

1 G. HOPKINS GUY, III (State Bar No. 124811)  
 hopguy@orrick.com  
 2 I. NEEL CHATTERJEE (State Bar No. 173985)  
 nchatterjee@orrick.com  
 3 MONTE COOPER (State Bar No. 196746)  
 mcooper@orrick.com  
 4 THERESA A. SUTTON (State Bar No. 211857)  
 tsutton@orrick.com  
 5 YVONNE P. GREER (State Bar No. 214072)  
 ygreer@orrick.com  
 6 ORRICK, HERRINGTON & SUTCLIFFE LLP  
 1000 Marsh Road  
 7 Menlo Park, CA 94025  
 Telephone: 650-614-7400  
 8 Facsimile: 650-614-7401

9 Attorneys for Plaintiffs  
 FACEBOOK, INC. and MARK ZUCKERBERG

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

15 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 AND DOES 1-25,

22 Defendants.  
 23

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

**JOINT CASE MANAGEMENT  
 STATEMENT**

Judge: Honorable Richard Seeborg

1 This Court has set the initial Case Management Conference for July 11, 2007. Pursuant  
2 to an Order Dated June 14, 2007, the Court has enlarged the time in which 5 recently-named  
3 defendants would be required to file responsive pleadings to the Second Amended Complaint.  
4 That Order further provides that the Court expects these recently-named defendants may file  
5 motions to dismiss for lack of personal jurisdiction. At the time this Joint Case Management  
6 Conference Statement was filed, the only defendant who had answered the Second Amended  
7 Complaint is ConnectU. Defendants Pacific Northwest Software, Inc. and Winston Williams  
8 have filed a motion to dismiss for lack of personal jurisdiction.

9 Defendants' Winklevoss, Narendra, Chang, Gucwa, Williams and Pacific Northwest  
10 Software, Inc.'s participation in the July 11, 2007 Case Management Conference, and in the  
11 activities leading up to this CMC is a stipulated "special appearance." As each of the  
12 Defendants have already filed or intend to file motions to dismiss for lack of personal  
13 jurisdiction, all parties stipulate that participation in conferences related to the Joint Case  
14 Management Statement and the issues related to the motion to dismiss for lack of personal  
15 jurisdiction, their involvement in the preparation of this Joint Case Management Conference  
16 Statement, and/or their appearance at the currently-scheduled Case Management Conference on  
17 July 11, 2007, shall not be used in any way to defeat their motions to dismiss for lack of  
18 personal jurisdiction.

19 **I. JURISDICTION AND SERVICE**

20 Plaintiffs contend that this court has subject matter jurisdiction over Plaintiffs' claims  
21 under 28 U.S.C. §§ 1331, 1332, and 1367, and that venue is proper under 28 U.S.C. § 1391. All  
22 named defendants have been served with the Second Amended Complaint. *See* Dkt. No. 76.  
23 Defendants Pacific Northwest Software, Inc., and Winston Williams have filed a motion to  
24 dismiss the First Amended Complaint for lack of personal jurisdiction, pending before this  
25 Court. Dkt. No. 23.

26 All defendants disagree that this Court has subject matter jurisdiction pursuant to 28  
27 U.S.C. § 1332, and 1367. One or more defendants disagrees that venue is proper in this  
28 district.

1 **II. FACTS**

2 The Parties believe that the issues, facts, parties (including who has answered and who  
3 may still challenge jurisdiction), have been presented in detail in other pleadings. The parties  
4 will be prepared to discuss the factual allegations of the case, if necessary, at the conference.

5 **III. LEGAL ISSUES**

- 6 1. Did Defendants violate California Penal Code § 502(c)?
- 7 2. Did Defendants' engage in common law misappropriation/unfair  
8 competition?
- 9 3. Did Defendants' violate Massachusetts General Law § 93A?
- 10 4. Did defendants violate the CAN SPAM Act, 15 U.S.C. § 7704?
- 11 5. Did defendants' violate the Computer Fraud and Abuse Act, 18 U.S.C.  
12 § 1030?
- 13 6. What damages, if any, are available to Defendants in the event a claim is  
14 successful?
- 15 7. Do one or more of the affirmative defenses in ConnectU's Answer bar  
16 any or all of Plaintiffs' claims?
- 17 8. Do the doctrines of res judicata, claim preclusion, collateral estoppel,  
18 laches, and/or issue preclusion bar some or all of the claims against some  
19 or all of the defendants?
- 20 9. Should this action be stayed?
- 21 10. Does personal jurisdiction over each of the individual defendants, and  
22 Pacific Northwest Software, Inc. exist?
- 23 11. Is venue proper in this Court?

