

EXHIBIT Q

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9 ~~THEFACEBOOK, INC.~~
10 FACEBOOK, INC. and MARK ZUCKERBERG

11 ~~SUPERIOR~~ UNITED STATES DISTRICT COURT ~~OF THE STATE~~
12 NORTHERN DISTRICT OF CALIFORNIA
13 ~~COUNTY OF SANTA CLARA~~ SAN JOSE DIVISION

14 ~~THEFACEBOOK~~ FACEBOOK, INC., and
15 MARK ZUCKERBERG,

16 ~~Plaintiff,~~

17 Plaintiffs,

18 v.

19 CONNECTU, INC. (formerly known as
20 CONNECTU, LLC), CAMERON
21 WINKLEVOSS, TYLER WINKLEVOSS,
22 ~~HOWARD WINKLEVOSS,~~ DIVYA
23 NARENDRA, PACIFIC NORTHWEST
24 SOFTWARE, INC., WINSTON WILLIAMS,
25 WAYNE CHANG, and DAVID GUCWA
26 AND DOES 1-25,

27 ~~Defendant.~~ Defendants.

CASE NO. ~~105507-CV047381-01389-~~
19 RS

~~THEFACEBOOK, INC.'S~~ PLAINTIFFS'
28 [PROPOSED] SECOND AMENDED
COMPLAINT FOR VIOLATION OF
CALIFORNIA PENAL CODE § 502(C);
CALIFORNIA AND
MASSACHUSETTS COMMON LAW
MISAPPROPRIATION / UNFAIR
COMPETITION; VIOLATION OF
MASSACHUSETTS GENERAL LAW
93A; 18 U.

S.C. § 1030; AND 15 U.S.C. §§ 7704
AND 7705

1 ~~Plaintiff TheFacebook, Inc. (“TheFacebook”)~~ hereby alleges for its ~~Complaint for~~
2 ~~Violations of~~ Plaintiffs Facebook, Inc. and Mark Zuckerberg hereby allege violations of California
3 Penal Code section 502(c), the Computer Fraud and Abuse Act, the Federal Can-Spam Act of
4 2003, Massachusetts General Law 93A § 2, and Common Law Misappropriation / Unfair
5 Competition under California and Massachusetts law, against ~~defendants~~ Defendant ConnectU
6 ~~LLC, Inc.~~, Cameron Winklevoss, Tyler Winklevoss, ~~Howard Winklevoss,~~ Divya Narendra,
7 Pacific Northwest Software, Inc., Winston Williams, Wayne Chang, David Guca, and Does 1-
8 25 inclusive (collectively, the “Defendants”), as follows:

9 **PARTIES, JURISDICTION, AND VENUE**

10 1. ~~TheFacebook~~ Facebook, Inc. is a Delaware corporation ~~incorporated in the State of~~
11 ~~Delaware (“TheFacebook”)~~, with its principal place of business at 471 Emerson Street, Palo Alto,
12 California. ~~TheFacebook~~ Facebook operates all of its servers in and/or from California ~~and has~~
13 done so since June 2004.

14 2. Mark Zuckerberg is an individual with a place of residence in the State of
15 California.

16 3. ~~2-~~ On information and belief, Defendant ConnectU, Inc. (formerly known as
17 ConnectU LLC is a limited liability corporation of) is incorporated in the State of ~~Delaware~~
18 ~~(“ConnectU”)~~ Connecticut, with its principal place of business at 500 West Putnam Avenue,
19 Greenwich, Connecticut. ConnectU was at all relevant times ~~during the wrongful acts~~
20 ~~complained of herein~~ doing business in California. ConnectU is an interactive website that
21 purports to provide certain website services to university students and alumni. ConnectU has
22 specifically targeted California universities and students in its business activities. For example,
23 ConnectU purports to have created “environments” for California universities, including but not
24 limited to University of California, Berkeley. In addition, on information and belief, ConnectU
25 sent commercial email to hundreds, if not thousands, of California residents. Its activities in
26 California have been substantial and continuous.

1 ~~3. The Facebook is informed and believes and thereupon alleges that defendant~~
2 ~~Cameron Winklevoss is a resident of the State of Connecticut, that he is one of the founders of~~
3 ~~ConnectU, and is a member and manager of ConnectU.~~

4 4. ~~The Facebook is informed and believes and thereupon alleges that defendant Tyler~~
5 ~~Winklevoss is a resident of the State of Connecticut, that he is one of the founders of ConnectU,~~
6 ~~and that he is a member of ConnectU.~~ Plaintiffs are informed and believe and thereupon allege
7 that Defendant Cameron Winklevoss is a citizen of the State of Connecticut. Plaintiffs are
8 informed and believe and thereupon allege that Defendant Mr. Winklevoss was a resident of the
9 State of Massachusetts until at least June 2004. Mr. Winklevoss purports to be a founder of
10 ConnectU. On information and belief, Mr. Winklevoss is and always has been an officer of
11 ConnectU and held an equivalent position with ConnectU's predecessor, ConnectU LLC. As
12 described below, Mr. Winklevoss has, in his individual capacity, engaged in conduct designed to
13 harm Plaintiffs, when he knew Plaintiffs were located in California and that the harmful effects
14 would be felt by Plaintiffs in California.

