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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JCS

CV 16 80 199 MISC

11 SOCIAL RANGER, LLC,
12 Plaintiff,
13 vs.
14 FACEBOOK, INC.,
15 Defendant.

) Case No:
) Case No.: 14-1525-LPS pending in the District
) of Delaware

) CROWDSTAR, INC., PETER RELAN,
) AND NIREN HIRO SHAMDASANI'S
) MOTION TO QUASH SUBPOENAS
) ISSUED BY SOCIAL RANGER, LLC;
) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT OF
) MOTION

) Date:
) Time:
) Judge:

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TABLE OF CONTENTS

NOTICE OF MOTION AND MOTION TO QUASH..... 1

MEMORANDUM OF POINTS AND AUTHORITIES 2

 I. PRELIMINARY STATEMENT 2

 II. STATEMENT OF FACTS 4

 A. The Social Ranger Antitrust Litigation 4

 B. CrowdStar’s Business, Mr. Shamdasani, and Mr. Relan 4

 C. Subpoena Requests..... 5

 III. SOCIAL RANGER’S SUBPOENAS SHOULD BE QUASHED..... 7

 A. Social Ranger’s Subpoena Has Little, If Any, Relevance to the Claims or Defenses of
 Any Party and are Unduly Burdensome 7

 B. Social Ranger’s Subpoenas Should Be Quashed for Seeking Confidential Information,
 and Seeking Information Available Elsewhere..... 9

 IV. CONCLUSION 11

TABLE OF AUTHORITIES

Cases

Beinin v. Ctr. for the Study of Popular Culture,
 No. 06-cv-2298, 2007 U.S. Dist. LEXIS 22518 (N.D. Cal. Mar. 16, 2007) 7, 9

Broadband iTV Inc. v. Hawaiian Telecom,
 Case No. 15-80053 HRL, 2015 WL 1778432 (N.D. Cal. April 17, 2015)..... 10

Dart Indus. Co., Inc. v. Westwood Chem. Co., Inc.,
 649 F.2d 646 (9th Cir. 1980) 9

In re eBay Seller Antitrust Litigation,
 2009 WL 5205961 (W.D. Wa. Dec. 23, 2009)..... 8, 10

McErlain v. Park Plaza Towers Owners Ass’n,
 No. 13-cv-03232, 2013 U.S. Dist. LEXIS 179176 (N.D. Cal. Dec. 19, 2013)..... 9

Nidec Corp. v. Victor Co.,
 249 F.R.D. 575 (N.D. Cal. 2007)..... 11

Social Ranger, LLC v. Facebook, Inc.,
 Civil Action No. 14-1525-LPS (D Del.)..... 1

Verinata Health, Inc. v. Sequenom, Inc.,
 No. C 12-00865 SI, 2014 WL 2582097(N.D. Cal. June 9, 2014)..... 9, 10

VirnetX, Inc. v. Apple Inc.,
 No. 14-mc-80013, 2014 U.S. Dist. LEXIS 130933 (N.D. Cal. Mar. 21, 2014) 8

Statutes

Fed. R. Civ. P. 26(b) 1

Fed. R. Civ. P. 26(b)(1)..... 6

Fed. R. Civ. P. 26(b)(2)(C)(i) 11

Fed. R. Civ. P. 45(d)..... *passim*

NOTICE OF MOTION AND MOTION TO QUASH

Pursuant to Federal Rules of Civil Procedure 26(b) and 45(d), non-parties CrowdStar, Inc. ("CrowdStar"), Peter Relan ("Relan") and Niren Hiro Shamdasani ("Shamdasani") hereby move to quash subpoenas seeking deposition testimony issued to Mr. Shamdasani and Mr. Relan by Social Ranger, LLC in connection with *Social Ranger, LLC v. Facebook, Inc.*, Civil Action No. 14-1525-LPS (D Del.).

This Motion is based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities in Support of Motion, the Declaration of Niren Hiro Shamdasani, the Declaration of Peter Relan, and the Declaration of Steven S. Kaufhold, and all exhibits attached thereto.