24 **IV. MOTIONS**

25 **Resolved Motions.** Defendant ConnectU filed a Demurrer on October 25, 2005; the  
26 demurrer was overruled. Cameron Winklevoss, Tyler Winklevoss, Divya Narendra, Howard  
27 Winklevoss, filed a Motion to Quash because the Court lacked personal jurisdiction on October  
28 25, 2005, which was granted. Defendant ConnectU filed a Motion to Stay on September 6,  
2006, which was denied. Both parties filed various motions to compel discovery. Facebook's  
motion to compel further responses to document requests was pending at the time ConnectU  
removed this action to this Court. Facebook filed a Motion for Leave to File a First Amended

1 Complaint on January 23, 2007, which was granted. ConnectU filed a Motion to Dismiss  
2 pursuant to Federal Rule 12(b)(6) on March 21, 2007, which was granted-in-part. Facebook  
3 filed, on April 4, 2007, a Local Rule 6-3 motion to enlarge the time required for it to respond to  
4 Pacific Northwest Software and Williams' Motion to Dismiss, which was granted. Facebook  
5 filed a Motion for Expedited Discovery on April 5, 2007, which was granted. Facebook filed,  
6 on April 9, 2007, a Motion to Reschedule the June 20, 2007, CMC, which was denied.  
7 ConnectU filed, on June 5, 2007, a Local Rule 6-3 motion to enlarge time to respond to the  
8 Second Amended Complaint, which was granted-in-part.

9 **Pending Motions.** Defendants Pacific Northwest Software and Winston Williams filed  
10 a Motion to Dismiss for Lack of Personal Jurisdiction on March 21, 2007. This motion is set for  
11 hearing on July 11, 2007.

12 **Proposed Motions.**

13 *Plaintiffs' Statement:*

14 Plaintiffs expect to file a Motion to Strike Defendant ConnectU's Affirmative Defenses.  
15 Plaintiffs further expect to file a Motion in opposition to any motion to dismiss or motion to  
16 strike by Cameron Winklevoss, Tyler Winklevoss, or Divya Narendra which sets out, among  
17 other matters, why those individuals are once again appropriately named as defendants and  
18 subject to personal jurisdiction in California. To the extent that this Motion may raise the issue  
19 of sanctions related to the earlier jurisdictional challenge, Plaintiffs expect to discuss the subject  
20 matter of the motion with Defendants and the Court prior to setting the issue for hearing.  
21 Plaintiffs further expect to file a Motion to Compel shortly with respect to the following issues  
22 a) responses to interrogatories related to personal jurisdiction, b) appropriate Rule 30(b)(6)  
23 testimony related to personal jurisdiction, and c) document production from Pacific Northwest  
24 Software that was promised but withheld. Plaintiffs will also file one or more motions for  
25 summary judgment. Plaintiffs also may raise in a motion issues associated with the  
26 inappropriateness of "speaking" objections and instructions not to answer at depositions.

27 *Defendants' Statement:*

28 (1) Defendant Pacific Northwest Software, Inc. intends to file a motion for

1 protective order. Despite this Court's Order allowing limited discovery (i.e. specifically limited  
2 to 2 depositions and one set of interrogatories) as it directly related to the issues of personal  
3 jurisdiction, Plaintiffs have violated that order by subpoenaing each of Pacific Northwest  
4 Software, Inc.'s California customers--where the subpoenas call for document production 8 days  
5 *after* the due date for Plaintiffs' opposition to the motion. That opposition was filed on June 25,  
6 2007. The due date for objections or documents is July 2, 2007. The hearing date for the  
7 motion to dismiss is July 11, 2007. These subpoenas were designed solely to harass Pacific  
8 Northwest Software Inc.'s customers.

9 (2) Defendants Cameron Winklevoss, Tyler Winklevoss and Divya Narendra  
10 intend to file a motion to dismiss because, as the State Court has already ruled, California courts  
11 cannot assert personal jurisdiction over them. These defendants also intend to assert res  
12 *judicata*, collateral estoppel, and abuse of process in this motion to dismiss.

