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 8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA  
 10 SAN JOSE DIVISION  
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12 FACEBOOK, INC., and MARK  
 ZUCKERBERG,

13 Plaintiff,

14 v.

15 CONNECTU, INC. (formerly known as  
 16 CONNECTU, LLC), CAMERON  
 WINKLEVOSS, TYLER WINKLEVOSS,  
 17 DIVYA NARENDRA, PACIFIC  
 NORTHWEST SOFTWARE, INC.,  
 18 WINSTON WILLIAMS, WAYNE  
 CHANG, and DAVID GUCWA AND  
 19 DOES 1-25,

20 Defendants.

Case No. C 07-01389-RS

**DEFENDANT DAVID GUCWA'S  
 ANSWER TO PLAINTIFFS' 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 Defendant David Gucwa (“GUCWA”), by and through his attorneys, hereby answers  
2 Plaintiffs’ Second Amended Complaint as follows:

3 **PARTIES, JURISDICTION, AND VENUE**

4 1. GUCWA is without sufficient knowledge or information to form a belief as to the  
5 truth of the allegations of Paragraph 1 and therefore denies them.

6 2. GUCWA is without sufficient knowledge or information to form a belief as to the  
7 truth of the allegations of Paragraph 2 and therefore denies them.

8 3. GUCWA is without sufficient knowledge or information to form a belief as to the  
9 truth of the allegations of Paragraph 3 and therefore denies them.

10 4. GUCWA is without sufficient knowledge or information to form a belief as to the  
11 truth of the allegations of Paragraph 4 and therefore denies them.

12 5. GUCWA is without sufficient knowledge or information to form a belief as to the  
13 truth of the allegations of Paragraph 5 and therefore denies them.

14 6. GUCWA is without sufficient knowledge or information to form a belief as to the  
15 truth of the allegations of Paragraph 6 and therefore denies them.

16 7. GUCWA is without sufficient knowledge or information to form a belief as to the  
17 truth of the allegations of Paragraph 7 and therefore denies them.

18 8. GUCWA is without sufficient knowledge or information to form a belief as to the  
19 truth of the allegations of Paragraph 8 and therefore denies them.

20 9. GUCWA is without sufficient knowledge or information to form a belief as to the  
21 truth of the allegations of Paragraph 9 and therefore denies them.

22 10. GUCWA admits he is a citizen of the state of Massachusetts. GUCWA denies the  
23 balance of the allegations of Paragraph 10 in the Second Amended Complaint.

24 11. GUCWA is without sufficient knowledge or information to form a belief as to the  
25 truth of the allegations of Paragraph 11 and therefore denies them.

26 12. GUCWA denies the allegations of Paragraph 12.

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**GENERAL ALLEGATIONS**

**A. Mark Zuckerberg**

13. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 13 and therefore denies them.

**B. Facebook**

14. GUCWA denies that he was aware that [www.facebook.com](http://www.facebook.com) operated from California during all relevant times outlined in the Second Amended Complaint. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of Paragraph 14 and therefore denies them.

15. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 15 and therefore denies them.

16. GUCWA denies the allegations of Paragraph 16.

17. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 17 and therefore denies them.

18. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 18 and therefore denies them.

19. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 19 and therefore denies them.

20. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 20 and therefore denies them.

21. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 21 and therefore denies them.

22. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 22 as they concern Cameron and Tyler Winklevoss, Divya Narendra, Winston Williams or Wayne Chang, and therefore denies them. To the extent the remaining allegations in Paragraph 22 are directed toward GUCWA, GUCWA denies them.

23. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 23 as they concern Cameron and Tyler Winklevoss, Divya

1 Narendra, Winston Williams or Wayne Chang, and therefore denies them. To the extent the  
2 remaining allegations in Paragraph 23 are directed toward GUCWA, GUCWA denies them.

3 **B[sic]. Unauthorized Access, Misappropriation, and Commercial Use by Defendants**

4 24. GUCWA is without sufficient knowledge or information to form a belief as to the  
5 truth of the allegations of Paragraph 24 and therefore denies them.