Dated: September 21, 2016

Respectfully submitted,



KAUFHOLD GASKIN LLP
STEVEN S. KAUFHOLD
*Attorneys for CrowdStar Inc., Peter Relan,
Niren Hiro Shamdasani*

MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

CrowdStar, Inc.¹ (“CrowdStar”), Peter Relan, CrowdStar’s chairman and co-founder, and Niren Hiro Shamdasani, CrowdStar’s former CEO, seek to quash third-party subpoenas issued by Social Ranger, LLC.² On December 29, 2014, Social Ranger, LLC (“Social Ranger”) sued Facebook, Inc. (“Facebook”) in the District of Delaware for violations of federal antitrust law contending that Facebook used its dominance in the social game network market to obtain a monopoly in the virtual-currency services market. CrowdStar, Mr. Relan, and Mr. Shamdasani are not parties to that antitrust litigation, have no relationship whatsoever to the antitrust litigation, and have very little, if any, information that is relevant to the claims or defenses of the antitrust litigation. This is particularly true with respect to Mr. Relan and Mr. Shamdasani.

This motion is properly heard by this court because compliance is required in the Northern District of California. Fed. R. Civ. P. 45(d)(3).

CrowdStar is a developer of mobile games, specifically targeted to entertainment for females. Mr. Shamdasani is CrowdStar’s former CEO, having left its employ over five years ago. Mr. Relan is CrowdStar’s Chairman of the Board and co-founder. They have no information relevant to Facebook’s alleged motives or intent in any purported monopolization nor do they have information relevant to Social Ranger’s alleged damages. The subpoenas are

¹ CrowdStar joins in this Motion because it seeks to protect its confidential and sensitive commercial information, which Social Ranger is requesting from the depositions of Mr. Shamdasani and Mr. Relan.

² Social Ranger served a subpoena for documents on CrowdStar on August 16, 2016, to which CrowdStar served objections on August 29, 2016. That subpoena is not the subject of this Motion, but it provides some insight into the type of information CrowdStar seeks from Mr. Shamdasani and Mr. Relan. The parties are currently meeting and conferring on the types of documents CrowdStar will produce in response to the subpoena.

1 overbroad, seek CrowdStar's highly confidential business information, and seek information that
2 could be obtained from other sources, namely the parties in their own litigation. Mr. Relan, and
3 Mr. Shamdasani should not be burdened with these subpoenas, and the Court should quash
4 Social Ranger's subpoenas in their entirety pursuant to Fed. R. Civ. P. 45(d) and 26(b).

5 First, Social Ranger's subpoenas seek information that is not relevant to its antitrust
6 litigation. Neither CrowdStar, nor Mr. Relan nor Mr. Shamdasani are parties to the litigation and
7 they are not accused of participating in any actions which would constitute an antitrust violation.
8 To the extent that Social Ranger seeks testimony to support a claim of its harm, CrowdStar's
9 operations and financial conditions have little, if any, relevance to any harm claimed by Social
10 Ranger in its litigation against Facebook.
11

12 Second, the subpoenas seek highly confidential information. *See, e.g.* Declaration of
13 Steven S. Kaufhold ("Kaufhold Decl."), Ex. A at Request No 9 (seeking documents showing
14 revenue generated by CrowdStar on every platform). CrowdStar is not a public corporation. *Id.*
15 ¶ 2. Mr. Shamdasani, upon leaving CrowdStar, signed a non-disclosure agreement which
16 restricts his divulgement of CrowdStar's confidential information regarding its finances,
17 operations, and business strategies. Declaration of Niren Hiro Shamdasani ("Shamdasani Decl.")
18 ¶ 9. Likewise, Mr. Relan, as Chairman of the Board and co-founder of CrowdStar, can attest that
19 CrowdStar keeps its information regarding its business model, financial conditions, and
20 marketing of games confidential and private and such disclosures would be detrimental to its
21 business. Declaration of Peter Relan ("Relan Decl.") ¶ 9.
22

