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11 Attorneys for Plaintiff  
 FACEBOOK, INC.

12  
 13 **UNITED STATES DISTRICT COURT**  
 14 **NORTHERN DISTRICT OF CALIFORNIA**  
 15 **SAN JOSE DIVISION**

17 FACEBOOK, INC.,  
 a Delaware corporation,  
 18  
 Plaintiff,

19 v.

20 JOHN DOES 1-10, individuals; and JOHN  
 21 DOES 11-20, corporations,  
 22 Defendants.

Case No. C-07-03404 HRL

**EX PARTE APPLICATION BY  
 FACEBOOK, INC. FOR ORDER  
 SHORTENING TIME FOR HEARING ON  
 FACEBOOK, INC.'S MEMORANDUM  
 OF POINTS AND AUTHORITIES IN  
 SUPPORT OF MOTION FOR LEAVE TO  
 TAKE FURTHER DISCOVERY, TO  
 ISSUE LETTERS ROGATORY, AND TO  
 CONTINUE CASE MANAGEMENT  
 CONFERENCE**

Date: October 23, 2007  
 Time: 10:00 a.m.  
 Dept.: 2, 5th Floor  
 Before: Honorable Howard R. Lloyd

1 Plaintiff Facebook, Inc. ("Facebook") hereby moves this Court, pursuant to Local Rule 6-3  
2 of the California Rules of Court for an Order Shortening Time for Hearing on Facebook's Motion  
3 for Leave to Take Further Discovery, to Issue Letters Rogatory, and to Continue the Case  
4 Management Conference.

5 Facebook requests that the Court hear its Motion on September 25, 2007, or as soon  
6 thereafter as the matter may be heard. This Application is made on the grounds that hearing the  
7 Motion on a regular briefing schedule will cause Facebook substantial harm since the electronic  
8 data sought in Facebook's Motion can be easily destroyed or deleted and this data is central to the  
9 claims alleged in Facebook's complaint. Time is of the essence in this case since the identities of  
10 the John Doe defendants are likely in the possession of third-parties, Look Communications, Inc.  
11 ("Look") and Rogers Communications, Inc. ("Rogers"). Apart from the information on Look's and  
12 Rogers' servers, Facebook does not have any other reasonable means to learn the identities of the  
13 subscribers using these IP addresses. Facebook has good cause to proceed with its discovery on  
14 Rogers and Look, pursuant to Rule 26(d), since its case will not proceed without the information  
15 currently in Rogers' and Look's possession.

16 On July 13, 2007, the Court granted Facebook's *Ex Parte* Motion, in part, for leave to take  
17 discovery on Accretive, based on Facebook's good faith belief that Accretive had data in its  
18 possession revealing the identity of the person or entity behind these unlawful attempts.  
19 Subsequently, Facebook served a subpoena on Accretive, pursuant to Rule 45 of the Federal Rules  
20 of Civil Procedure. In response to this subpoena, Accretive provided Facebook with a hosting  
21 agreement indicating that the IP address at issue was subleased to "1564476 Ontario Limited," an  
22 entity in Canada that is affiliated with an online pornography company doing business at  
23 [www.slickcash.com](http://www.slickcash.com). Accretive also produced server logs from the server bearing IP address  
24 216.127.50.20, which was used to attack Facebook's site, indicating that the commands to gain  
25 unauthorized access and launch malicious code on Facebook's site were sent to that server by IP  
26 addresses registered to Look and Rogers. Based on the information contained in Accretive's  
27 server logs, Facebook believes that the Look and Rogers subscribers are likely the John Does  
28

1 identified in Facebook’s complaint as defendants; the same individuals who uploaded the scripted  
2 commands to Accretive’s server to attack Facebook’s site. Facebook has no reasonable means to  
3 obtain the information related to the identity of the John Does without access to the information in  
4 Look’s and Rogers’ possession as well as access to the information contained on the subject  
5 server.

6 This Application is based upon the attached Memorandum of Points and Authorities and  
7 the Declaration of Lisa D. Olle in Support of Facebook, Inc.’s Memorandum of Points and  
8 Authorities in Support of Motion for Leave to Take Further Discovery, to Issue Letters Rogatory,  
9 and to Continue Case Management Conference (“Olle Decl.”) filed concurrently herewith, the  
10 complete files and records in this action, and any oral argument with regard to this Application.

