

EXHIBIT B

1 JEROME B. FALK, JR. (No. 39087)
Email: jfalk@howardrice.com
2 SEAN M. SELEGUE (No. 155249)
Email: sselegue@howardrice.com
3 JOHN P. DUCHEMIN (No. 250501)
Email: jduchemin@howardrice.com
4 HOWARD RICE NEMEROVSKI CANADY
FALK & RABKIN
5 A Professional Corporation
Three Embarcadero Center, 7th Floor
6 San Francisco, California 94111-4024
Telephone: 415/434-1600
7 Facsimile: 415/677-6262

8 Attorneys for CAMERON WINKLEVOSS,
TYLER WINKLEVOSS and DIVYA
9 NARENDRA

10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

14
15 THE FACEBOOK, INC., et al.,

16 Plaintiffs,

17 v.

18 CONNECTU, INC., et al.,

19 Defendants.
20
21
22
23
24
25
26
27
28

No. C 07-01389 JW

CONNECTU FOUNDERS'
OPPOSITION TO CONNECTU'S
MOTION FOR A TELEPHONIC
CONFERENCE (CIVIL LOCAL RULE 7
11)

1 **I. INTRODUCTION.**

2 ConnectU, Inc.’s motion to schedule a telephone conference is procedurally and
3 substantively flawed. Procedurally, ConnectU’s motion is a misuse of the local rule
4 intended for administrative matters not otherwise addressed in the local rules. Substantively,
5 ConnectU’s motion is based on entirely inaccurate characterizations of court orders to
6 contend that ConnectU’s Founders¹ and the law firm of Finnegan Henderson Farabow
7 Garrett & Dunner LLP (“Finnegan”) have violated this Court’s disqualification order.
8 Nothing could be further from the truth.

9 **II. DISCUSSION.**

10 **A. ConnectU’s Use Of The Civil L.R. 7-11 Administrative Motion Procedure Is**
11 **Improper.**

12 Administrative motions under Civil Local Rule 7-11 are limited to “miscellaneous
13 administrative matters,” such as “motions to exceed otherwise applicable page limitations or
14 motions to file documents under seal.” Civil L.R. 7-11. A contempt proceeding is not the
15 type of routine administrative matter appropriately handled under Civil Local Rule 7-11. To
16 seek a substantive order from this Court in a civil case, Civil Local Rule 7-2(a) provides a
17 mandatory noticed motion procedure that must be followed. That rule provides as follows:

18 Time. Except as otherwise ordered or permitted by the assigned Judge or these
19 Local Rules, and except for motions made during the course of a trial or hearing,
20 *all motions must be filed, served and noticed in writing on the motion calendar of*
21 *the assigned Judge for hearing not less than 35 days after service of the motion.*
(Emphasis added)

22 ConnectU seeks to avoid the established noticed-motion procedure by making inflammatory
23 and unsupported conclusions in a motion brought under Civil Local Rule 7-11. This is a
24 misuse of the Civil Local Rule 7-11 administrative motion procedure.

25 Had ConnectU properly followed this Court’s rules, it would have noticed a motion
26 pursuant to Civil Local Rule 7-2(a), which would provide the Founders and Finnegan with
27 an appropriate opportunity to respond. The procedure ConnectU chose, Civil Local Rule 7-

28 ¹Cameron Winklevoss, Tyler Winklevoss and Divya Narendra.

11, was inappropriate and prejudicial to the Founders and Finnegan, because Civil Local Rule 7-11 provides only three court days to respond in a brief of no more than five pages. While reserving their objections to the incorrect procedure ConnectU has employed, and in the space allowed, the Founders respond briefly on the merits.

B. Neither The Founders Nor Finnegan Has Violated This Court's Disqualification Order.

In the Massachusetts case, Finnegan recently responded on the Founders' behalf to a motion Facebook filed in that court. Motion at 2:3-6. It is this action alone—Finnegan's representation of the Founders *in the Massachusetts case*—on which ConnectU bases its current motion. *Id.* Finnegan's representation of the Founders in Massachusetts does not violate this Court's September 2, 2009 disqualification order (the "California Order"), because the California Order is expressly limited to the Northern District of California action and the related Ninth Circuit proceedings.

Specifically, the California Order disqualified Finnegan from "further representation of the Founders with respect to *this* matter." California Order (Docket No. 704) at 18:20-21 (emphasis added); *id.* at 4:10-11 (this Court described ConnectU's motion to disqualify, which was originally filed in the Ninth Circuit, as a motion to disqualify Finnegan from "continued representation of the Founders *on appeal*." (emphasis added); *id.* at 13:13 (ConnectU sought to disqualify Finnegan from "continuing to represent the Founders *in the current appeal*." (emphasis added). The Founders have complied with the California Order by retaining new counsel (Howard Rice) to handle the appeal and any related proceedings before this Court.

With regard to the conduct in Massachusetts about which ConnectU complains, the simple fact is that the California Order does not apply to Massachusetts. No contempt citation is appropriate, and no conference call is needed. *See E.E.O.C. v. New York Times Co.*, 196 F.3d 72, 81 (2d Cir. 1999) (to be liable for contempt, violator of court order "must be able to ascertain from the four corners of the order precisely what acts are forbidden"); *accord Yagman v. Republic Ins.*, 987 F.2d 622, 629 (9th Cir. 1993) (court's request that was

1 not part of court’s order “cannot serve as the basis for a finding of contempt”).