15 5. ~~The Facebook is informed and believes and thereupon alleges that defendant~~
16 ~~Howard Winklevoss is~~ Plaintiffs are informed and believe and thereupon allege that Defendant
17 Tyler Winklevoss is a citizen of the State of Connecticut. Plaintiffs are informed and believe and
18 thereupon allege that Mr. Winklevoss was a resident of the State of ~~Connecticut, and that he is a~~
19 ~~member of ConnectU. Howard Winklevoss is the father of Tyler and Cameron Winklevoss.~~
20 ~~The Facebook is informed and believes and thereupon alleges that, in close contact with other~~
21 ~~Defendants, Howard Winklevoss had knowledge of the wrongful acts complained of herein and~~
22 ~~provided support for such activities, including but not limited to payment for and financing of the~~
23 ~~accused activities complained of herein.~~ Massachusetts until at least June 2004. Mr. Winklevoss
24 purports to be a founder of ConnectU. On information and belief, Mr. Winklevoss is and always
25 has been an officer of ConnectU and held an equivalent position with ConnectU's predecessor,
26 ConnectU LLC. As described below, Mr. Winklevoss has, in his individual capacity, engaged in
27 conduct designed to harm Plaintiffs, when he knew Plaintiffs were located in California and that
28 the harmful effects would be felt by Plaintiffs in California.

1 6. ~~The Facebook is~~Plaintiffs are informed and ~~believes~~believe and thereupon
2 ~~alleges~~allege that ~~defendant~~Defendant Divya Narendra (~~“Narendra”~~) ~~is~~is currently a citizen of the
3 State of Massachusetts. Plaintiffs are informed and believe and thereupon allege that Mr.
4 Narendra was a citizen of New York until late 2006, and a resident of the State of ~~New York, that~~
5 ~~he is one of the founders of ConnectU, and that he is a member of ConnectU~~Massachusetts from
6 September 2000 through June 2004. Mr. Narendra purports to be a founder of ConnectU. On
7 information and belief, Mr. Narendra is an officer of ConnectU and held an equivalent position
8 with ConnectU’s predecessor, ConnectU LLC. As described below, Mr. Narendra has, in his
9 individual capacity, engaged in conduct designed to harm Plaintiffs, when he knew Plaintiffs
10 were located in California and that the harmful effects would be felt by Plaintiffs in California.
11 Mr. Narendra also personally hired at least one other person to assist in the conduct alleged
12 herein.

13 7. Plaintiffs are informed and believe and thereupon allege that Defendant Pacific
14 Northwest Software, Inc. (“PNS”) is incorporated in the State of Washington, with its principal
15 place of business at 2210 177th Place, NE Redmond, Washington. On information and belief,
16 PNS has entered into contracts with California residents and has derived substantial revenue from
17 California residents. For example, in 2005 PNS issued a press release in which it announced a
18 web development deal with the Chula Vista Elementary School District (located in California),
19 pursuant to which PNS would develop internet “portals” for 50 sites (including 43 district
20 schools) that would be available to the public. Plaintiffs are informed and believe and thereupon
21 allege that ConnectU and/or its founders hired PNS to gain unauthorized access to Facebook’s
22 servers and website and to take, without permission, information found therein. Plaintiffs are
23 informed and believe that PNS has entered into contracts in California, has clients in California,
24 has received revenue from California residents, has solicited website users from California, has
25 advertised in California, and has traveled to this state. As described below, PNS and its agents
26 engaged in conduct designed to harm Plaintiffs, when they knew Plaintiffs were located in
27 California and that the harmful effects would be felt by Plaintiffs in California.
28

1 8. Plaintiffs are informed and believe and thereupon allege that Defendant Winston
2 Williams is a citizen of the State of Washington, and that he helped the Defendants develop a
3 software application designed to hack into www.facebook.com and steal information. As
4 described below, Mr. Williams has engaged in conduct designed to harm Plaintiffs, when he
5 knew Plaintiffs were located in California and that the harmful effects would be felt by Plaintiffs
6 in California. Mr. Williams has, at various times, been employed by ConnectU and PNS.

7 9. Plaintiffs are informed and believe and thereupon allege that Defendant Wayne
8 Chang is a citizen of the State of Massachusetts, and that he was hired by ConnectU and/or its
9 founders to gain unauthorized access to Plaintiffs' server and website and to misappropriate
10 information found therein. As described below, Mr. Chang has engaged in conduct designed to
11 harm Plaintiffs, when he knew Plaintiffs were located in California and that the harmful effects
12 would be felt by Plaintiffs in California. Plaintiffs are informed and believe and thereupon allege
13 that Defendant Chang is currently employed by Defendant PNS.

14 10. Plaintiffs are informed and believe and thereupon allege that Defendant David
15 Gucwa is a citizen of the State of Massachusetts, and that he was hired by ConnectU and/or its
16 founders and/or Defendant Chang to gain unauthorized access to Plaintiffs' server and website
17 and to misappropriate information found therein. As described below, Mr. Gucca has engaged in
18 conduct designed to harm Plaintiffs, when he knew Plaintiffs were located in California and that
19 the harmful effects would be felt by Plaintiffs in California.