23 Third, enforcing the subpoena would be unduly burdensome on non-parties CrowdStar,
24 Mr. Relan, and Mr. Shamdasani. As discussed *supra*, the subpoenas seek confidential
25 information. Additionally, the subpoenas seek information that is more readily available from
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1 the parties to the litigation. Significantly, Mr. Relan and Mr. Shamdasani are executives with
2 heavy commitments, including work and personal commitments, and would be unduly burdened
3 with having to appear for a deposition. Relan Decl. ¶ 3 (Mr. Relan's immediate family member
4 was diagnosed with a serious medical issue and he has since become the sole provider and
5 caretaker for his two children); *id.* ¶ 4-7 (Mr. Relan works at several companies and is on the
6 board of several entities); Shamdasani Decl. ¶ 6 (business travel plans in September). Thus,
7 CrowdStar, Mr. Relan, and Mr. Shamdasani should not have to spend their valuable time and
8 money to provide this discovery. *See* Shamdasani Decl. ¶¶ 5-8; Relan Decl. ¶¶ 3-7.
9

10 **II. STATEMENT OF FACTS**

11 **A. The Social Ranger Antitrust Litigation**

12 Social Ranger filed suit on December 29, 2014 in the District of Delaware alleging that
13 Facebook, Inc. violated antitrust laws by using its dominance in the social-game network market
14 to obtain a monopoly in the virtual-currency services market. CrowdStar, Mr. Relan, and Mr.
15 Shamdasani were not accused of violating any antitrust laws Social Ranger's complaint and are
16 not parties to the litigation. *See* Kaufhold Decl., ¶ 3.
17

18 **B. CrowdStar's Business, Mr. Shamdasani, and Mr. Relan**

19 CrowdStar is a non-public company (Relan Decl. ¶ 2) that develops of mobile and social
20 games. *See* Kaufhold Decl. ¶ 2. CrowdStar develops games on several different application
21 platforms including on Apple App Store, Google Play, and Amazon App Store. CrowdStar
22 previously developed games for the Facebook application but around February 2012, it
23 announced its desire to focus on the mobile market and would not be creating new games for the
24 Facebook platform.
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1 Mr. Shamdasani served as CrowdStar's Chief Executive Officer from April 2010 to
2 January 2011. Shamdasani Decl. ¶ 2. Mr. Shandasani signed a non-disclosure agreement with
3 CrowdStar upon leaving the company. *Id.* ¶ 9. Mr. Shamdasani currently has a variety of
4 professional commitments, including being the co-founder of another company and being
5 engaged in five other start-up companies. *Id.* ¶¶ 7, 8. He also has extensively travel plans
6 throughout the month of September. *Id.* ¶ 6.

8 Mr. Relan serves as the Chairman to CrowdStar's Board of Directors and is its co-
9 founder. Relan Decl. ¶ 1. In addition, Mr. Relan has a long list of professional commitments
10 and works for other companies and serves on a variety of boards. Relan Decl. ¶¶ 4-7. Most
11 significantly, Mr. Relan's immediate family member was diagnosed with a serious medical issue,
12 leaving him to be the sole provider for his two children and the caretaker for said family member
13 undergoing intense medical treatment. Relan Decl. ¶ 3.

15 C. Subpoena Requests

16 Social Ranger served a subpoena on August 30, 2016 on Mr. Shamdasani seeking his
17 deposition testimony. *See* Shamdasani Decl. ¶ 4. Social Ranger also served a subpoena on Mr.
18 Relan seeking his deposition testimony. Kaufhold Decl. ¶ 7. Prior to the service of these
19 subpoenas, Mr. Relan and Mr. Shamdasani had no knowledge of the lawsuit between Social
20 Ranger and Facebook. Shamdasani Decl. ¶ 5; Relan Decl. ¶ 8. In the meet and confer process,
21 Social Ranger's counsel stated that they wished to take the depositions of Mr. Shamdasani and
22 Mr. Relan in relating to their role at CrowdStar. Kaufhold Decl. ¶ 13. The information sought is
23 extremely burdensome and intrusive and it provides little, if any, value to the antitrust litigation.
24 Though it is unclear precisely the testimony and information Social Ranger seeks from Mr.
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1 Shamdasani and Mr. Relan, its subpoena to CrowdStar for documents suggest that it may seek
2 testimony and information which is readily available from Facebook, such as:

- 3 • All documents relating to Facebook's efforts to get You to use Facebook Credits
4 and/or Facebook Credits offers, including, but not limited to, Your internal
5 consideration of whether to use Facebook's services over those offered by other
6 Virtual Currency Service Providers. (Request No. 1.)
- 7 • Your agreements with Facebook relating to Facebook Credits or Facebook
8 Platform, including all addenda and amendments, and all drafts and final versions.
9 (Request No. 2.)

