ... computer system, ... or takes or copies any supporting documentation,
25 whether existing or residing internal or external to a ...computer system ...

26 ...
27
28

1 (6) Knowingly and without permission provides or assists in providing a means of
2 accessing a computer, computer system, or computer network in violation of this
3 section.

4 (7) Knowingly and without permission accesses or causes to be accessed any
5 computer, computer system, or computer network.

6 Cal. Penal Code § 502(c). Limiting the application of section 502(c), however, is section 502(e)
7 which states that “the owner or lessee of the computer, computer system, ... who suffers damage or
8 loss by reason of a violation of any of the provisions of subdivision (c) may bring a civil action
9 against the violator for compensatory damages and injunctive relief or other equitable relief.” Thus,
10 in order to succeed on a section 502(c) claim, a plaintiff must have suffered damages. Similarly, the
11 CAN-SPAM Act authorizes any “provider of Internet access service adversely affected” by
12 violations of sections 7704(a)(1) or 7704 (b) of the Act to bring a civil action. 15 U.S.C. §
13 7706(g)(1). The discovery propounded in August which Plaintiffs admit to only recently
14 completing, is essential to proving that Plaintiffs cannot qualify as intended beneficiaries to this
15 statute. Defendants seek at least the time to fully analyze Plaintiffs’ production, which Plaintiffs
16 contend was completed two days after the Motion was filed, and the opportunity to depose the
17 appropriate parties regarding Plaintiffs’ systems.

18 **2. The CAN-SPAM Act**

19 On August 24, 2007, Defendants propounded document requests seeking information
20 regarding Plaintiff Facebook’s status as an Internet Service Provider, a status required to bring suit
21 under the CAN-SPAM Act. Additionally, Defendant’s requests were directed to determine the
22 extent that Facebook was “adversely affected” or suffered any “loss or damage” as a result of
23 Defendants alleged actions as required to bring suit under the CAN-SPAM Act and Penal Code
24 Section 502(c), respectively. Plaintiffs played games with their document production and instead of
25 producing new documents, pointed to numerous documents already served. Once Plaintiffs finally
26 began producing documents they did so on a “rolling basis” and refused to acknowledge that
27 production was complete until after they served the pending summary judgment motion. Once
28 again, Plaintiffs are playing games with discovery and the litigation process in general.

1 In *Visa*, the Ninth Circuit held that denial of a 56(f) motion while discovery requests
2 are still outstanding is “especially inappropriate.” *See Visa*, 748 F.2d at 1474. This is exactly the
3 situation Plaintiffs have created. Their conveniently timed “final” production may be an attempt to
4 avoid this issue, but Plaintiffs cannot possibly claim that because they have determined that
5 production is complete, discovery regarding the issue is closed. Clearly, Defendants need additional
6 time to review these newly produced documents, serve follow up discovery requests in response to
7 the documents received, and take appropriate depositions.

8 A preliminary analysis of the documents that have been produced establishes that
9 Plaintiffs have not fulfilled their discovery obligations, which may likely result in a motion to
10 compel. When production is complete, Defendants will notice and take a Rule 30(b)(6) deposition,
11 and elicit specific evidence negating some or even all of the claims for relief asserted in Plaintiffs’
12 Second Amended Complaint. Specifically, Defendants will establish that Plaintiffs experienced no
13 adverse effects or suffered any loss as a result of Defendants alleged actions. The ongoing discovery
14 and expected future discovery go to the heart of Plaintiffs’ Motion – allegations that Defendants
15 ConnectU and PNS violated the CAN-SPAM Act. Pursuant to Rule 56(f), Defendants are entitled to
16 complete this discovery before having to respond to the currently-pending summary judgment
17 motion.

18 **C. Defendants Need Additional Discovery to Develop an Affirmative Defense of**
19 **Unclean Hands Based on Documents Recently Produced by Plaintiffs in the**
20 **Massachusetts Action**

21 As explained above, on November 13, 2007, in response to an Order issued by the
22 U.S. District Court for the District of Massachusetts, Plaintiffs produced additional information
23 regarding relevant computer hard drives. Most importantly, Plaintiffs produced Facebook co-
24 founder and current employee Adam D’Angelo’s hard drive. These documents included a portion of
25 code evidencing repeated attempts by Mark Zuckerberg to hack into ConnectU’s website, and obtain
26 unauthorized access to ConnectU’s computer system. This is strong evidence of unclean hands, and
27 Defendants need to take the deposition of at least Mark Zuckerberg and Adam D’Angelo to
28 determine the extent of Mr. Zuckerberg’s hacking. Defendants expect this evidence will support one
or more of their affirmative defenses

1 **D. Defendants Need Additional Discovery to Depose Plaintiffs' Expert Chris Shiflet**

2 In support of their summary judgment motion, Plaintiffs submitted the declaration of
3 Chris Shiflet. This is the *first* time Defendants were ever notified of Mr. Shiflet, as Plaintiffs never
4 identified Mr. Shiflet in discussions with counsel for Defendants. As such, Defendants have not had
5 any opportunity to depose Mr. Shiflet or to otherwise take discovery related to his proposed
6 testimony.

7 Moreover, Mr. Shiflet's Declaration includes Exhibits that were not produced to
8 Defendants until *after* the filing of Plaintiffs' summary judgment motion. See Exhibits 1 through 3
9 of the Shiflet Declaration, Bates labeled FBCA051063--FBCA051132. These Exhibits make up
10 almost the entirety of the documents produced to the Defendants *after* the filing of Plaintiffs'
11 Motion; accompanied by a letter from Plaintiffs' counsel stating that "[w]e believe this
12 supplementation completes Plaintiffs' production in response to ConnectU's Second Request for the
13 Production of Documents, served August 24, 2007." (*See id.*: Exhibit P) Plaintiffs' Motion relies
14 heavily upon the Shiflet Declaration and the Exhibits that were not made available to Defendants
15 until after the filing of Plaintiffs' Motion. (*See, e.g.*, Plf.'s Mot. at 12:17-23.) Accordingly,
16 Plaintiffs' Motion raises new and unanticipated issues, and Defendants need additional time to
17 analyze the documents produced *after* the filing of Plaintiffs' Motion and to depose Mr. Shiflet in
18 order to properly respond to Plaintiffs' allegations that they have been damaged by Defendants'
19 alleged conduct. (*See e.g., id.*)

20 **E. Defendants Gucwa and Chang Were Only Recently Brought Into this Litigation**
21 **and Need Additional Time to Propound Discovery Requests Before Responding**
22 **to Plaintiffs' Summary Judgment Motion**

23 Defendants Gucwa and Chang did not Answer the allegations in Plaintiffs' Second
24 Amended Complaint until September, 2007. As stated in the fact section above, they should be
25 provided sufficient time to review the enormous number of documents and source code produced in
26 this case. Pursuant to Rule 56(f), the summary judgment should be stayed until this investigation
27 and their expected discovery efforts can be completed.
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