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8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN JOSE DIVISION

12 THE FACEBOOK, INC.,

13 Plaintiff,

14 v.

15 CONNECTU LLC, PACIFIC NORTHWEST
 16 SOFTWARE and WINSTON WILLIAMS,

17 Defendants.

Case No. 5:07-CV-01389-RS

**FACEBOOK'S MOTION TO
 RESCHEDULE THE JUNE 20, 2007
 CASE MANAGEMENT
 CONFERENCE**

1 TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT Plaintiff Facebook, Inc. hereby requests, pursuant to
3 Local Rules 7-11 and 16-2(d), that the Court reschedule the Case Management Conference
4 (“CMC”) currently scheduled for June 20, 2007, to April 25, 2007 or the earliest available date
5 before June 20, 2007. This case was pending in California Superior Court for more than 18
6 months before it was removed on March 9, 2007. The parties have engaged in substantial
7 discovery efforts and many issues are ripe for resolution. A CMC was set for April 26, 2007, at
8 which time Facebook believes the State Court would have scheduled a trial setting conference.
9 That CMC was interrupted when the case was removed to this Court on March 9, 2007.

10 Facebook believes the parties and the Court will avoid unnecessary delay and will benefit
11 from a revised schedule for this case, including a trial setting conference, as soon as possible in
12 order to accelerate the progress of this matter and any possible settlement negotiations. Facebook
13 also wishes to expeditiously continue the proceedings pending in State Court rather than put
14 everything on hold for several months. The facts and proceedings are set forth below.

15 In meet and confer discussions, counsel for defendants stated that a CMC is not
16 appropriate at this time because two motions to dismiss are currently pending. The current status
17 of these motions is of no import: 1) ConnectU has not moved to dismiss all claims asserted
18 against it; 2) ConnectU, in response to the original complaint, raised arguments identical to those
19 it raises now, and the Superior Court rejected them (overruling its demurrer); and 3) all of the
20 asserted claims arise from the same set of facts and circumstances. Defendants also have
21 contended in the parties’ meet and confer discussions that an early CMC is not appropriate
22 because two defendants, Pacific Northwest Software (“PNS”) and Winston Williams, are not yet
23 formally before the Court. One attorney represents all three defendants. As a result, no prejudice
24 will result to any of the defendants if the Court reschedules the CMC to an earlier date.

25 **Background**

26 On August 17, 2005, Facebook filed a complaint against ConnectU LLC and four
27 individuals alleging violations of California’s Penal Code Section 502(c) and common law
28 misappropriation laws. ConnectU, conceding jurisdiction in California, filed a Demurrer

1 asserting that Facebook failed to state a claim for which relief could be granted. The State Court
2 overruled ConnectU's Demurrer. At the same time ConnectU filed its Demurrer, the four
3 principals filed a Motion to Quash Service of Subpoena for Lack of Personal Jurisdiction, in
4 which they argued that any actions they took against Facebook were done in their capacities as
5 "members" of ConnectU LLC. They later recanted this position to avoid dismissal of a case
6 ConnectU filed against Facebook in the District of Massachusetts. The State Court granted the
7 Motion to Quash. Within two months of the order overruling ConnectU's Demurrer, ConnectU
8 filed a Motion to Stay the State Court action in favor of a related District of Massachusetts action
9 between Facebook (and its principals) and ConnectU. The State Court denied that motion, as
10 well.

11 During the course of discovery in this matter and the related Massachusetts action,
12 Facebook uncovered facts showing that PNS and Williams assisted in ConnectU's wrongdoing.
13 As a result, Facebook filed a motion for leave to amend its complaint to add PNS and Williams as
14 parties and allege additional causes of action. The State Court granted Facebook's motion and,
15 on February 23, 2007, Facebook filed a First Amended Complaint. In response, the defendants
16 filed a Notice of Removal. All defendants are represented by the same counsel, and that firm has
17 been counsel of record in this matter since it commenced.