2 **C. The Massachusetts Court Has Not Adopted This Court’s Disqualification**
3 **Order.**

4 ConnectU attempts to stretch the California Order to apply to the Massachusetts case
5 by contending that Judge Woodlock in Massachusetts has declared that the California Order
6 has “preclusive effect” in Massachusetts. Not true.

7 To contend that Judge Woodlock has given preclusive effect to the California Order,
8 ConnectU misquotes an order Judge Woodlock issued on September 30, 2009 (the
9 “Massachusetts Order”). ConnectU claims that Judge Woodlock wrote that he is “obligated
10 to give [*this Court’s September 2, 2009 Order*] preclusive effect despite the pendency of
11 appeal.” Motion at 1:15-16 (emphasis added). **The bracketed language ConnectU added**
12 **is not included in Judge Woodlock’s order.** Judge Woodlock actually wrote that he was
13 giving preclusive effect to “the *judgment* of the Northern District of California”
14 Declaration of James E. Towery (“Towery Decl.”) Ex. A at 2 (emphasis added). Earlier in
15 his order, Judge Woodlock described the “judgment” as “directing dismissal pursuant to
16 what [Judge Ware] has found to be an enforceable settlement agreement among the
17 interested parties.” *Id.* at 1. In other words—in *Judge Woodlock’s* words—he accorded
18 preclusive effect to this Court’s judgment enforcing the settlement, not to this Court’s
19 disqualification order.

20 **D. The Massachusetts Court Has Declined To Rule On ConnectU’s Motion To**
21 **Disqualify**

22 In the Massachusetts Order, Judge Woodlock imposed a stay on all proceedings in that
23 court and terminated all outstanding motions without prejudice. The motions Judge
24 Woodlock terminated included one ConnectU filed in the Massachusetts case to disqualify
25 Finnegan.² ConnectU has not sought to renew its motion to disqualify before Judge

27 ²See Docket No. 274, *ConnectU, Inc. v. Facebook, Inc.*, No. 07-10593-DPW in the
28 U.S. District Court for the District of Massachusetts (the “Massachusetts case”), which
specifically identifies the “Motion to Disqualify Counsel” as having been terminated
(continued . . .)

1 Woodlock. ConnectU is simply incorrect in asserting that Judge Woodlock has disqualified
2 Finnegan in the Massachusetts proceedings.

3 **E. The Massachusetts Proceedings Are Subject To Judge Woodlock's**
4 **Supervision.**

5 To the extent that ConnectU's motion asks this Court to regulate proceedings before
6 another district court, such a request is inappropriate. Each District Court has the power and
7 responsibility to manage its own proceedings. *Thomas Kinkade Co. v. Hazlewood*, No. C 06
8 7034 MHP, 2007 WL 1655846 at *6 (N.D. Cal. June 6, 2007) ("This court almost certainly
9 lacks jurisdiction to preclude plaintiffs' counsel from appearing in actions not before this
10 court. Attempts to disqualify plaintiffs' counsel from other proceedings are properly
11 directed toward the adjudicators in those actions"). It is neither necessary nor appropriate
12 for this Court to become enmeshed in the Massachusetts proceedings.

13 As noted earlier, the Massachusetts court on September 30, 2009, imposed a stay on
14 proceedings pending resolution of the Founders' appeal to the Ninth Circuit of this Court's
15 judgment enforcing the settlement. The Massachusetts court has not lifted that stay. On
16 November 3, 2009, Facebook filed in the Massachusetts case a motion for limited relief from
17 stay for the purposes of seeking certain relief against the Founders and Finnegan. The
18 limited space and time available for the Founders to respond to ConnectU's administrative
19 motion do not permit a full explication of Facebook's pending motion in Massachusetts. In
20 addition, Facebook's motion and the opposing papers were all submitted to the
21 Massachusetts court under seal.³ Should the Court desire, the Founders will promptly
22 submit a copy of the relevant Massachusetts papers under seal for this Court's review.

23 ConnectU's effort to draw this Court into the current Massachusetts motion

24 _____
(. . . continued)

25 "without prejudice to the motion of any party" to reassert that motion "no later than 30 days
26 after the issuance of any mandate of the United States Court of Appeals for the Ninth Circuit
concerning the judgment entered by the United States District Court for the Northern District
of California in Civil Action No. 07-01389-JW").

27 ³Those papers were filed in the case at Docket Nos. 291-92, 295-97, 308-09, 318, and
28 320 in the Massachusetts case.

1 proceedings—which arise from a motion in which ConnectU is not even involved—is just
2 the type of “multiplication of proceedings” Judge Woodlock sought to avoid by imposing a
3 stay on the Massachusetts case. Towery Decl. Ex. A at 2. Governance of the Massachusetts
4 case should be left to Judge Woodlock.

5 **III. CONCLUSION.**

6 ConnectU’s Local Rule 7-11 Motion for a telephone conference should be denied.
7

8 DATED: November 30, 2009.

9 Respectfully,

10 JEROME B. FALK, JR.
11 SEAN M. SELEGUE
12 JOHN P. DUCHEMIN
13 HOWARD RICE NEMEROVSKI CANADY
14 FALK & RABKIN
15 A Professional Corporation

16 By: /s/ Sean M. SeLegue
17 SEAN M. SELEGUE

18 Attorneys for CAMERON WINKLEVOSS,
19 TYLER WINKLEVOSS and DIVYA NARENDRA

20 W03 113009-180060001/U10/1579187/F
21
22
23
24
25
26
27
28