20 11. ~~7. TheFacebook has~~ Plaintiffs have not yet fully and independently identified the
21 true names and capacities of the ~~defendants~~Defendants sued herein as Does 1-25, inclusive, and
22 therefore sues those ~~defendants~~Defendants by such fictitious names. ~~TheFacebook~~
23 ~~reserves~~Plaintiffs reserve the right to amend this complaint to allege such ~~defendants~~Defendants'
24 true names and capacities when they are ascertained. ~~TheFacebook is~~Plaintiffs are informed and
25 ~~believes~~believe and thereupon ~~alleges~~allege that each of the fictitiously designated
26 ~~defendants~~Defendants has been acting as a partner, contractor, joint venturer, agent, or employee
27 of one or more of the named Defendants and that each is jointly and severally responsible for the
28 acts and omissions complained of herein.

1 ~~12.~~ ~~8. Venue~~Jurisdiction and ~~jurisdiction~~venue are proper in this jurisdiction pursuant
2 to ~~California Code~~Federal Rules of Civil Procedure §§ ~~393, 395, 410.10 and 1060, as well as~~
3 ~~California Penal Code §§ 502(e)(1) and 502(j)~~Sections 1331, 1332, 1391(b) and (c). The cause of
4 action arose, and the injuries described herein occurred primarily or wholly within, the County of
5 Santa Clara, ~~as did.~~ The wrongful acts causing such injuries, were initiated at various times from
6 the States of Massachusetts, New York, and Connecticut and directed at persons and equipment
7 in California.

GENERAL ALLEGATIONS

~~A. — TheFacebook~~

A. Mark Zuckerberg

11 13. Mark Zuckerberg is a former Harvard student who, in June 2004, took a leave of
12 absence from school to come to California. He hoped to launch a successful business. He
13 succeeded and decided to stay in California.

B. Facebook

15 14. ~~9. TheFacebook~~Facebook is an interactive computer service ~~which~~that enables
16 social networking amongst present and former university students. Plaintiffs have been operating
17 the popular website, www.facebook.com,¹ from California since June 2004. During all relevant
18 times herein, Plaintiffs are informed and believe that Defendants were aware that
19 www.facebook.com operated from California.

20 15. ~~10. TheFacebook~~Facebook is an industry leader in the business of social
21 networking for college students. It currently has over ~~three~~19 million registered users.

22 16. ~~11.~~ In order to legally access user ~~profiles~~data and other specific information on
23 ~~TheFacebook's web site~~Plaintiffs' website, one must register and thereby agree to
24 ~~TheFacebook's~~Plaintiffs' Terms of Use (“Terms of Use”) and its Privacy Policy (“Privacy
25 Policy”). Plaintiffs have authorized access only to those individuals who agree to the Terms of
26 Use. The use of any information on the Facebook website contrary to the Terms of Use is

27 _____
28 ¹ The website was originally called www.thefacebook.com. To avoid confusion, Plaintiffs refer to the site by its current name.

1 unauthorized. Enabling users of the Facebook website to control the level of privacy to their
2 personal information is of utmost importance to Plaintiffs and the success of their business.
3 Facebook users are expected to respect the privacy of other users and abide by the Privacy Policy
4 and Terms of Use. During all relevant times herein, Defendants were aware of these policies.

5 ~~12. — By registering, and becoming a member, the user gains personal access to other~~
6 ~~profiles within his or her University (i.e., to profiles of other students and alumni), as well as to~~
7 ~~the profiles of friends at other Universities that have explicitly granted such user access.~~

8 17. ~~13.~~ The Terms of Use and the Privacy Policy have, at all times since the launch of
9 ~~TheFacebook's web site~~ Facebook's website, prohibited all commercial use and access to data and
10 communications therein, except as explicitly authorized by ~~TheFacebook~~ Plaintiffs.

11 18. ~~14.~~ From at least ~~January 2005 until June 27, 2005,~~ February 2004, the Terms of
12 Use provided as follows (aside, on information and belief, from non-substantive modifications):

13 The Web site is for the personal use of individual Members only and may not be
14 used in connection with any commercial endeavors. Organizations, companies,
15 and/or businesses may not become Members and should not use the Service or the
16 Web site for any purpose. Illegal and/or unauthorized uses of the Web site,
17 including collecting email addresses or other contact information of members by
18 electronic or other means for the purpose of sending unsolicited email and
19 unauthorized framing of or linking to the Web site will be investigated, and
20 appropriate legal action will be taken, including without limitation, civil, criminal,
21 and injunctive redress.”

22 (Emphasis added.) In addition, it provided that:

23 You may not engage in advertising to, or solicitation of, other Members to buy or
24 sell any products or services through the Service. You may not transmit any chain
25 letters or junk email to other members. Although Thefacebook cannot monitor the
26 conduct of its members off the Web site, it is also a violation of these rules to use
27 any information obtained from the Service in order to harass, abuse, or harm
28 another person, or in order to advertise to, solicit, or sell to any member without
their prior consent.

Lastly, it affirmed:

Thefacebook owns and retains all proprietary rights in the Web site and the
Service. The Web site contains the copyrighted material, trademarks, and other
proprietary information of Thefacebook, and its licensors. Except for that
information which is in the public domain or for which you have been given
written permission, you may not copy, modify, publish, transmit, distribute,
perform, display, or sell any such proprietary information.