18 At the time ConnectU filed the Notice of Removal on March 9, 2007, the following
19 activity was pending in the State Court action:

20 1. Facebook's Motion to Compel Further Responses to its Second Set of
21 Requests for Production of Documents was fully briefed by the parties and was set for hearing on
22 March 16, 2007. On that day the Honorable Peter Manoukian, perhaps unaware that the case had
23 been removed, issued an Order granting in-part Facebook's motion. In the Order, the State Court
24 ordered ConnectU to provide further responses, produce documents and produce a privilege log
25 within 20 days. Decl. of Theresa Sutton in Supp. of Mot. to Reschedule CMC ("Sutton Decl."),
26 Ex. A.

27 2. Seven depositions of non-party, out-of-state witnesses were scheduled over
28 the course of 10 days beginning on March 21, 2007. Two of the witnesses, iMarc, LLC and

1 David Gucwa, had agreed to appear voluntarily. The day before he was to appear, Mr. Gucwa
2 abruptly canceled his deposition. Facebook immediately received a letter from defendants'
3 counsel indicating that they now represent Mr. Gucwa. The other five witnesses, all of whom are
4 either officially represented by defendants' counsel or otherwise advised by them, simply refused
5 to appear. Facebook was forced to cancel iMarc's deposition so as not to unnecessarily incur
6 additional costs, but iMarc continues to ask Facebook to reschedule the deposition.

7 3. ConnectU's responses to Facebook's Second Set of Special Interrogatories,
8 which sought information about the location of the code defendants used to hack into Facebook's
9 website, were due on March 27, 2007. *Id.*, Ex. B. ConnectU did not respond.

10 4. PNS agreed to produce additional documents in response to a subpoena
11 issued to it prior to its involvement as a party in this matter. *Id.*, Ex. C. Those documents have
12 not been produced.

13 5. PNS agreed to set a day to continue its deposition. *Id.*, Ex. D. Facebook
14 attempted to depose PNS in January 2007. Mr. Taves, PNS' CEO, appeared on behalf of the
15 company but had made no effort to prepare for the deposition, despite the detailed list of topics
16 contained in the subpoena. *Id.*, Ex. E. As a result, he was unable to substantively answer many
17 questions. After meeting and conferring with defendants' counsel, PNS agreed to appear again
18 — after being adequately prepared to testify. No date has been set for that deposition.

19 Facebook wishes to pick up where it left off in the State Court proceedings and, as
20 a result, asks the Court to reschedule the CMC for the earliest available date.

21 **Meet and Confer Efforts**

22 On Friday, March 6, 2007, Counsel for the parties met and conferred to reach an
23 agreement about rescheduling the CMC. Counsel for defendants opposes this motion for an early
24 CMC because defendants believe the CMC should await the outcome of the pending motions to
25 dismiss. For the reasons stated above, Facebook disagrees. As a result, the parties were unable to
26 agree on whether the CMC should be rescheduled.

27 **Proposed Case Management Schedule**

28 Facebook proposes the following case management and ADR schedule. A copy of this

1 schedule was emailed to counsel for defendants on Friday, March 6, 2007, but defendants'
 2 counsel has not yet commented on it.

Date	Event	Governing Rule
3/9/2007	Notice of removal filed	
4/25/2007	INITIAL CASE MANAGEMENT CONFERENCE (CMC) in Courtroom 4, 5th Floor, SJ at 2:30 P.M.	Civil_L.R. 16-10
5/15/2007	Last day to: <ul style="list-style-type: none"> • meet and confer re: initial disclosures, early settlement, ADR process selection, and discovery plan • file Joint ADR Certification with Stipulation to ADR Process or Notice of Need for ADR Phone Conference 	FRCivP_26(f) & ADR L.R.3-5 Civil_L.R. 16-8
6/1/2007	Last day to file Rule 26(f) Report, complete initial disclosures or state objection in Rule 26(f) Report and file Case Management Statement per attached Standing Order re Contents of Joint Case Management Statement (also available at http://www.cand.uscourts.gov)	FRCivP 26(a) (1) Civil_L.R. 16-9

19 **I. CONCLUSION**

20 For the foregoing reasons, Facebook respectfully requests that the Court grant its Motion
 21 to Reschedule the June 20, 2007 CMC to April 25, 2007 or another early date at the Court's
 22 convenience.

23 Dated: April 9, 2007

ORRICK, HERRINGTON & SUTCLIFFE LLP

25 /s/ I. Neel Chatterjee /s/
 26 I. Neel Chatterjee
 27 Attorneys for Plaintiff
 28 THE FACEBOOK, INC.