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8 **UNITED STATES DISTRICT COURT**  
 9 **NORTHERN DISTRICT OF CALIFORNIA**  
 10 **SAN JOSE DIVISION**  
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12 FACEBOOK, INC.,  
 a Delaware corporation,

13 Plaintiff,

14 v.

15 JOHN DOES 1-10, individuals; and JOHN  
 16 DOES 11-20, corporations,

17 Defendants.  
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Case No. C-07-03404 HRL

**EX PARTE APPLICATION FOR ORDER  
 SHORTENING TIME FOR HEARING ON  
 FACEBOOK, INC.'S MOTION FOR  
 LEAVE TO TAKE DISCOVERY ON  
 ACCRETIVE TECHNOLOGY GROUP,  
 INC. AND FCI, INC.**

Date: August 14, 2007  
 Time: 10:00 a.m.  
 Dept.: 2, 5th Floor  
 Before: Honorable Howard R. Lloyd

20  
 21 Plaintiff Facebook, Inc. ("Facebook") hereby moves this Court, pursuant to Local Rule 6-3  
 22 of the California Rules of Court for an Order Shortening Time for Hearing on Facebook's *Ex*  
 23 *Parte* Application For Order Shortening Time For Hearing On Facebook, Inc.'s Motion For Leave  
 24 To Take Discovery On Accretive Technology Group, Inc. and FCI, Inc. ("Motion").

25 Facebook requests that the Court hear its Motion as soon as the Court's calendar permits.  
 26 This Application is made on the grounds that hearing the Motion on a regular briefing schedule  
 27 will cause Facebook substantial harm since the electronic data sought in Facebook's Motion can  
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1 be easily destroyed or deleted and this data is central to the claims alleged in Facebook's  
2 complaint. *See* Declaration of Lisa D. Olle ("Olle Decl.") ¶ 3. Time is of the essence in this case  
3 since the identities of the John Doe defendants are likely in the possession of third-parties,  
4 Accretive Technology Group, Inc. ("Accretive") and FCI, Inc. ("FCI"). *Id.* To date, both  
5 Accretive and FCI have refused to voluntarily provide Facebook with the information necessary  
6 for Facebook to learn the identities of the person(s) or entities associated with IP Address  
7 216.127.50.20 despite the fact that this IP Address is responsible for all 200,000 requests targeting  
8 Facebook's proprietary computer system and is assigned to Accretive. Olle Decl. ¶ 4.

9 This Application is based upon the attached Memorandum of Points and Authorities and  
10 the Declaration of Lisa D. Olle in Support of Facebook, Inc.'s *Ex Parte* Application for Order  
11 Shortening Time for Hearing on Facebook, Inc.'s Motion for Leave to Take Discovery on  
12 Accretive Technology Group and FCI, Inc ("Olle Decl.") filed concurrently herewith, the complete  
13 files and records in this action, and any oral argument with regard to this Application.

14 Facebook therefore respectfully requests that this Court grant its Application for an Order  
15 Shortening Time for Hearing on its *Ex Parte* Motion for Leave to Take Discovery on Accretive  
16 Technology Group and FCI, Inc.

## 17 **MEMORANDUM OF POINTS AND AUTHORITIES**

### 18 **I. BACKGROUND FACTS**

19 On June 28, 2007, Facebook filed a complaint against John Does 1-10, individual and John  
20 Does 1-10, corporations ("Complaint"). In its Complaint, Facebook alleges that the John Doe  
21 defendants violated the Computer Fraud and Abuse Act, 18. U.S.C. § 1030 and the California  
22 Comprehensive Data Access and Fraud Act, Cal. Penal Code § 502(c) when they unlawfully  
23 accessed Facebook's proprietary computer system located at: <http://www.facebook.com> more than  
24 200,000 times from a single IP address.

25 Facebook, relying on publicly available information, researched the identity of this IP  
26 address and learned that IP Address 216.127.50.20 is associated with Accretive. Upon learning  
27 this information, Facebook requested that Accretive and FCI preserve and produce to it all  
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1 evidence related to the use of the offending IP address' unauthorized attempts to access Facebook.  
2 *See Preservation Letters sent to Accretive and FCI on June 15, 2007*, Olle Decl., ¶¶ 8, 9, Exhibits  
3 A and B. To date, Accretive and FCI have refused to voluntarily provide this evidence to  
4 Facebook. Olle Decl. ¶ 4.

## 5 **II. ARGUMENT**

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

18 The reasoning behind Facebook's Motion is sound, but delaying a decision on the Motion  
19 would significantly prejudice Facebook since it would allow over five weeks to lapse without  
20 acting to preserve fragile electronic evidence, which is integral to Facebook's case. If the Motion  
21 were heard on a regular noting schedule, relevant evidence might likely be destroyed and  
22 Facebook would have no means to reverse the severe prejudice that it would inevitably suffer.

23 Further, no party will be prejudiced by the Court's immediate consideration of Facebook's  
24 Ex Parte Motion for Leave to Take Discovery on Accretive Technology Group, Inc. and FCI, Inc.,  
25 because there will be no response to the Motion. The identity of the John Doe defendants is  
26 currently unknown and is the subject of the Motion. Olle Decl. ¶ 7.

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 Discovery on  
4 Accretive Technology Group, Inc. and FCI Inc.

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6 Dated: July 3, 2007

**PERKINS COIE LLP**

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8 By: \_\_\_\_\_ /s/  
Lisa D. Olle

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Attorneys for Plaintiff  
FACEBOOK, INC.

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