1 19. By registering, and becoming a member, the user may have access to view the
2 personal data of other users within his or her college (i.e., other students and alumni), as well as
3 to the personal data of friends at other schools who have explicitly granted such user access.
4 Each user has the ability to add his or her own personal identifying information and determine
5 who may view it. Such personal information may include his or her relationship status, birth date,
6 phone numbers, email address, and home address. Each item of personal information is provided
7 only by the user, and none of it is required in order to be a member of the website. At the
8 relevant times, the default privacy setting on a user's account limited a user's access to a school
9 network, but any user could have further limited access by selecting a more strict privacy setting
10 such that only her confirmed friends could view her information. Even now, the default setting
11 provides a limited view of a user's personal information, and the user has the option to make no
12 information available publicly.

13 20. ~~15. The Facebook Plaintiffs~~ also ~~restricts~~restrict access to and ~~has~~have always used
14 ~~its~~their best efforts to keep ~~confidential its aggregate customer lists and other~~their proprietary user
15 and system information, ~~as~~ from unauthorized uses and parties.

16 21. ~~16. The Facebook has~~Plaintiffs have generally expended substantial effort, money
17 and time in developing the informational components of its ~~web site~~website, as well as its
18 aggregate ~~customer~~user base. The data on the ~~The Facebook's~~Plaintiffs' computers, computers
19 systems, and computer networks is highly valuable.

20 22. At different times from the winter or spring of 2004 through at least 2005,
21 Defendants Cameron and Tyler Winklevoss, Divya Narendra, Wayne Chang, Winston Williams,
22 and David Guewa knowingly circumvented the Terms of Use for the Facebook website by
23 illicitly employing the user IDs and passwords of friends who were registered members of the
24 Facebook website to mask Defendants' real identities. These defendants took these actions in
25 order to gain access to the site and to steal information and data for commercial purposes, as well
26 as to advertise to and solicit members of the Facebook website to join www.connectu.com. Both
27 Defendants and the friends who provided Defendants with their user IDs and passwords did so
28

1 cognizant that such use was intended to harm Plaintiffs. Defendants' actions were at all times
2 intentionally aimed at, and the effects were felt by, Plaintiffs in California.

3 23. The users whose passwords Defendants (including, at least, Messrs. Winklevoss,
4 Narendra, Chang, and Guca) used to knowingly and improperly access the Facebook website in
5 California for commercial purposes and in violation of Plaintiffs' Terms of Use include, but were
6 not limited to, user IDs and passwords associated with the email addresses carlsson@stanford.edu
7 and stinab8@ucla.edu. The use of such user IDs and passwords for commercial purposes by
8 Defendants in violation of Plaintiffs' Terms of Use harmed Plaintiffs in California. Defendants
9 knew that such actions were improper, and that the harm would be uniquely felt by Plaintiffs in
10 California.

11 **B. Unauthorized Access, Misappropriation, and Commercial Use by Defendants**

12 24. ~~17.~~ ConnectU is a direct competitor of TheFacebook, and similarly offers an
13 interactive computer service ~~which enables~~ that purports to enable social networking amongst
14 present and former university students.

15 25. ~~18.~~ ConnectU has attempted to aggressively compete with
16 ~~TheFacebook.~~ Facebook.

17 26. Beginning in 2004, and upon information and belief continuing through and
18 including 2005, ConnectU and/or its founders hired PNS, Winston Williams, Wayne Chang, and
19 David Guca to write software to gain access, without permission, to Plaintiffs' website and steal
20 information, including email addresses and personal user information. ConnectU and/or its
21 founders also requested that friends of the founders, such as Divya Narendra's friend Deva
22 Mishra, attempt on behalf of ConnectU and the founders to violate Plaintiffs' Terms of Use and
23 steal email addresses; personal user information such as birthdates, addresses, and phone
24 numbers; course information; and other data from the Facebook website so that ConnectU could
25 solicit Facebook users (including users of the Facebook website located in California) to join
26 www.connectu.com. ConnectU, Messrs. Winklevoss and Narendra knew the harm from such
27 activities would be felt by Plaintiffs in California. They directed their activities through third
28

1 parties such as Deva Mishra knowing that the activities would result in the solicitation of
2 California-based Facebook members to join the website www.connectu.com.

3 27. In the Spring 2004, Tyler and Cameron Winklevoss and Divya Narendra hired
4 iMarc, a website developer, to help build the ConnectU website. On or around June 11, 2004,
5 “the boyz from” ConnectU asked iMarc to

6 write a little script that logs into www.thefacebook.com, loops
7 through http://www.thefacebook.com/profile.php?id=xxxxx
8 replacing xxxxx with numbers to grab people’s email addresses.

