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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 DONGXIAO YUE,

11 Plaintiff,

12 v.

13  
14 21<sup>st</sup> Century Insurance, et al.,

15 Defendants.  
16  
17

Case No. 10-cv-3634-JW (PVT)

**PLAINTIFF’S OPPOSITION TO  
DEFENDANTS’ MOTION TO CONTINUE  
CASE MANAGEMENT CONFERENCE**

Judge: The Honorable James Ware

18  
19 Plaintiff Dongxiao Yue opposes defendants’ belated motion to continue the Case  
20 Management Conference (“CMC”) scheduled for November 29, 2010 for the following reasons.

21 **I. FRCP 16(b) (2) SETS THE TIME FOR ISSUING THE SCHEDULING ORDER**

22 Federal Rule of Civil Procedure 16(b) (2) states that “[t]he judge must issue the scheduling  
23 order ... within ... 90 days after any defendant has appeared.” Defendant USAA appeared on  
24 September 2, 2010 (Docket No.7). Ninety days after that date is December 1, 2010. Defendants’  
25

1 proposed continuance, for which they provided no legal authority, would delay the issuance of the  
2 scheduling order by several months.

3 **II. DEFENDANTS AND PLAINTIFF ARE READY FOR THE CMC**

4 On November 12, 2010, in the telephone conference among the parties, defense counsel  
5 indicated that they would be able to submit a Joint Case Management Statement (“JCMS”) on  
6 time if the Court denies their motion to continue the CMC. Declaration of Dongxiao Yue (“Yue  
7 Decl.”) at ¶ 9. The Court set the CMC date more than two months ago. The parties had sufficient  
8 time to prepare for the JCMS and the CMC.  
9

10 **III. PEGASYSTEMS’ DELAYING TACTICS PREJUDICE PLAINTIFF SEVERELY**

11 Pegasystems, Inc., Chordiant Software, Inc.’s successor in interest, is defending both the  
12 instant lawsuit and the related Yue v. Chordiant (C08-0019-JW) case. On November 9, 2010,  
13 Pegasystems published the following statements regarding the two lawsuits:  
14

15 On January 2, 2008, Chordiant and certain of its officers and one other  
16 employee were named in a complaint ... under the caption Dongxiao Yue  
17 (“Plaintiff”) v. Chordiant Software, Inc. et al. Case No. CV 08-0019 (N.D.  
18 Cal.)... The Company has not yet determined whether it will file an appeal in  
19 this matter.

18 On August 17, 2010, the Plaintiff filed an additional complaint with the Court  
19 against a number of Chordiant customers and partners... the Company has  
20 agreed to indemnify and defend these customers and partners in this matter.  
21 On November 1, 2010, the Company filed motions with the Court seeking to  
22 dismiss the claims in this complaint. The Company does not expect a material  
23 unfavorable outcome from the resolution of this complaint is probable.

24 Yue Decl. ¶ 10, Exhibit 2.

25 Pegasystems/Chordiant and its licensees copied and profited immensely from Plaintiff’s  
26 software over the past decade. They had no license and have not paid a penny to Plaintiff. Evident  
27 from the statements quoted above, it is to Pegasystems’ benefit to delay the instant action, keep  
28

1 their illegal gains and profits, and thwart Plaintiff's effort in enforcing his copyrights. Indeed,  
2 despite Plaintiff's repeated requests, Defendants refused to meet and confer with Plaintiff under  
3 Rule 26(f). Yue Decl. ¶¶ 2-8. Defendants' refusal to meet-and-confer under Rule 26 deprives  
4 Plaintiff's right to initiate discovery in accordance of that rule. With the alleged continuing  
5 infringement by these defendants, Plaintiff suffers irreparable harm each passing day. Delaying  
6 the CMC would further prejudice Plaintiff and hamper his ability to protect his copyrights.  
7

8         Pegasystems had executed the delaying tactic in the name of judicial economy once  
9 already. In the related Yue v. Chordiant Software, Inc. case, it filed a motion to toll the time to  
10 appeal until the Court rules on Derek Witte's motion for attorneys' fees. On September 2, 2010,  
11 the Court granted the motion and tolled the time to file a notice of appeal "until the Court has  
12 issued an order addressing Defendant Witte's Motion." Then on November 9, 2010, just one  
13 week before the hearing of Witte's motion, Pegasystems/Chordiant filed a Notice of Appeal,  
14 appealing "all ... adverse rulings."  
15

#### 16 **IV. THE CMC WILL STREAMLINE THE CASE**

17         The rule of the Court requires the parties to meet-and-confer under FRCP 26(f) and  
18 identify/narrow their contentions. Many of the issues Defendants raised are factual questions that  
19 can be resolved among the parties themselves, without burdening the Court.  
20

21         The District Court has set a standard format for a JCMS, including sections for "Legal  
22 Issues", "Motions", "Amendment of Pleadings", etc. Under section "Amendment of Pleadings",  
23 the parties are to address "[t]extent to which parties, claims, or defenses are expected to be added  
24 or dismissed." "Settlement/ADR" is another required section in the JCMS.  
25  
26

1 None of the issues Defendants raised exceeds the scope of the JCMS. Instead, the issues  
2 they raised, such as standing, damages, jurisdiction, are exactly those covered by the JCMS, for  
3 the purpose of CMC.

4 **V. THE COURT SHOULD ORDER A RULE 26(f) CONFERENCE AND ALLOW**  
5 **DISCOVERY TO PROCEED**

6 The *Yue v. Chordiant* trial was limited to Chordiant's direct copyright infringement.  
7 Chordiant's licensees are privies to Chordiant. Under the doctrine of claim preclusion, they are  
8 bound by the finding of copyright infringement in the *Yue v. Chordiant* case. *Bouchat v.*  
9 *Champion Prods*, 327 F.Supp.2d 537 (D. Md. 2003). The primary issues in the instant case are  
10 factual: defendants' extent of infringement and their profits attributable to the infringement.  
11 Plaintiff expects that defendants, including reputable global IT companies such as IBM and  
12 Accenture, would cooperate and provide the needed discovery.  
13

14 Plaintiff most respectfully requests that the Court to order a Rule 26(f) conference among  
15 the parties and allow discovery to proceed.

16 **CONCLUSION**

17 For the foregoing reasons, Plaintiff most respectfully requests the Court to deny Defendants'  
18 motion to continue the CMC. Plaintiff most respectfully requests the Court to order the parties to  
19 hold a Rule 26(f) conference by November 19, 2010.  
20

21 Respectfully submitted,

22 DATED: November 15, 2010

23 \_\_\_\_\_/s/\_\_\_\_\_

24 Dongxiao Yue  
25 PLAINTIFF