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 THE FACEBOOK, INC. and MARK ZUCKERBERG

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

15 THE FACEBOOK, INC. and MARK
 ZUCKERBERG,

16 Plaintiffs,

17 v.

18 CONNECTU, INC. (formerly known as
 19 CONNECTU, LLC), CAMERON
 WINKLEVOSS, TYLER WINKLEVOSS,
 20 DIVYA NARENDRA, PACIFIC
 NORTHWEST SOFTWARE, INC.,
 21 WINSTON WILLIAMS, WAYNE CHANG,
 and DAVID GUCWA,

22 Defendants.
 23

Case No. 5:07-CV-01389-RS

**DECLARATION OF THERESA A.
 SUTTON IN SUPPORT OF
 PLAINTIFFS' OPPOSITION TO
 DEFENDANTS MOTION TO
 DISMISS**

Date: October 10, 2007
 Time: 9:30 a.m.
 Judge: Honorable Richard Seeborg

1 I, Theresa A. Sutton, declare as follows:

2 1. I am an attorney with the law firm of Orrick, Herrington & Sutcliffe LLP, counsel
3 for Plaintiffs FaceBook, Inc. and Mark Zuckerberg in the above-captioned action. I am a member
4 of the Bar of the State of California. I make this Declaration in support of Plaintiffs' Opposition
5 to Defendants' Motion to Dismiss. I have personal knowledge of the facts set forth in this
6 declaration and could and would competently testify thereto under oath if called as a witness.

7 1. Attached hereto as **Exhibit A** is a true and correct copy of relevant excerpts of the
8 October 25, 2006, hearing transcript in *ConnectU, LLC v. Zuckerberg, et al*; Case No. 04-cv-
9 11923-DPW, District of Massachusetts.

10 2. Attached hereto as **Exhibit B** is a true and copy of Facebook's August 17, 2005,
11 Complaint filed in Santa Clara Superior Court, Case No. 1:05-CV-047381.

12 3. Attached hereto as **Exhibit C** is a true and correct copy of Defendants' Reply to
13 Opposition to Motion to Quash Service of Complaint and Summons For Lack of Personal
14 Jurisdiction, filed on May 24, 2006, Santa Clara County Superior Court. **[CONFIDENTIAL**
15 **DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

16 4. Attached hereto as **Exhibit D** is a true and correct copy of Plaintiff's Objections to
17 [the Magistrate Judge's] Report and Recommendation Dated March 2, 2007, filed on March 16,
18 2007 in *ConnectU, LLC v. Zuckerberg, et al*; Case No. 04-cv-11923-DPW, District of
19 Massachusetts.

20 5. Attached hereto as **Exhibit E** is a true and correct copy of relevant exhibits from
21 ConnectU's production. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY**
22 **UNDER SEAL]**

23 6. Attached hereto as **Exhibit F** is a true and correct copy of the September 26, 2006,
24 Amended Notice of Subpoena to Pacific Northwest Software in *ConnectU, LLC v. Zuckerberg, et*
25 *al*; Case No. 04-cv-11923-DPW, District of Massachusetts.

26 7. Attached hereto as **Exhibit G** is a true and correct copy of the October 9, 2006
27 email from Pacific Northwest Software's ("PNS") counsel to Facebook's counsel indicating PNS
28 would produce responsive documents without objection.

1 8. Attached hereto as **Exhibit H** is a true and correct copy of Motion to Quash
2 Deposition Subpoenas Duces Tecum Served on Non-Parties, John Taves and Pacific Northwest
3 Software, filed October 19, 2006 in *ConnectU, LLC v. Zuckerberg, et al*; Case No. 04-cv-11923-
4 DPW, District of Massachusetts.

5 9. Attached hereto as **Exhibit I** is a true and correct copy of the October 16, 2006,
6 email from PNS' counsel to Facebook's counsel indicating PNS objected to producing responsive
7 documents.

8 10. Attached hereto as **Exhibit J** is a true and correct copy of the Subpoena Duces
9 Tecum for Documents and Videotape Deposition, served December 28, 2006 to PNS in this
10 action.

11 11. Attached hereto as **Exhibit K** is a true and correct of relevant excerpts of the
12 October 24, 2006, hearing transcript in *ConnectU, LLC v. Zuckerberg, et al*; Case No. 04-cv-
13 11923-DPW, District of Massachusetts.