9 iMarc refused, because its employees believed that the request was unethical. Despite iMarc’s
10 caution against such activity, on July 22, 2004, “the boyz from” ConnectU “sent thousands of
11 invite emails [over a 12 hour period]. Every single one was sent using a bogus ‘From’ address:
12 ...”² For example, some of the “invite emails” purported to come from “god@harvard.edu.”
13 Many of these emails were sent to California college students via email addresses extracted from
14 the Facebook website. The email addresses were obtained by ConnectU, Messrs. Winklevoss and
15 Narendra through their illicit use of third party user accounts on the Facebook website. The
16 “invite emails” did not indicate that they contained an advertisement for users to join a competing
17 website, www.connectu.com. iMarc’s relationship with ConnectU soured and ended shortly after
18 this incident.

19 28. Messrs. Winklevoss engaged Wayne Chang, PNS and Winston Williams to
20 develop a computer program designed to retrieve user account names, personal data (including
21 email addresses and personal data of such user’s “friends”) from Facebook and its servers located
22 in California. Mr. Chang hired David Gucwa, a computer programmer, to write the programs
23 necessary to retrieve email accounts, course information and other data from the Facebook
24 website and Plaintiffs’ servers in California. Mr. Chang and Mr. Gucwa, with the knowledge and
25 support of ConnectU, Cameron Winklevoss, Tyler Winklevoss, and Divya Narendra, collaborated
26 with PNS and Mr. Williams to achieve the goal of writing programs to retrieve email account

27 _____
28 ² All quotes in this complaint are taken directly from documents produced in response to
discovery requests.

1 information, course information and other data from the Facebook website and its servers in
2 California.

3 29. Mr. Chang, in aid of his “partners” Tyler Winklevoss, Cameron Winklevoss and
4 Divya Narendra, provided Mr. Gucwa with fake and/or “borrowed” user accounts, including (but
5 not limited to) stinab8@ucla.edu and carlsson@stanford.edu, and gave him specific instructions
6 to play “cat and mouse” with Facebook. Mr. Chang noted that Facebook was “run by a techie,” a
7 reference that upon information and belief was to California resident Mark Zuckerberg, so they
8 should “be careful.” Mr. Gucwa indeed wrote a “script” that worked in two steps: it retrieved the
9 user ids and then the user profile information. It was a slow process, according to Mr. Gucwa,
10 “because the program has to “descend” into each separate profile for each separate friend.” Mr.
11 Gucwa eventually “[w]rote a script that catches up to 10k [user i.d.s] at a time.” Mr. Chang was
12 pleased by this news because he wanted to “seed ConnectU as much as possible.” The “good
13 news,” he said, “is that I’m sending thefacebook several thousand requests in a couple minutes
14 and they haven’t blocked my IP yet.” Mr. Chang was concerned, of course, about setting off
15 “huge” alarms at Facebook, and wondered how they could steal the information “faster.” On
16 January 27, 2005, Mr. Gucwa boasted that he had implemented the program he developed to
17 collect 46,000 “ids” from the Facebook website.

18 30. The programs that Mr. Chang, Mr. Gucwa, Mr. Williams, and PNS developed in
19 2005 to misappropriate Facebook email account and other information so that ConnectU could
20 spam Facebook users with invitations to join www.connectu.com were called variously
21 “importer,” “Facebook importer,” “crawler,” “grabFacebook.php,” “grabFacebook2.php,” and
22 “Social Butterfly.” Upon information and belief, ConnectU, Cameron Winklevoss, Tyler
23 Winklevoss, and Divya Narendra knew about the actions of Mr. Chang, Mr. Gucwa, Mr.
24 Williams, and PNS, were familiar with the importer, Facebook importer, crawler,
25 grabFacebook.php, grabFacebook2.php, and Social Butterfly programs and their purposes, and
26 were aware that the programs required access to Plaintiffs’ servers in California in order for the
27 programs to have their intended effects. Upon information and belief, the intended effects of
28 these programs included, but were not limited to, crawling the Facebook website, illicitly

1 importing without permission email addresses and personal user information into the
2 www.connectu.com website, and soliciting via spam email with false and/or misleading header
3 information Facebook users, including users located in California, to join the www.connectu.com
4 website. Such misleading header information included false information suggesting that the
5 invitation was not a commercial advertisement and that the spam request had originated as a
6 result of the stated wishes of third parties. Instead, on information and belief, the commercial
7 advertisement emails were sent by Defendants.

8 31. Upon information and belief, among other methods Mr. Chang, Mr. Gucwa, Mr.
9 Willams and PNS (with the support and knowledge of ConnectU, Cameron Winklevoss, Tyler
10 Winklevss, and Divya Narendra) “spoofed” the Facebook website to gain access to email account
11 and other information. Said “spoofing” was accomplished by using an email header or browser to
12 make it appear as though the communication link originated from someone other than a source
13 associated with Mr. Chang, Mr. Gucwa, Mr. Williams or PNS. Upon information and belief,
14 Defendants “spoofed” the website to illicitly circumvent the Facebook website security measures
15 designed to prevent parties such as Defendants from hacking into the Facebook website in order
16 to steal data contained on the Facebook website and its California servers.