6 25. GUCWA is without sufficient knowledge or information to form a belief as to the  
7 truth of the allegations of Paragraph 25 and therefore denies them.

8 26. GUCWA is without sufficient knowledge or information to form a belief as to the  
9 truth of the allegations of Paragraph 26 as they concern ConnectU, its “founders”, Pacific  
10 Northwest Software, Inc., Winston Williams or Wayne Chang, and therefore denies them. To  
11 the extent the remaining allegations in Paragraph 26 are directed toward GUCWA, GUCWA  
12 denies them.

13 27. GUCWA is without sufficient knowledge or information to form a belief as to the  
14 truth of the allegations of Paragraph 27 and therefore denies them.

15 28. GUCWA denies that he was engaged to develop a computer program by Cameron  
16 Winklevoss or Tyler Winklevoss. GUCWA admits working with Pacific Northwest Software,  
17 Inc., Winston Williams and Wayne Chang, which work eventually led to a computer program  
18 concerning [www.thefacebook.com](http://www.thefacebook.com). To the extent the remaining allegations are directed toward  
19 Cameron and Tyler Winklevoss, Divya Narendra, Winston Williams, Wayne Chang, PNS and  
20 ConnectU, GUCWA is without sufficient knowledge or information to form a belief as to the  
21 truth of the allegations of Paragraph 28 and therefore denies them. To the extent the remaining  
22 allegations in Paragraph 28 are directed toward GUCWA, GUCWA denies them.

23 29. GUCWA admits that Wayne Chang provided him with information allowing  
24 access to [www.thefacebook.com](http://www.thefacebook.com) that was provided to Mr. Chang by others. GUCWA admits  
25 that Mr. Chang used the phrase “cat and mouse” in correspondence with GUCWA, and that Mr.  
26 Chang also wrote that Facebook was “run by a techie.” GUCWA admits that he assisted in  
27 writing a computer program concerning [www.thefacebook.com](http://www.thefacebook.com). GUCWA is without sufficient  
28 knowledge or information to form a belief as to the truth of the balance of the allegations of

1 Paragraph 29 and therefore denies them.

2 30. To the extent any of the allegations in Paragraph 30 are directed toward GUCWA,  
3 GUCWA denies them. To the extent any of the allegations of Paragraph 30 are not directed  
4 toward GUCWA, GUCWA is without sufficient knowledge or information to form a belief as to  
5 the truth of these allegations and therefore denies them.

6 31. To the extent any of the allegations in Paragraph 31 are directed toward GUCWA,  
7 GUCWA denies them. To the extent any of the allegations of Paragraph 32 are not directed  
8 toward GUCWA, GUCWA is without sufficient knowledge or information to form a belief as to  
9 the truth of these allegations and therefore denies them.

10 32. To the extent any of the allegations in Paragraph 32 are directed toward GUCWA,  
11 GUCWA denies them. To the extent any of the allegations of Paragraph 32 are not directed  
12 toward GUCWA, GUCWA is without sufficient knowledge or information to form a belief as to  
13 the truth of these allegations and therefore denies them.

14 33. To the extent any of the allegations in Paragraph 33 are directed toward GUCWA,  
15 GUCWA denies them. To the extent any of the allegations of Paragraph 33 are not directed  
16 toward GUCWA, GUCWA is without sufficient knowledge or information to form a belief as to  
17 the truth of these allegations and therefore denies them.

18 34. To the extent any of the allegations in Paragraph 34 are directed toward GUCWA,  
19 GUCWA denies them. To the extent any of the allegations of Paragraph 34 are not directed  
20 toward GUCWA, GUCWA is without sufficient knowledge or information to form a belief as to  
21 the truth of these allegations and therefore denies them.

22 35. To the extent any of the allegations in Paragraph 35 are directed toward GUCWA,  
23 GUCWA denies them. To the extent any of the allegations of Paragraph 35 are not directed  
24 toward GUCWA, GUCWA is without sufficient knowledge or information to form a belief as to  
25 the truth of these allegations and therefore denies them.