10 Additionally, numerous requests seek information about CrowdStar's confidential
11 finances and strategies, including:

- 12 • Documents sufficient to show revenue You generated from the provision of
13 virtual goods or virtual currency, either directly or through offer walls, on
14 Facebook Platform and on each other platform where You offered Your games.
15 (Request No. 9.)
- 16 • Documents sufficient to show the number of Your monthly active users over time
17 on Facebook Platform and on each other platform where You offered Your
18 games. (Request No. 10.)

19 Kaufhold Decl. ¶ 4, Ex. A.

20 Concurrent with the filing of this motion, Mr. Shamdasani and Mr. Relan served Social
21 Ranger with responses and objections to the subpoenas.³ See Kaufhold Decl. ¶¶ 14-15. Mr.
22 Shamdasani and Mr. Relan objected to the subpoenas on multiple applicable grounds, including
23 *inter alia* that the subpoena: (1) sought CrowdStar's highly confidential business information; (2)
24 sought irrelevant information; (3) sought information that was publicly available from the
25 defendants in the antitrust litigation; and (4) imposed an undue burden on Mr. Shamdasani and
26 Mr. Relan.

27 ³ In compliance with the Local Rules of this Court, counsel for CrowdStar, Mr. Relan, Mr.
28 Shamdasani met and conferred with Social Ranger's counsel prior to service of the responses and
objections to the subpoenas and the filing of this action. See Kaufhold Decl. ¶¶ 8-13.

1 **III. SOCIAL RANGER'S SUBPOENAS SHOULD BE QUASHED**

2 **A. Social Ranger's Subpoena Has Little, If Any, Relevance to the Claims or**
3 **Defenses of Any Party and are Unduly Burdensome**

4 Social Ranger's subpoenas seek irrelevant information and pose costs that are not
5 proportional to the needs of the case, and should thus be quashed. *See* Fed. R. Civ. P. 26(b)(1)
6 (discovery is limited to matters "relevant to any party's claim or defense and proportional to the
7 needs of the case"); *see also* *Beinin v. Ctr. for the Study of Popular Culture*, No. 06-cv-2298,
8 2007 U.S. Dist. LEXIS 22518 at *4-5 (N.D. Cal. Mar. 16, 2007) (stating that the Fed. R. Civ. P.
9 26(b)(1) relevancy standard also applies to third-party subpoenas). Social Ranger's subpoena
10 must also be quashed because it imposes an unjustified burden on CrowdStar, Mr. Relan and Mr.
11 Shamdasani. *See* Fed. R. Civ. P. 45(d)(3)(A)(iv).

12
13 CrowdStar, Mr. Relan, and Mr. Shamdasani are not parties to Social Ranger's antitrust
14 litigation and have not been accused of violating any antitrust statutes. The information sought
15 by Social Ranger from Mr. Shamdasani and Mr. Relan regarding CrowdStar is irrelevant to its
16 antitrust claims against Facebook. From its document subpoena to CrowdStar, it is clear that
17 Social Ranger seeks information regarding (1) CrowdStar's communications and interactions
18 with Facebook regarding Facebook Credits and (2) CrowdStar's customers, revenues, and
19 business strategies involving its game, marketing, and use of different platforms. None of this
20 information – or the testimony sought from Mr. Shamdasani and Mr. Relan – particularly
21 advances the claims and defenses at issue in the antitrust litigation.

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24 The only basis for relevancy articulated by Social Ranger in the meet and confers leading
25 up to the filing of this motion was that such information could bolster its claims of antitrust
26 violation by Facebook. But Social Ranger is claiming damages to its own interests – not
27 CrowdStar's. Social Ranger does not represent any class of entities in its litigation against
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1 Facebook. Any information about Facebook's intent, conduct, or Social Ranger's harms can and
2 should be discovered from the parties in the litigation.