13 (3) Defendants Wayne Chang and David Gucwa will file motions to dismiss on  
14 the grounds that this Court cannot assert personal jurisdiction over them.

15 (4) Some of the defendants may file motions to dismiss because some of the  
16 claims fail to state facts sufficient to constitute a cause of action.

17 (4) If any of the defendants remain in this case after motions to dismiss, they  
18 intend to file motions for summary judgment on each of the claims for relief.

19 **V. AMENDMENT OF PLEADINGS**

20 *Plaintiffs' Position*

21 Plaintiffs do not anticipate adding or dismissing any parties, claims, or defenses.  
22 Plaintiffs note that there is a clerical error in the Second Amended Complaint, and seeks the  
23 Court's guidance on how best to proceed. The Second Amended Complaint contains an  
24 inadvertent citation to the "Federal Rules of Civil Procedures Sections 1331, 1332, 1391(b) and  
25 (c)." This passage should cite to "28 U.S.C. Sections 1331, 1332, 1367, and 1391(b) and (c)."  
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27  
28

1           *Defendants' Position:*

2           Only Defendant ConnectU has filed an answer. Depending upon whether other  
3 defendants file motions to dismiss, and this Court's order, ConnectU may amend its answer  
4 consistent with such order.

5   **VI. EVIDENCE PRESERVATION**

6           *Plaintiffs' Position*

7           Because discovery relevant in this case has already taken place in related cases, potential  
8 evidence in this action has already been collected. In addition, plaintiffs have sent company-  
9 wide emails to prevent any on-going erasures of any potentially relevant material. During prior  
10 discovery, Plaintiffs encountered certain technical difficulties while gathering documents from a  
11 single computer hard drive. After attempting all reasonable means of data recovery, Plaintiffs  
12 have extracted all recoverable information from the computer hard drive. Plaintiffs have learned  
13 that measures to preserve some evidence from Defendants, such as electronic information from  
14 Winston Williams, were not taken and that Williams' computer has been stolen.

15           *Defendants' Position*

16           Each of the Defendants has been notified not to destroy evidence that might be relevant  
17 to this case. The contentious nature of this litigation is continually demonstrated by Plaintiffs.  
18 Note their characterization of the "technical difficulties" regarding the computer likely used by  
19 Zuckerberg when he stole ConnectU's ideas and source code, and compare it to their  
20 unsupported claim that Mr. Williams did not take measures to preserve evidence. Regarding  
21 these "technical difficulties", one or more of the defendants may propound discovery and/or file  
22 a motion regarding their circumstances.

23   **VII. INITIAL DISCLOSURES**

24           The parties will discuss the scheduling of initial disclosures pursuant to Rule 26 at the  
25 Case Management Conference. Plaintiff believes Rule 26 disclosures should be exchanged  
26 promptly after the hearing. Defendants believe that before further time, effort and costs are  
27 incurred regarding this case, the parties and the Court should agree to stay this case in light of  
28 the pre-existing Massachusetts case that will undoubtedly resolve all the issues in this action.

1 Even if a stay is not granted, neither Pacific Northwest Software, Inc., Winston Williams, nor  
2 the newly-named individual defendants should have to make any Rule 26 disclosures unless or  
3 until the Court finds that it has personal jurisdiction over any of them (or if any makes a general  
4 appearance).

5 **VIII. DISCOVERY**

6 *Plaintiffs Position:*

7 The vast majority of discovery in this case is complete. Plaintiffs believe the primary  
8 remaining issue is the number of false emails sent to stolen email addresses. Plaintiffs propose  
9 the schedule set forth at the end of this statement. Pursuant to the Court's order, plaintiffs are in  
10 the process of taking limited jurisdictional discovery of defendants PNS and Williams, including  
11 depositions and a limited number of interrogatories.

12 Other than for jurisdictional discovery, ConnectU has not served a single deposition  
13 notice in this action. ConnectU did serve 26 requests for production to which Facebook  
14 responded. ConnectU filed a motion to compel which was denied. Defendants have not sought  
15 any other discovery to date, even though ConnectU has had ample time to do so.

16 Plaintiffs do not believe a stay of this case is warranted. Defendants sought a stay of this  
17 case before and their request was denied.