17 32. In February 2005, Mr. Chang was notified that his account had been suspended
18 because the web service Defendants were using had received complaints from someone at
19 Facebook that its California servers had been attacked through the web service. The web service
20 indicated that it noticed a significant amount of activity and wondered what Defendants’ interest
21 in www.facebook.com was. In response, Mr. Chang notified defendants Cameron Winklevoss,
22 PNS (through its CEO, John Taves), Mr. Williams, and Mr. Gucwa that Facebook learned of their
23 activity. Mr. Chang described a method for working around the suspended account and asked
24 Mr. Williams, Mr. Gucwa, PNS and others to provide thoughts on how best to work around
25 Plaintiffs’ website security mechanisms. Mr. Winklevoss then indicated to these other defendants
26 that the “importer” script, designed to breach Facebook’s security mechanisms in order to steal
27 user data, was top priority for them.

1 33. In late 2004, Messrs. Winklevoss and Narendra hired defendants PNS and
2 Williams to help develop the connectu.com website. PNS/Mr. Williams joined forces with
3 Messrs. Chang and Gucwa to develop the “importer/crawler” program, as well as the Social
4 Butterfly program. All Defendants knew the “importer/crawler” and Social Butterfly programs
5 would be used to spam and solicit California-based and other users of the Facebook website to
6 invite them to join the ConnectU website. On information and belief, all Defendants also knew
7 that the “importer/crawler” and/or Social Butterfly programs employed misleading email header
8 information that failed to indicate the solicitation was a commercial advertisement and/or which
9 failed to apprise the solicited Facebook account holder that the email had not actually been sent
10 by the person from whom it appeared to be sent. In early 2005, Mr. Williams logged many hours
11 developing the “importer” program and stealing millions of emails from www.facebook.com
12 website, including emails of users located in California and known to Mr. Williams and the other
13 Defendants to be associated with California schools. Much of his activity was targeted at
14 California residents.

15 34. In 2004 and 2005, ConnectU, Messrs. Winklevoss, Narendra and Chang received
16 multiple complaints related to the spamming of Facebook users. In March of 2005, ConnectU,
17 Cameron Winklevoss, Tyler Winklevoss, and Divya Narendra were specifically informed by one
18 or more of the other Defendants that “some person from thefacebook” identified how the
19 “headers” used by ConnectU worked, and why the spamming of Facebook users (including those
20 based in California) had generated complaints. Upon information and belief, the headers that
21 Defendants were aware created these complaints were email headers originating from
22 connectu.com, and were misleading because they did not identify the solicitations as commercial
23 solicitations and did not accurately reflect that the email originated from the administrators of
24 connectu.com rather than friends of the Facebook users who received the email.

25 35. ~~19.~~ Through its actions, ConnectU and the other Defendants ~~have~~ gained
26 unauthorized access to ~~TheFacebook’s web site,~~ Plaintiffs’ servers and network. They have
27 ~~taken stolen~~ extensive amounts of proprietary and personal user data from ~~TheFacebook~~ Plaintiffs,
28 including but not limited to user data such as email addresses and other ~~protected data collected~~

1 ~~and/or created by TheFacebook. At least some of the emails and related data Defendants took~~
2 ~~without authorization was from numerous individuals that~~personal identifying information
3 collected in Plaintiffs' servers. The Defendants' actions, which included using other users'
4 accounts and passwords (as well as fake accounts and passwords), violated Plaintiffs' Terms of
5 Use and Privacy Policy. Defendants' actions affected thousands, if not millions, of individuals
6 who had no direct contact or prior business relationship with ConnectU. At least some of those
7 ~~individuals were~~Their actions had a direct effect on thousands of California residents, including
8 (but not limited to) students at UCLA, the University of California at Berkeley and Stanford.

9 36. At the time of Defendants' unauthorized access, all users were required to register
10 and abide by the website's Terms of Use and Privacy Policy. The Terms of Use in effect at the
11 time of Defendants' unauthorized access of the www.facebook.com prohibited use of the website
12 for commercial endeavors. In addition, the Terms of Use prohibited the collection of email
13 addresses or other contact information of Plaintiffs' members for the purpose of sending
14 unsolicited e-mail, including unsolicited e-mail to California-based users of the Facebook
15 website. Defendants' activity violated Plaintiffs' Terms of Use and Privacy Policy.

16 37. 20. On information and belief, Defendants willfully and maliciously engaged in
17 unauthorized access to, and unauthorized appropriation of, ~~TheFacebook's~~Plaintiffs' data,
18 computers, computer systems, and computer networks, at least in part in the hope of gaining
19 competitive advantage for ConnectU through such activities and to avoid the effort, time and
20 money needed to develop such data, ~~customer~~user lists, and other matter on its own. At the time
21 of Defendants' unauthorized access via importer, Facebook importer, crawler, grabFacebook.php,
22 grabFaceboo2.php, and the solicitation of Facebook users via Social Butterfly, Plaintiffs and/or
23 their data, computers, computer systems and computer networks were principally located in
24 California.

25 38. Defendants sought commercial gain and competitive advantage through their
26 unauthorized access as explained, in May 2004, by Cameron Winklevoss to his father, when he
27 described how he and his colleagues would steal course information and other data from
28 www.facebook.com in order to launch connectu.com with as many or more schools than

1 Facebook. Defendant Cameron Winklevoss explained to his father Howard Winklevoss, who
2 encouraged him, that such theft would give them a competitive advantage over Plaintiffs without
3 investing the time it took Plaintiffs to become successful.