3 The discovery sought by Social Ranger is, accordingly, essentially irrelevant to its
4 antitrust action and Social Ranger's subpoenas should thus be quashed. *See VirnetX, Inc. v.*
5 *Apple Inc.*, No. 14-mc-80013, 2014 U.S. Dist. LEXIS 130933 at *8-11 (N.D. Cal. Mar. 21, 2014)
6 (quashing a third-party subpoena seeking information about IPRs filed by RPX because the
7 information sought was irrelevant to the underlying case); *In re eBay Seller Antitrust Litigation*,
8 2009 WL 5205961, at * 2-3 (W.D. Wa. Dec. 23, 2009) (granting motion to quash subpoena
9 seeking information from non-party competitor to discover evidence as to definition of market in
10 antitrust case).
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12
13 Moreover, despite CrowdStar, Mr. Relan, and Mr. Shamdasani having no connection to
14 the antitrust litigation and no knowledge relevant to it, Social Ranger's subpoenas demand that
15 Mr. Relan and Mr. Shamdasani sit for a deposition in September 2016⁴ after giving them notice
16 only at the end of August 2016. This case has been ongoing since 2014 but Social Ranger did
17 not subpoena Mr. Shamdasani or Mr. Relan until one month prior to the end of fact discovery
18 and now seeks to impose on them the burden of changing their heavy travel and work schedule,
19 as well as personal commitments, to accommodate its delay. *See Shamdasani Decl.* ¶¶ 6-8,
20 *Relan Decl.* ¶¶ 3-7. Specifically, Mr. Shamdasani would be forced not just to prepare for and
21 appear for a deposition, but also forced to change business travel plans to accommodate this
22 burdensome subpoena. *See Shamdasani Decl.* ¶ 6. Mr. Relan is already under a huge burden
23 with his personal issues involving a family member dealing with a serious medical condition, in
24 addition to his business commitments. *Relan Decl.* ¶ 3. None of this third-party discovery is
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28 ⁴ Fact discovery for the case is currently scheduled to close on September 30, 2016.

1 justified under the circumstances here and the subpoena must be quashed because of the undue
2 burden it imposes. *See* Fed. R. Civ. P. 45(d)(3)(A)(iv).

3 **B. Social Ranger's Subpoenas Should Be Quashed for Seeking Confidential**
4 **Information, and Seeking Information Available Elsewhere**

5 Applicable law strongly supports quashing these subpoenas for several additional
6 independent reasons. A court may quash a subpoena that requires a party to disclose "a trade
7 secret or other confidential research, development, or commercial information" Fed. R. Civ. P.
8 45(d)(3)(B)(i). Additionally, non-parties are entitled to greater protections from overly broad
9 discovery requests in order to prevent "harassment, inconvenience, or disclosure of confidential
10 documents." *Beinin v. Ctr. for the Study of Popular Culture*, No. 06-cv-2298, 2007 U.S. Dist.
11 LEXIS 22518 at *5-6 (N.D. Cal. Mar. 16, 2007); *see also Dart Indus. Co., Inc. v. Westwood*
12 *Chem. Co., Inc.*, 649 F.2d 646, 649 (9th Cir. 1980). A court must also limit discovery if it is
13 duplicative or could be obtained from a more convenient or less burdensome source. *McErlain*
14 *v. Park Plaza Towers Owners Ass'n*, No. 13-cv-03232, 2013 U.S. Dist. LEXIS 179176 at *6-7
15 (N.D. Cal. Dec. 19, 2013). These grounds all apply here.