18 *Defendants' Position:*

19 Plaintiffs' statement that the vast majority of discovery has already been completed  
20 couldn't be farther from the truth. Plaintiffs explicitly admit the falsity of this statement by  
21 telling the Court they believe 50 more hours of deposition is appropriate. *See* Section, A, below.  
22 Regarding the limited discovery taken by ConnectU, it took Plaintiffs over six months to serve  
23 documents in response to ConnectU's initial document requests. Around that time, Plaintiffs  
24 moved to amend their complaint, and have now amended their complaint three times. Unlike  
25 Plaintiffs, Defendants do not have the luxury of taking discovery multiple times. Plaintiffs have  
26 embarked on a process of changing allegations. This case has substantially changed in breadth  
27 since it commenced. For the first time in this statement, Plaintiffs represent that they do not  
28 intend to further amend the complaint. Once the Court decides which Defendants will remain in

1 the case, unless it is stayed, they will continue their discovery efforts. Plaintiffs' criticism of  
2 Defendants' approach cannot be justified.

3 In any event, the discovery ConnectU has performed has been blocked at nearly every  
4 stage. ConnectU's deposition of Zuckerberg was abruptly interrupted, which forced ConnectU  
5 to move to compel his attendance, which the Superior Court granted. Further, Plaintiffs have  
6 played procedural games interfering with document production. Shortly after this obstreperous  
7 activity, Plaintiffs amended their complaint to add two federal claims, a claim arising under the  
8 general statutes of Massachusetts and three other California statutory claims. ConnectU  
9 removed this case, resulting in the Rule 26 stay of discovery. And, the addition of 5 new  
10 defendants, assuming one or more of them remains in this case, further complicates the  
11 coordination of discovery efforts. The Rule 26 stay was undoubtedly imposed to allow the  
12 claims and the parties to be finalized, as nearly as possible, before the unlimited spending of  
13 time and money on discovery begins. Plaintiffs' late approach of adding claims and defendants  
14 and then insisting that discovery be closed only a few months after the schedule would permit a  
15 hearing on a motion to determine whether these newly-named defendants even belong in the  
16 case, is unfair, improper, and would violate due process.

17 Given the procedural activities and posture of this case, Defendant ConnectU has taken  
18 only one deposition, and that was limited to issues directly related to personal jurisdiction.  
19 Unless this case is stayed, ConnectU expects to propound discovery requests and interrogatories,  
20 and thereafter notice depositions. The other defendants, if they remain in the case after the  
21 Court rules on motions to dismiss for lack of personal jurisdiction, intend to conduct discovery,  
22 but given their recent entry into the case, these defendants are not in a position to detail what this  
23 discovery might be. Moreover, many of the newly named defendants do not have the  
24 knowledge that the previous discovery has disclosed.

25 David Gucwa, who will be represented by the Dechert firm is a newly named party. Mr.  
26 Gucwa is informed that hundreds of thousands of documents have been produced between the  
27 parties in the Massachusetts case, that may be relevant to this case, as Plaintiffs' statement  
28 concedes. Mr. Gucwa will require a reasonable time to get up to speed, in the event this Court

1 denies his expected motion to dismiss. Plaintiffs have known about Mr. Gucwa since even  
2 before this case was filed. This Court has stayed discovery as it concerns him (and Messrs.  
3 Winklevoss, Narendra, and Chang). Neither Mr. Gucwa, nor the other newly-named defendants  
4 should be forced to expend time and effort reviewing and preparing for a case that may be  
5 dismissed for lack of personal jurisdiction. Plaintiffs waited nearly two years to bring these new  
6 parties into this case. It would be a denial of due process to force Mr. Gucwa, as well as the  
7 other newly-named parties, to come up to speed on this case, which includes reviewing hundreds  
8 of thousands of documents, propounding discovery, and taking depositions within a few months  
9 after the schedule would allow for a hearing on their motions to dismiss for lack of personal  
10 jurisdiction.

11 This case should be stayed entirely, as the resolution of the Massachusetts action will end  
12 this action. If the Court is inclined to allow this case to proceed, Defendants propose that once  
13 the Court rules on the last motion to dismiss, it hold a supplemental case management  
14 conference at which point the defendants, and particularly the newly-named defendants will be  
15 in a better position to advise the Court on the amount of time each expects is necessary for  
16 preparation, and the discovery each contemplates. In the mean time, all discovery should be  
17 stayed in light of Plaintiffs' decision to add 5 new defendants and new claims to this case.  
18 Otherwise these newly named defendants would be forced to expend enormous funds reviewing  
19 and preparing for, and participating in discovery in vain, if the Court grants their motions.