14 12. Attached hereto as **Exhibit L** is a true and correct copy of relevant exhibits from
15 PNS' production. **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER**
16 **SEAL]**

17 13. Attached hereto as **Exhibit M** is a true and correct copy of relevant exhibits from
18 ConnectU's California production. **[CONFIDENTIAL DOCUMENT SUBMITTED**
19 **SEPARATELY UNDER SEAL]**

20 14. Attached hereto as **Exhibit N** is a true and copy of relevant exhibits from iMarc
21 LLC's September 26, 2006, production.

22 15. Attached hereto as **Exhibit O** is a true and correct copy of relevant excerpts from
23 Winston Williams' June 19, 2007, deposition transcript. **[CONFIDENTIAL DOCUMENT**
24 **SUBMITTED SEPARATELY UNDER SEAL]**

25 16. Attached hereto as **Exhibit P** is a true and correct copy of relevant exhibits from
26 David Gucwa's March 12, 2007, production.

27 17. Attached hereto as **Exhibit Q** is a true and correct redline comparison of
28 Facebook's original August 17, 2005 complaint and the Second Amended Complaint.

1 18. Attached hereto as **Exhibit R** is a true and correct copy of the Response of Divya
2 Narendra to First Set of Requests for Admission, served October 31, 2005. Plaintiffs include
3 Mr. Narendra's responses, though the responses served by Messrs. Winklevoss were
4 substantively the same. To reduce the burden on the Court, Plaintiffs are providing only Mr.
5 Narendra's responses.

6 19. Attached hereto as **Exhibit S** is a true and correct copy of the March 2, 2007,
7 Report and Recommendation on Facebook's Motion to Dismiss, adopted by the District of
8 Massachusetts, March 28, 2007.

9 20. Attached hereto as **Exhibit T** is a true and correct copy the Amended Response of
10 Defendant Divya Narendra to to Form Interrogatories, served on April 3, 2006. Plaintiffs include
11 Mr. Narendra's responses, though the responses served by Messrs. Winklevoss were
12 substantively the same. To reduce the burden on the Court, Plaintiffs are providing only Mr.
13 Narendra's responses.

14 21. Attached hereto as **Exhibit U** is a true and correct copy of ConnectU LLC's
15 August 5, 2005, Limited Liability Operating Agreement, Bates labeled as C011285 – C011335.

16 **[CONFIDENTIAL DOCUMENT SUBMITTED SEPARATELY UNDER SEAL]**

17 22. Attached hereto as **Exhibit V** is a true and correct copy of the Amended Response
18 of Defendant Divya Narendra to Plaintiff's First Set of Special Interrogatories (1-23), served
19 March 9, 2006. Plaintiffs include Mr. Narendra's responses, though the responses served by
20 Messrs. Winklevoss were substantively the same. To reduce the burden on the Court, Plaintiffs
21 are providing only Mr. Narendra's responses.

22 23. Attached hereto as **Exhibit W** is a true and correct copies of the Declaration of
23 Divya Narendra in Support of Plaintiff's Supplemental Brief in Opposition to Motion to Dismiss,
24 Presenting New Evidence and Supplemental Authority in View of *Pramco*; Declaration of
25 Cameron Winklevoss in Support of Plaintiff's Supplemental Brief in Opposition to Motion to
26 Dismiss, Presenting New Evidence and Supplemental Authority in View of *Pramco*; and
27 Declaration of Tyler Winklevoss in Support of Plaintiff's Supplemental Brief in Opposition to
28 Motion to Dismiss, Presenting New Evidence and Supplemental Authority in View of *Pramco*, all

1 filed June 12, 2006 in *ConnectU, LLC v. Zuckerberg, et al*; Case No. 04-cv-11923-DPW, District
2 of Massachusetts.

3 24. Attached hereto as **Exhibit X** is a true and correct copy of the Plaintiff's
4 Supplemental Brief in Opposition to Motion to Dismiss, Presenting New Evidence and
5 Supplemental Authority in View of *Pramco*. [**CONFIDENTIAL DOCUMENT SUBMITTED**
6 **SEPARATELY UNDER SEAL**]

7 25. Attached hereto as **Exhibit Y** is a true and correct copy of the November 3, 2005
8 Order Granting Facebook's *Ex Parte* Application to Reschedule the November 17, 2005 Hearing
9 in Regards to Defendants' Motion to Quash.

10 26. Attached hereto as **Exhibit Z** is a true and correct copy of First set of Form
11 Interrogatories to Divya Narendra, served on September 26, 2005; Notice of Deposition of
12 Defendant Divya Narendra, served November 3, 2005; TheFacebook, Inc.'s First Set of Special
13 Interrogatories to Defendant Divya Narendra, served November 3, 2005; and TheFacebook, Inc.'s
14 First Set of Requests for Production to Defendant Divya Narendra, served November 3, 2005
15 Plaintiffs include discovery served on Mr. Narendra, though the discovery served on Messrs.
16 Winklevoss was substantively the same. To reduce the burden on the Court, Plaintiffs are
17 providing only Mr. Narendra's discovery.