11 Facebook therefore respectfully requests that this Court grant its Application for an Order  
12 Shortening Time for Hearing on its Motion for Leave to Take Further Discovery, to Issue Letters  
13 Rogatory, and to Continue Case Management Conference.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. BACKGROUND FACTS**

On June 28, 2007, Facebook filed a complaint against John Does 1-10, individual and John Does 1-10, corporations (“Complaint”). In its Complaint, Facebook alleges that the John Doe defendants violated the Computer Fraud and Abuse Act, 18. U.S.C. § 1030 and the California Comprehensive Data Access and Fraud Act, Cal. Penal Code § 502(c) when they unlawfully accessed Facebook’s proprietary computer system located at: <http://www.facebook.com> more than 200,000 times from a single IP address.

Facebook, relying on publicly available information, researched the identity of this IP address and learned that IP Address 216.127.50.20 is associated with Accretive. On July 13, 2007, the Court granted Facebook’s *Ex Parte* Motion, in part, for leave to take discovery on Accretive, based on Facebook’s good faith belief that Accretive had data in its possession revealing the identity of the person or entity behind these unlawful attempts. Subsequently, Facebook served a subpoena on Accretive, pursuant to Rule 45 of the Federal Rules of Civil Procedure. In response to this subpoena, Accretive provided Facebook with a hosting agreement indicating that the IP address at issue was subleased to “1564476 Ontario Limited,” an entity in Canada that is affiliated with an online pornography company doing business at [www.slickcash.com](http://www.slickcash.com). Accretive also produced server logs from the server bearing IP address 216.127.50.20, which was used to attack Facebook’s site, indicating that the commands to gain unauthorized access and launch malicious code on Facebook’s site were sent to that server by IP addresses registered to Look and Rogers. On September 6, 2007, Facebook sent preservation letters to both Look and Rogers requesting that they preserve all logs, records, data, and other information relating to these IP addresses. Both Look and Rogers responded to these preservation requests stating that they had preserved the subscriber information for the IP addresses and stated that Facebook would be required to seek a court order, from a Canadian Court, via letters rogatory, in order to obtain this subscriber information. *See* Declaration of Joseph Cutler in support Facebook's Motion for Leave to Take Further Discovery, to Issue Letters Rogatory, and to Continue Case Management Conference at ¶

1 4. Apart from the information on Look's and Rogers' servers, Facebook does not have any other  
2 reasonable means to learn the identities of the subscribers using these IP addresses.

3 **II. ARGUMENT**

4 Facebook will suffer substantial hardship if this Court hears its Motion on a normal  
5 briefing schedule. Facebook has been and continues to be harmed by these unlawful attempts to  
6 access Facebook's proprietary computer system. Time is of critical importance given the fact that  
7 the data revealing the identity of the person or entity behind these unlawful attempts is in Look's  
8 and Rogers' possession and could easily be deleted, overwritten, or otherwise destroyed.  
9 Furthermore, apart from the information on Look's and Rogers' servers, Facebook does not have  
10 any other reasonable means to learn the identity of IP Address 216.127.50.20. Without the  
11 evidence that is in Look's and Rogers' possession, Facebook would not be able to pursue this  
12 lawsuit against the defendants that are responsible for unlawfully attempting to access Facebook's  
13 computer system in direct violation of the laws that were specifically enacted to protect companies  
14 such as Facebook.

15 The reasoning behind Facebook's Motion is sound, but delaying a decision on this Motion  
16 would significantly prejudice Facebook since it would allow over five weeks to lapse without  
17 acting to preserve fragile electronic evidence, which is integral to Facebook's case.

18 In addition, shortening the briefing schedule would not cause the John Doe defendants any  
19 harm since their identities are presently unknown and they have not yet been served with this  
20 Complaint.

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1 **III. CONCLUSION**

2 For the foregoing reasons, the Court should grant Facebook's *Ex Parte* Application for  
3 Order Shortening Time for Hearing on Facebook's Motion for Leave to Take Further Discovery, to  
4 Issue Letters Rogatory, and to Continue Case Management Conference.

5  
6 Dated: September 20, 2007

**PERKINS COIE LLP**

7  
8 By:                     /s/                      
                    Lisa D. Olle

9 Attorneys for Plaintiff  
10 FACEBOOK, INC.  
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