20 **A. Fact and Expert Depositions**

21 *Plaintiffs position:*

22 Plaintiffs proposes that each side be allowed to take up to 50 total hours of fact witness  
23 depositions (including F.R.C.P. 30(b)(6) depositions), in addition to the limited jurisdictional  
24 discovery already authorized by this Court. Plaintiffs further propose that each side be allowed  
25 to take seven deposition hours per expert report, should they be necessary.

26 ///

1           *Defendants' Position<sup>1</sup>:*

2           Each party represented by separate counsel should be entitled to the 10 deposition limit  
3 pursuant to the Federal Rules of Civil Procedure. Each deposition should be limited to no more  
4 than 7 hours, also pursuant to the Federal Rules of Civil Procedure, although the parties should  
5 meet and confer about the appropriate length of any Rule 30(b)(6) deposition. Regarding  
6 ConnectU, there are only 3 owners, i.e. Cameron Winklevoss, Tyler Winklevoss and Divya  
7 Narendra, each of whom is now a defendant. Plaintiff has already taken each of their  
8 depositions for 2 hours. Plaintiff should not be allowed to take multiple depositions of these  
9 individual defendants by cleverly using Rule 30(b)(6). Nor should Plaintiffs be entitled to  
10 expand this limitation because of their recent addition of Zuckerberg as a party plaintiff.  
11 Similarly, Plaintiffs have taken over 8 hours of Pacific Northwest Software, Inc.'s deposition (in  
12 two sessions) and 4 hours of Winston Williams's deposition. Plaintiffs have also taken a 2 hour  
13 deposition of Howard Winklevoss. Each of the previously-mentioned depositions should count  
14 toward the 10 depositions allowed by the Federal Rules.

15           **B. Interrogatories**

16           The parties agree that each party currently represented by separate counsel is entitled to  
17 propound 25 interrogatories.

18           **C. Requests for Admissions**

19           The parties agree that the Federal Rules of Civil Procedure shall govern Requests for  
20 Admission.

21           **D. Requests For Production**

22           The Parties agree that the Federal Rules of Civil Procedure shall govern Requests for  
23 Production.

24           ///

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27           

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<sup>1</sup> Initially Defendants question why Plaintiffs believe they need any depositions in light of their  
28 statement above that "the primary remaining issue is the number of false emails sent to stolen  
email addresses."

1           Plaintiffs' additional position:

2           Based on representations by their counsel, document collection from Defendants  
3 ConnectU, Tyler, Cameron and Howard Winklevoss; and Gucwa is largely complete at this  
4 time. Document collection from Defendants Williams and Chang remains.

5           In or around October 2006, Plaintiffs suggested that the parties reach agreement on a list  
6 of key search terms in order to search Plaintiffs' approximately 1,000,000 records in order to  
7 pare down the volume of records to be produced and provide only those that are relevant.  
8 Defendants refused to participate in identifying search terms. Plaintiffs recently offered this  
9 process in the related Massachusetts action, but have received no response.

10           Defendants' response to Plaintiffs' position:

11           Regarding Plaintiffs' proposal that the parties agree on search terms, Defendants strongly  
12 disagree. If a party propounds an enforceable Request for Production, the responding party must  
13 perform a reasonable search to find and produce all responsive documents. The propounding  
14 party should not be tasked with the responsibility of guessing at search terms that might or might  
15 not identify the document.

16           **E.     Protective Order**

17           The parties entered into a stipulated protective order while the action was pending before  
18 the California court. The parties seek the Court's guidance as to how to proceed in adapting the  
19 current protective order to address the Court's and the Northern District's approach to protective  
20 orders.

21           **IX.    CLASS ACTIONS**

22           This is not a class action.

23           **X.     RELATED CASES**

24           Counsel for plaintiffs are aware of two pending related proceedings to this case:  
25 *ConnectU Inc. v. Mark Zuckerberg et al.*, No. 04-11923 (D.Mass) and *ConnectU LLC v. Mark*  
26 *Zuckerberg et al.*, No. 07-1796 (1st Cir.). The First Circuit appeal was filed when an earlier,  
27 related case was dismissed on March 28, 2007. That case was *ConnectU LLC v. Mark*  
28 *Zuckerberg, et al*, No. 1:07-CV-10593-DPW.