4 39. ~~21.~~ As a result of these incidents of unauthorized access and unauthorized
5 appropriations by Defendants, ~~TheFacebook was~~ Plaintiffs were damaged, including being
6 damaged in California.

7 40. ~~22.~~ As a result of their deliberate actions, Defendants improperly benefited from
8 ~~TheFacebook's~~ Plaintiffs' business efforts and established reputation, including its business
9 efforts and established reputation in California, gaining substantial advantage from access and use
10 of ~~TheFacebook's~~ Plaintiffs' commercial and proprietary information.

11 41. ~~23.~~ At various times, ~~ConnectU~~ Defendants distributed e-mails to members of
12 ~~TheFacebook~~ www.facebook.com and otherwise sought to solicit ~~TheFacebook's~~ Plaintiffs'
13 members, including the solicitation of California-based members and members with whom
14 ConnectU had no prior or direct relationship ~~with,~~ in an effort to lure them to
15 ~~ConnectU~~ www.connectu.com. ConnectU used the email addresses that had been gathered by
16 and/or for ConnectU through Defendants' unauthorized access to and unauthorized appropriations
17 from ~~TheFacebook's data,~~ Plaintiffs' computers, computer systems, and computer networks ~~to~~
18 unjustly enrich ConnectU, and to spam and solicit Facebook users to join the website
19 www.connectu.com.

20 42. ~~24.~~ In response to ConnectU's mass e-mailings, ~~TheFacebook was~~ and
21 Defendants' other actions, Plaintiffs were forced to notify ~~at least~~ certain of its members of the
22 apparent breach of their privacy by ConnectU, along with its agents and partners. ~~TheFacebook~~
23 ~~is~~ Plaintiffs are informed and ~~believes~~ believe and thereupon ~~alleges~~ allege that such notice
24 damaged the trust ~~it~~ their members placed in ~~TheFacebook's web site~~ Plaintiffs and harmed
25 ~~TheFacebook's~~ Plaintiffs' business, including its business in California.

26 43. ~~25.~~ ~~TheFacebook is~~ Plaintiffs are informed and ~~believes~~ believe and thereupon
27 ~~alleges~~ allege that each of the Defendants had ~~at least had~~ knowledge of the wrongful acts
28 described herein (including that such wrongful acts would harm Facebook in California), as well

1 as their commercial purpose, ~~and at least some of the~~. Defendants carried out such wrongful acts
2 willfully and maliciously.

3 44. ~~26. The Facebook is~~ Plaintiffs are informed and ~~believes~~ believe and thereupon
4 ~~alleges~~ allege that Defendants and/or those similarly situated may continue to engage in such
5 unauthorized access and unauthorized appropriations in the future. In addition, ~~The Facebook~~
6 ~~is~~ Plaintiffs are informed and ~~believes~~ believe and thereupon ~~alleges~~ allege that Defendants
7 continue to exploit ~~The Facebook's proprietary and valuable~~ the misappropriated data for their own
8 commercial benefit, to ~~The Facebook's~~ Plaintiffs' detriment. Plaintiffs do not have an adequate
9 remedy at law.

10 45. Defendants were aware at all times from the summer of 2004 through the present
11 that their actions would harm Plaintiffs in California. For instance, in January, 2006, Defendant
12 Williams discussed with attorneys for ConnectU how many California student members of
13 Facebook had been spammed by ConnectU through the combined use of the Facebook
14 importer/crawler, grabFacebook.php/grabFacebook2.php, and Social Butterfly.

FIRST CAUSE OF ACTION

(Violation of California Penal Code § 502(c) — Against All Defendants)

16 46. ~~27. The Facebook~~ Plaintiffs hereby ~~realleges~~ reallege and ~~incorporates~~ incorporate by
17 reference paragraphs 1 through ~~26,~~ 45, inclusive, of this complaint as though fully set forth herein.

18 47. ~~28.~~ Defendants have knowingly and without permission accessed, caused to be
19 accessed, and used ~~The Facebook's data,~~ Plaintiffs' computers, computer systems, ~~and~~ computer
20 networks, and data stored therein, in order to wrongfully obtain and control data, ~~web site~~ website
21 components, and other information of monetary value.

22 48. ~~29.~~ Defendants have knowingly and without permission taken, copied, and made
23 use of data from ~~The Facebook's~~ Plaintiffs' computers, computer systems, and computer networks,
24 as well as taken and copied ~~related~~ resident data.

25 49. ~~30.~~ Defendants have knowingly and without permission provided or assisted in
26 providing a means of accessing ~~The Facebook's~~ Plaintiffs' computers, computer systems, and
27 computer networks in violation of California Penal Code Section 502. Furthermore, Defendants
28

1 have knowingly instructed others to access, use, and copy ~~TheFacebook's~~information from
2 Plaintiffs' computers, computer systems, and computer networks, without permission.

3 50. ~~31.~~ Defendants' unauthorized access and use has damaged and caused loss to
4 ~~TheFacebook~~Plaintiffs.

5 51. ~~32.~~ Defendants' actions constitute violations of California Penal Code section
6 502(c).