18 27. Attached hereto as **Exhibit AA** is a true and correct copy of the November 21,
19 2005, Order Granting Facebook's *Ex Parte* Application to Compel Depositions of Defendants
20 Related to Personal Jurisdiction, requiring Defendants to appear for deposition on or before
21 December 23, 2005.

22 28. Attached hereto as **Exhibit BB** is a true and correct copy of the January 6, 2006,
23 Order Granting Facebook, Inc.'s *Ex Parte* Application to Compel Limited Deposition on the
24 Subject of Personal Jurisdiction, requiring ConnectU to appear for deposition.

25 29. Attached hereto as **Exhibit CC** is a true and correct copy of Notice of Motion,
26 Motion, and Memorandum of Points and Authorities in Support of TheFacebook, Inc.'s Motion to
27 Compel Limited Depositions on the Subject of Personal Jurisdiction, filed November 30, 2005;
28 Notice of Motion and Memorandum of Points and Authorities in Support of TheFacebook, Inc.'s

1 Motion to Compel Supplemental Responses and Production of Documents in Response to its First
2 Sets of Special Interrogatories and Requests for Production, filed January 17, 2006; Notice of
3 Motion and Memorandum of Points and Authorities in Support of TheFacebook, Inc.'s Motion to
4 Compel Supplemental Responses to Facebook, Inc.'s First Sets of Form Interrogatories and
5 Requests for Admission, filed January 31, 2006. **[CONFIDENTIAL DOCUMENT**
6 **SUBMITTED SEPARATELY UNDER SEAL]**

7 30. Attached hereto as **Exhibit DD** is a true and correct copy of the February 17, 2006,
8 Order granting, in-part, Facebook's Motions to Compel.

9 31. Attached hereto as **Exhibit EE** is a true and correct copy of the Declaration of
10 ConnectU LLC, dated March 3, 2006, indicating that a diligent search had been performed and all
11 responsive documents were produced,

12 32. Attached hereto as **Exhibit FF** is a true and correct copy of relevant excerpts of
13 the June 22, 2006, hearing transcript in *ConnectU, LLC v. Zuckerberg, et al*; Case No. 04-cv-
14 11923-DPW, District of Massachusetts.

15 33. Attached hereto as **Exhibit GG** is a true and correct copy of the Notice of *Ex*
16 *Parte* Application to Compel Depositions of Defendants Related to Personal Jurisdiction;
17 Memorandum of Points and Authorities, filed November 21, 2005.

18 34. Attached hereto as **Exhibit HH** is a true and correct copy of the Amendment to
19 Second Amended Response of Defendant ConnectU LLC to Plaintiff's First Set of Special
20 Interrogatories (1-23), served June 21, 2006.

21 35. Attached hereto as **Exhibit II** is a true and correct copy of the Order re: (1)
22 Defendant ConnectU LLC's Motion for Sanctions in Violation of Court Order; (2) Defendant
23 Cameron Winklevoss, Tyler Winklevoss, Howard Winklevoss, and Divya Narendra's Motion to
24 Seal Records Filed in Connection With Defendant ConnectU LLC's Motio for Sanctions in
25 Violation of Court Order; (2&3) Plaintiff's and Defendants' Motions to File Under Seal; AND,
26 (4) Plaintiff TheFacebook Inc.'s Motion to Compel Supplemental Responses to Facebook Inc.'s
27 First Set of Form Interrogatories and Requests for Admission, entered March 3, 2006.

28 36. Attached hereto as **Exhibit JJ** is a true and correct copy of the Response and

1 Objections of Defendant Divya Narendra to Plaintiffs First Set of Special Interrogatories (Nos 1-
2 23), served December 5, 2005.

3 37. Attached hereto as **Exhibit KK** is a true and correct copy of the Response of
4 Defendant Divya Narendra to Form Interrogatories, served October 31, 2005.

5 I declare under penalty of perjury that the foregoing is true and correct to the best of my
6 knowledge.

7 Executed this 19th day of September, 2007, at Menlo Park, California.

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/s/ Theresa A. Sutton /s/
Theresa A. Sutton

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CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on September 19, 2007.

Dated: September 19, 2007.

Respectfully submitted,

/s/ Theresa A. Sutton /s/
Theresa A. Sutton