1 **XI. RELIEF**

2 Plaintiffs seek judgment against Defendants including damages<sup>2</sup>, disgorgement by  
3 Defendants, pre- and post- judgment interest; injunctive relief, and attorneys' fees and costs.

4 **XII. SETTLEMENT AND ADR**

5 The parties agree that mediation may be desirable. They disagree as to the scope of any  
6 potential mediation. To that end, Counsel for Facebook and ConnectU have a fundamental  
7 difference regarding the potential for settlement. Their positions are set forth below.

8 Plaintiffs position: Facebook believes that the parties should seek a global settlement of  
9 all disputes between the parties through mediation with Magistrate Judge Chen or a mutually  
10 acceptable Magistrate Judge or mediator with experience in complex disputes. ConnectU and  
11 most defendants in this case are represented by the same firm in the two cases and claim that its  
12 lead counsel (both from Finnegan Henderson) is different in the two cases. Further, plaintiffs  
13 believe this Court has the authority to order the parties to a settlement conference to discuss  
14 global settlement as all parties relevant to a global settlement are before this Court. To the  
15 extent any Defendant in the Massachusetts Action not a party to this action is needed, plaintiff  
16 believes they will appear voluntarily.<sup>3</sup> Defendants make numerous other statements in their  
17 position which do not appear to have any bearing on whether or not ADR is desirable in this  
18 case. Relatedly, a mediation on ConnectU's appeal to the First Circuit is likely to be ordered.  
19 Plaintiffs will not respond to those comments here. Plaintiffs are happy to discuss any of those  
20 issues at the hearing, should the Court wish.

21 Defendants' Position: ConnectU is represented by the same law firm in the California  
22 and Massachusetts actions, but has chosen to staff the actions separately. ConnectU's California

23 <sup>2</sup> As stated in the Second Amended Complaint, Plaintiffs seek damages including:  
24 Compensatory damages pursuant to California Penal Code § 502(e)(1) and 18 U.S.C. § 1030  
25 (a)(4) for costs of responding to Defendants' actions; exemplary damages under California Civil  
26 Code § 3426.3(c), punitive damages under California Penal Code § 502(e)(4) (exemplary or  
27 punitive damages), economic damages under 18 U.S.C. § 1030 (a)(5)(B)(i); statutory damages  
28 under 15 U.S.C. § 7701, et seq., calculated as the number of violations multiplied by up to \$250,  
in an amount not to exceed \$2,000,000; aggravated damages under 15 U.S.C. § 7701, in an  
amount not to exceed three times the amount of statutory damages available, and general  
damages in an amount to exceed \$25,000.

<sup>3</sup> Plaintiffs counsel in this case represents all Defendants in the Massachusetts action except for one.

1 counsel does not represent ConnectU in the Massachusetts case and knows little about it.  
2 ConnectU's counsel in the Massachusetts case does not represent ConnectU in this case.  
3 ConnectU's position is that any settlement discussions in this case must be limited to the issues  
4 in this case, regardless of where its counsel are located, and regardless of how it has chosen to  
5 staff the cases. Although Facebook does not like ConnectU's staffing decision, Facebook was  
6 the party who chose to file a separate action in California, not ConnectU. Moreover, long before  
7 filing the California action, Facebook asserted affirmative defenses in the Massachusetts action  
8 that duplicate the issues that later formed the basis of this action. For that reason alone, the only  
9 forum in which these actions might both be resolved is Massachusetts--i.e. the venue of the  
10 earlier-filed action. This is also one of the reasons this case should be stayed, as the  
11 Massachusetts case will necessarily resolve the issues in this case.

12 Facebook insists that any settlement discussion include the issues raised in  
13 Massachusetts. ConnectU is more than willing to discuss settlement in a mediation or settlement  
14 conference as it concerns the issues pled in the Second Amended Complaint in this action.  
15 However, Plaintiff's founder and CEO, Mark Zuckerberg, has already testified that Facebook  
16 never suffered any damages as a result of any of the accused acts. By comparison, ConnectU  
17 seeks very substantial damages in the Massachusetts action. Thus, in ConnectU's view, this  
18 case is not the tail wagging the dog. It is just the tail, or more accurately, the tip of the tail.  
19 ConnectU recently made a mandatory settlement demand in the Massachusetts case, to which  
20 Facebook did not respond. ConnectU and Facebook will also be participating in mandatory  
21 mediation in connection with an appeal in the Massachusetts action, scheduled for late July.  
22 Given Facebook's position that both cases need to be discussed during ADR sanctioned by this  
23 Court, and for additional reasons set forth above, ConnectU does not believe ADR would be  
24 effective at this juncture in this action.

