UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS MARSHALL DIVISION

FPX, LLC d/b/a FIREPOND,

S Civil Action No. 2:09-cv-00142-TJW-CE
Individually and on Behalf of All Others
Similarly Situated,

Plaintiff,

V.

GOOGLE, INC., YOUTUBE, LLC, AOL,
LLC, TURNER BROADCASTING
SYSTEM, INC., MYSPACE, INC. AND
IAC/INTERACTIVECORP,

Defendants.

S Civil Action No. 2:09-cv-00142-TJW-CE

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JURY TRIAL REQUESTED

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JOINT MOTION TO CONTINUE CERTAIN DEADLINES

Plaintiff FPX, LLC d/b/a Firepond ("Plaintiff") and Defendants Google Inc., YouTube, LLC, AOL INC, Turner Broadcasting System, Inc., MySpace, Inc., and IAC/InterActiveCorp (collectively "Defendants") hereby jointly move the Court to continue the deadlines and hearing date set forth in the Court's November 6, 2009 Docket Control Order ("DCO") relating to class certification and *Daubert/Kumho* motions, and would respectfully show the Court the following:

1. Under the DCO, the deadline for Plaintiff to file its Motion for Class Certification is August 17, 2010; the deadline for Defendants to file oppositions to Plaintiff's Motion for Class Certification is September 17, 2010; the deadline for Plaintiff to file its Reply to Defendants' oppositions to Plaintiff's Motion for Class Certification is October 1, 2010; and the deadline for Defendants to file Sur-Replies on Plaintiff's Reply to Defendants' oppositions to Plaintiff's Motion for Class Certification is October 15, 2010. In addition, the hearing on Plaintiff's Motion for Class Certification is set for 9:30 a.m. on October 26, 2010.

Joint Motion to Continue Certain Deadlines – Page 1

- 2. Under the DCO, the parties' deadline to file *Daubert/Kumho* challenges is August 17, 2010.
- 3. Certain counsel for Plaintiff have a trial setting in this Court the first two weeks of August 2010. Accordingly, conditioned upon the Court's approval, Plaintiff has requested, and Defendants have agreed, to continue each of the aforementioned deadlines for approximately 30 days as follows:
 - a. Deadline for Plaintiff to file Motion for Class Certification: September 17, 2010.
- b. Deadline for Defendants to file Opposition to Plaintiff's Motion for Class Certification: **October 18, 2010.**
- c. Deadline for Plaintiff to file a Reply to Defendants' Opposition to Plaintiff's Motion for Class Certification: **November 1, 2010.**
- d. Deadline for Defendants to file a Sur-Reply on Plaintiff's Reply to Defendants' Opposition to Plaintiff's Motion for Class Certification: **November 15, 2010.**
- e. Hearing on Plaintiff's Motion for Class Certification: Subject to the Court's revised setting.
- f. Deadline to file a *Daubert/Kumho* challenge to any expert witness designated in accordance with the DCO: **September 17, 2010.**
- 4. Finally, the discovery deadline under the DCO is Friday, July 30, 2010. Conditioned upon the Court's approval, Plaintiff has requested, and Defendants have agreed, to allow Plaintiff to take the deposition of Defendants' expert, Dr. Itamar Simonson, after the close of discovery, namely, on a mutually agreeable date at the end of August, 2010. The parties respectfully ask the Court for leave to allow Plaintiff to take this deposition after the discovery deadline.
- 5. These extensions will not impact any other deadlines imposed by this Court or interfere with the orderly preparation of the case.
 - 6. These extensions are being requested not to delay the case but so that justice can be done.

WHEREFORE, PREMISES CONSIDERED, the parties respectfully request that the Court grant this Motion and revise the Docket Control Order accordingly.

Respectfully submitted,

/s/ Marc A. Fenster

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2010, I electronically submitted the foregoing

document with the clerk of the court for the U.S. District Court, Eastern District of Texas, using

the electronic case files system of the court. The electronic case files system sent a "Notice of

Electronic Filing" to individuals who have consented in writing to accept this Notice as service

of this document by electronic means. All other counsel of record not deemed to have consented

to electronic service were served with a true and correct copy of the foregoing by first class mail

today, August 4, 2010.

/s/ Charles L. Babcock

Charles L. Babcock