7 SECOND CAUSE OF ACTION

8 (Common Law Misappropriation / Unfair Competition—under Massachusetts and
9 California Law—Against All Defendants)

10 52. ~~33.~~ ~~TheFacebook~~Plaintiffs hereby ~~realleges~~re allege and ~~incorporates~~incorporate by
11 reference paragraphs 1 through ~~32,~~51, inclusive, of this complaint as though fully set forth herein.

12 53. ~~34.~~ ~~TheFacebook has~~Plaintiffs expended considerable time and money developing
13 ~~the~~their commercially valuable ~~customer lists, web site~~user base (including account information),
14 website components, network, and other information specified in this complaint
15 (“~~TheFacebook~~Facebook's Information”).

16 54. ~~35.~~ Defendants have taken such information and without authorization used,
17 disclosed, and held out as their own ~~TheFacebook~~Facebook's Information, without compensation
18 to ~~TheFacebook~~Facebook.

19 55. Defendants' unauthorized access, use and disclosure of Facebook's Information
20 was the result of the deceptive and unfair actions described above.

21 56. ~~36.~~ As a consequence, ~~TheFacebook has~~Plaintiffs have been harmed.
22 ~~TheFacebook is~~Plaintiffs are informed and ~~believes~~believe, and on that basis ~~alleges~~allege, that
23 Defendants' acts and conduct constitute common law misappropriation / unfair competition and
24 were carried out willfully, fraudulently, maliciously, and with the wanton disregard of
25 ~~TheFacebook's~~Plaintiffs' rights, thereby entitling ~~TheFacebook~~Plaintiffs to compensatory and
26 punitive damages to be proven at trial.

27 THIRD CAUSE OF ACTION

28 (Violation of Massachusetts General Law 93A § 2 – Against All Defendants)

1 57. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 56,
2 inclusive, of this complaint as though fully set forth herein.

3 58. Defendants' actions in gaining unauthorized access to www.facebook.com,
4 misappropriating data, and sending unsolicited emails are unlawful, unfair, and deceptive.

5 59. Plaintiffs have been harmed as a direct consequence of Defendants' unlawful
6 actions.

7 60. Defendants' unlawful, unfair and deceptive actions are in violation of
8 Massachusetts General Law 93A.

9 **FOURTH CAUSE OF ACTION**
10 **(Violation of 15 U.S.C. §§ 7704(a)(1), (2), (3) and 7705 – Against All Defendants)**

11 61. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 60,
12 inclusive, of this complaint as though fully set forth herein.

13 62. Defendants accessed Facebook's computer system without authorization and
14 intentionally initiated the transmission of multiple commercial electronic mail messages through
15 Plaintiffs' computer system. Said commercial electronic mail messages contained materially
16 false and/or materially misleading header information. The header information was materially
17 false and/or misleading because it included a technically accurate originating electronic mail
18 address, domain name, and/or Internet Protocol address purporting to be from a particular
19 Facebook user, but the access to the email address for purposes of initiating the message was
20 obtained by means of false or fraudulent pretenses or representations.

21 63. Defendants initiated the transmission of a commercial electronic mail message
22 with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that
23 the subject heading of their email solicitations to Facebook users would be likely to mislead a
24 recipient, acting reasonably under the circumstances, about a material fact regarding the contents
25 or subject matter of the message because the message did not indicate that Defendants sent the
26 email, that the email was an advertisement to join www.connectu.com, or that the email was not
27 initiated by the sender from whom it appeared to be initiated.

1 64. On information and belief, Defendants initiated commercial electronic mail
2 messages that did not contain a functioning return electronic mail address (e.g.,
3 god@harvard.edu, jstarr@georgetown.edu, jstarr@amherst.edu, and jstarr@dartmouth.edu) or
4 other Internet-based mechanism, to provide the recipient to submit, in a manner specified in the
5 message, a reply electronic mail message or other form of Internet-based communication
6 requesting not to receive future commercial electronic mail messages from ConnectU, Messrs.
7 Winklevoss and/or Narendra at the electronic mail address where the message was received.

8 65. ConnectU, Messrs. Winklevoss and Narendra promoted, or allowed the promotion
9 of www.connectu.com in a commercial electronic mail message, the transmission of which is in
10 violation of 15 U.S.C. § 7704 (a)(1) because they knew or should have known in the ordinary
11 course of their business that www.connectu.com was being promoted in such a message; they
12 received or expected to receive an economic benefit from such promotion; and they took no
13 reasonable action to prevent the transmission.

14 66. Defendants knowingly and willfully collected electronic mail addresses and other
15 information from www.facebook.com using automated means.

16 67. At the time of Defendants actions, Plaintiffs' website contained a notice that
17 member electronic mail addresses were not to be given, sold, or otherwise transferred to any other
18 party.

19 68. Defendants' actions constitute violations of the Federal Can-Spam Act of 2003, 15
20 U.S.C. § 7701 et. seq.

21 **FIFTH CAUSE OF ACTION**
22 **(Violation of 18 U.S.C. § 1030 – Against All Defendants)**

23 69. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 68,
24 inclusive, of this complaint as though fully set forth herein.

25 70. Defendants knowingly and with intent to defraud accessed Plaintiffs' computers
26 without authorization.

27 71. Defendants' conduct involved interstate communications.

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Dated: ~~August 17, 2005~~ May 30, 2007

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