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18 1. Social Ranger's Subpoenas Demand Discovery of CrowdStar's Confidential
19 Information

20 Social Ranger's subpoenas impermissibly seek some of CrowdStar's most closely
21 guarded secrets by requiring its former CEO and current Chairman to testify to CrowdStar's
22 highly confidential revenues, marketing, and pricing strategies. *See Verinata Health, Inc. v.*
23 *Sequenom, Inc.*, No. C 12-00865 SI, 2014 WL 2582097, at *2 (N.D. Cal. June 9, 2014)
24 (subpoena seeking information related to non-party's sales, marketing, pricing strategies, and
25 view of the market was highly sensitive confidential information). For example, Request No. 9
26 seeks "documents sufficient to show revenue you generated from the provision of virtual goods
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1 or virtual currency, either directly or through offer walls, on Facebook Platform and on each
2 other platform where you offered your games.” Similarly, Request No. 7 seeks information
3 analyzing monetization strategies on the Facebook platform. CrowdStar’s operations, finances,
4 and business strategies are highly confidential and kept as such in the course of business. *See*
5 *Relan Decl.* ¶ 9.

6
7 Once the non-party shows that the requested information is confidential, “the burden
8 shifts to the requesting party to show a ‘substantial need’ for the testimony or material that
9 cannot be otherwise met without undue hardship; and to ensure that the subpoenaed person will
10 be reasonably compensated.” *Verinata Health Inc.*, 2014 WL 2582097 at *2. Social Ranger has
11 not articulated any “substantial need” for such information.⁵

12
13 Indeed, it appears that Social Ranger has not even considered, much less articulated any
14 means of protecting, the confidentiality of CrowdStar’s highly sensitive information. Moreover,
15 even if Social Ranger had proffered a protective order to CrowdStar, Mr. Relan and Mr.
16 Shamdasani that would apply to CrowdStar’s information, courts have rightly expressed
17 skepticism that highly sensitive commercial information could be guarded in litigation. *See, e.g.*,
18 *In re eBay Seller Antitrust Litig.*, 2009 WL 520591, at *4 (non-party’s information would
19 necessarily need to be divulged to parties and consultants and “nothing, however, compels a
20 competitor who wishes to stay outside the fray of antitrust litigation to let the litigants rummage
21 through” its information”). There is no reason to believe that CrowdStar’s confidential
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25 ⁵ To the extent that Social Ranger may argue that there is a protective order in place in the
26 antitrust litigation, that protective order is between Social Ranger and Facebook, not CrowdStar,
27 Mr. Relan, or Mr. Shamdasani. *See Broadband iTV Inc. v. Hawaiian Telecom*, Case No. 15-
28 80053 HRL, 2015 WL 1778432, at *3 (N.D. Cal. April 17, 2015) (protective order irrelevant in
determining whether non-party had to turn over confidential information because non-party was
not a party to the protective order).

1 information could or would be protected from disclosure. Finally, should this case go to trial,
2 there is no plan for the use of CrowdStar's information about how it runs its business, which it
3 must safeguard to keep its competitive edge in this space.

4 2. Social Ranger's Subpoenas Demand Production of Information that is
5 Publicly Available or Available From the Defendant

6 Social Ranger's subpoenas are also unduly burdensome because much of the information
7 sought is available from Facebook. For example, Social Ranger seeks discovery on CrowdStar's
8 communication and agreements with Facebook. *See e.g.*, Requests 1-3. To the extent this
9 information exists and is even relevant, this information can be easily obtained from the
10 defendant who is a party to the litigation rather than burdening non-parties CrowdStar, Mr.
11 Relan, and Mr. Shamdasani. *See Nidec Corp. v. Victor Co.*, 249 F.R.D. 575, 577 (N.D. Cal.
12 2007) ("There is simply no reason to burden nonparties when the documents sought are in the
13 possession of the party defendant."). Because it would be much more "convenient" and "less
14 burdensome" for Social Ranger to seek this information from sources other than CrowdStar, Mr.
15 Relan, and Mr. Shamdasani, Social Ranger's subpoenas should be quashed. Fed. R. Civ. P.
16 26(b)(2)(C)(i).

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20 **IV. CONCLUSION**

21 For the foregoing reasons, non-party CrowdStar and non-parties Peter Relan and Niren
22 Hiro Shamdasani respectfully request that the Court quash in their entirety the subpoenas served
23 by Social Ranger.
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1 Dated: September 21, 2016

Respectfully submitted,

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4 KAUFHOLD GASKIN LLP
5 STEVEN S. KAUFHOLD
6 *Attorney for CrowdStar Inc., Peter Relan, and*
7 *Niren Hiro Shamdasani*

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