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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 FACEBOOK, INC., and MARK ZUCKERBERG,

14 Plaintiffs,

15 v.

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

17 Defendants.
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Case No.: 5:07-cv-01389-RS

**DEFENDANTS CONNECTU LLC,
PACIFIC NORTHWEST SOFTWARE,
INC., WINSTON WILLIAMS, AND
WAYNE CHANG'S OPPOSITION TO
PLAINTIFFS' ADMINISTRATIVE
REQUEST PURSUANT TO CIVIL L.R. 7-
11 FOR ORDER REQUIRING
DEFENDANTS TO PROVIDE DATES FOR
DEPOSITION**

1 Attempting to bury several small entities and individuals in paper, Plaintiffs (hereinafter
2 “Facebook”) file yet another unmeritorious motion, this one requesting an order compelling
3 Defendants to provide deposition dates. The motion is procedurally improper, and for that reason
4 alone it should be denied. There is no justification for the use of this Court’s Administrative Motion
5 process to make such a request--other than to require that Defendants respond within 3 days as
6 opposed to the usual 14 days. This procedure was undoubtedly used to distract Defendants from
7 their current activity of responding to two pending motions--a motion for summary judgment and a
8 different motion to compel.

9 Regarding the false claims asserted in this motion, Facebook fails to advise the Court that
10 Defendants have responded to Facebook’s inquiry, and Defendants are in the process of securing
11 dates for these depositions. And, most incredibly, Facebook fails to advise this Court that it sent
12 Defendants a letter at 3:00 p.m. on January 30, threatening to file this motion if Defendants did not
13 respond, and that Defendants *did* respond a few minutes later by stating that Facebook’s concerns
14 would be addressed once Defendants’ oppositions to the two currently-pending motions were filed.
15 (See attached, Exhibit A). (These oppositions are due on February 6, 2008.) Indeed, and in any
16 event, since discovery does not close for many months, there is no reason for this motion
17 whatsoever.

18 Facebook also fails to tell this Court that within the past week, the parties discussed the
19 setting of depositions, and, consistent with the statements made at the CMC, Defendants advised that
20 given two of the ConnectU principals’ current Olympic training, the actual scheduling of dates,
21 times and locations would be and is turning out to be complex. The parties discussed potential
22 locations (perhaps near Atlanta’s airport, or an airport in South Carolina) and the probability that the
23 deposition would have to occur in sessions so that it would not interfere with their training schedule.
24 That conversation occurred between Scott Mosko and Sean Lincoln, the *newest* member of the
25 Facebook legal team assigned to the case Facebook filed against Defendants in California-- a case in
26 which Plaintiffs have already admitted in deposition that they suffered absolutely no damages as a
27 result of the alleged acts in the Complaint. (So far, 8 lawyers have made appearances and/or filed
28 motions in this matter: I. Neel Chatterjee, Monte M.F. Cooper, Chester Wren-Ming Day, George

1 Hopkins Guy, III, Sean Alan Lincoln, Theresa Ann Sutton, Yvonne Penas Greer and Robert Nagel)

2 Facebook also fails to tell this Court that the parties discussed the request that the depositions
3 be set within 45 days, and Defendants responded that such proposal was “doable.”

4 Through this motion and its unsupported assertions, Facebook is seeking to impose on
5 Defendants what amounts to a double standard. Facebook fails to tell this Court that it leisurely
6 responds to discovery and requests for deposition dates, yet imposes arbitrary and unreasonable
7 production and response dates on Defendants. Indeed, Facebook is really the party who has delayed
8 the discovery activity in this case, *for example*, (a) waiting seven months before completing a
9 document production in response to Defendants’ initial document request [document requests served
10 on June 12, with a partial document production made on November 10, where documents continued
11 to trickle in through January 10], (b) waiting five months to complete a subsequent document
12 production in response to Defendants’ second document request [request served on August 24, 2007
13 with first production made on November 30, 2007 and most recent production made on January 8,
14 2008], (c) initially refusing to provide deposition dates to Defendants’ request for a Rule 30(b)(6)
15 deposition necessary to oppose the currently-pending summary judgment motion--and then later
16 offering dates after Defendants’ Opposition to said motion would be due, (d) serving a summary
17 judgment motion, and two days later serving documents Facebook knew had an impact on
18 Defendants’ ability to oppose the summary judgment motion, (e) waiting until the day before the
19 scheduled day for Mark Zuckerberg’s deposition and then postponing it for nearly 3 weeks, and
20 others.

21 It is also interesting the way Facebook characterizes the Court’s comments during the Case
22 Management Conference. The Court admonished the parties to act professionally and appropriately.
23 For example, the Court indicated that a reasonable time between conferences and due dates should
24 be recognized. It also suggested the parties respond to the request for conferences within a
25 reasonable time. This motion is quite inconsistent with the Court’s directive. As yet another
26 example of Facebook’s refusal to heed this Court’s directives, regarding the currently pending
27 motion to compel, Facebook sent a follow up letter after the meet and confer on a Friday, and
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demanded discovery responses five days later--where a holiday weekend encompassed three of those five days. If any party is acting inappropriately, it is Facebook.

Facebook's motion, for the above stated reasons, should be denied.

Dated: February 4, 2008

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