### 25 **XIII. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

26 The parties have already consented to Magistrate Judge Seeborg for all purposes in this  
27 matter.  
28

1 **XIV. OTHER REFERENCES**

2 Plaintiffs do not believe that this case is suitable for reference to binding arbitration, a  
3 special master, or the Judicial Panel on Multidistrict Litigation. Defendants would consider such  
4 options.

5 **XV. NARROWING OF ISSUES**

6 *Plaintiffs' Position:*

7 Because of much of the discovery in this case has already taken place in related cases  
8 and before this action was removed to this Court, Plaintiffs believe summary judgment will be  
9 appropriate in this case.

10 *Defendants' Position:*

11 See Defendants' submission in Paragraph VIII, above.

12 **XVI. EXPEDITED SCHEDULES**

13 *Plaintiffs' Position*

14 Because of much of the discovery in this case has already taken place in related cases  
15 and before this action was removed to this Court, Plaintiffs believe that this case may be  
16 resolved on an expedited basis.

17 *Defendants' Position:*

18 See Defendants' submission in Paragraph VIII, above.

19 **XVII. SCHEDULING**

20

	Plaintiffs' Proposal	Defendants' Proposal <sup>4</sup>
21 Fact Discovery Cut-off	November 30, 2007	Late Spring/Summer of 2008
22 Expert Reports	December 21, 2007	
23 Rebuttal Expert Reports	January 11, 2008	
24 Expert Discovery Cut-off	January 31, 2008	Late Summer/Fall of 2008

25 \_\_\_\_\_  
26 <sup>4</sup> Defendants appreciate that the Court's standing order requires the parties to opine on  
27 scheduling. However, Defendants suggest at this stage the Court not set dates. This case should  
28 be stayed pending the resolution of the Massachusetts action. However, if the Court is  
disinclined to stay this case, Defendants propose that after the last motion to dismiss for lack of  
personal jurisdiction is heard, the Court schedule a case management conference, by which time  
the parties will be in a better position to opine on dates.

1	Last Day to Hear Dispositive Motions	April 13, 2008	Late 2008
2			
3	Pre-trial Hearing	July 7, 2008	
4	Trial	July 19, 2008	Late Spring/Summer 2009

5 **XVIII. TRIAL**

6 Through its Second Amended Complaint, Plaintiffs seek a jury trial. Given the number  
7 of claims and defendants, as of this date Plaintiffs anticipate a trial length of two weeks.  
8 Defendants believe if this case were tried, it is likely that it would take three weeks or more.

9 **XIX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES AND PERSONS**

10 Pursuant to Civil L.R. 3-16, Plaintiffs and ConnectU certify that as of this date, other  
11 than the named parties, there is no such interest to report. See Dkt. Nos. 20, 32.

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Dated: June 29, 2007

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/ Monte M.F. Cooper /s/

Name Of Attorney  
Attorneys for Plaintiffs  
Facebook, Inc. and Mark Zuckerberg

Dated: June 29, 2007

FINNEGAN, HENDERSON, FARABOW,  
GARRETT, & DUNNER, LLP

/s/ Scott R. Mosko

Scott R. Mosko  
Attorneys for Defendant ConnectU

Dated: June 29, 2007

FINNEGAN, HENDERSON, FARABOW,  
GARRETT, & DUNNER, LLP

/s/ Scott R. Mosko

Scott R. Mosko  
Attorneys Making Special Appearance on behalf  
of Defendants Pacific Northwest Software, Inc.,  
Winston Williams, Cameron Winklevoss, Tyler  
Winklevoss, Divya Narendra and Wayne Chang

Dated: June 29, 2007

DECHERT, LLP

/s/ Valerie M. Wagner

Valerie M. Wagner  
Attorneys Making Special Appearance on behalf  
of Defendant David Gucwa