26 36. To the extent any of the allegations in Paragraph 36 are directed toward GUCWA,  
27 GUCWA denies them. To the extent any of the allegations of Paragraph 36 are not directed  
28 toward GUCWA, GUCWA is without sufficient knowledge or information to form a belief as to

1 the truth of these allegations and therefore denies them.

2 37. To the extent any of the allegations in Paragraph 37 are directed toward GUCWA,  
3 GUCWA denies them. To the extent any of the allegations of Paragraph 37 are not directed  
4 toward GUCWA, GUCWA is without sufficient knowledge or information to form a belief as to  
5 the truth of these allegations and therefore denies them.

6 38. To the extent any of the allegations in Paragraph 38 are directed toward GUCWA,  
7 GUCWA denies them. To the extent any of the allegations of Paragraph 38 are not directed  
8 toward GUCWA, GUCWA is without sufficient knowledge or information to form a belief as to  
9 the truth of these allegations and therefore denies them.

10 39. GUCWA denies the allegations of Paragraph 39.

11 40. GUCWA denies the allegations of Paragraph 40.

12 41. To the extent any of the allegations in Paragraph 41 are directed toward GUCWA,  
13 GUCWA denies them. To the extent any of the allegations of Paragraph 41 are not directed  
14 toward GUCWA, GUCWA is without sufficient knowledge or information to form a belief as to  
15 the truth of these allegations and therefore denies them.

16 42. GUCWA denies the allegations of Paragraph 42.

17 43. GUCWA denies the allegations of Paragraph 43.

18 44. GUCWA denies the allegations of Paragraph 44.

19 45. GUCWA denies the allegations of Paragraph 45.

20 **FIRST CAUSE OF ACTION**

21 **(Violation of California Penal Code § 502(c) - Against All Defendants)**

22 46. GUCWA incorporates by this reference his answers to Paragraphs 1 through 45  
23 above.

24 47. GUCWA denies the allegations of Paragraph 47.

25 48. GUCWA denies the allegations of Paragraph 48.

26 49. GUCWA denies the allegations of Paragraph 49.

27 50. GUCWA denies the allegations of Paragraph 50.

28 51. GUCWA denies the allegations of Paragraph 51.

**SECOND CAUSE OF ACTION**

**(Common Law Misappropriation/Unfair Competition under Massachusetts and California Law - Against All Defendants)**

52. GUCWA incorporates by this reference his answers to Paragraphs 1 through 51 above.

53. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 53 and therefore denies them.

54. GUCWA denies the allegations of Paragraph 54.

55. GUCWA denies the allegations of Paragraph 55.

56. GUCWA denies the allegations of Paragraph 56.

**THIRD CAUSE OF ACTION**

**(Violation of Massachusetts General Laws 93A § 2 - Against All Defendants)**

57. GUCWA incorporates by this reference his answers to Paragraphs 1 through 56 above.

58. GUCWA denies the allegations of Paragraph 58.

59. GUCWA denies the allegations of Paragraph 59.

60. GUCWA denies the allegations of Paragraph 60.

**FOURTH CAUSE OF ACTION**

**(Violation of 15 U.S.C. §§ 7704(a)(1),(2),(3) and 7705 - Against All Defendants)**

61. GUCWA incorporates by this reference his answers to Paragraphs 1 through 60 above.

62. GUCWA denies the allegations of Paragraph 62.

63. GUCWA denies the allegations of Paragraph 63.

64. GUCWA denies the allegations of Paragraph 64.

65. GUCWA is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 65 and therefore denies them.

66. The allegations of Paragraph 66 are vague and unintelligible. To the extent a response is required, GUCWA denies the allegations of Paragraph 66.

1 67. GUCWA is without sufficient knowledge or information to form a belief as to the  
2 truth of the allegations of Paragraph 67 and therefore denies them.

3 68. GUCWA denies the allegations of Paragraph 68.

4 **FIFTH CAUSE OF ACTION**

5 **(Violation of 18 U.S.C. § 1030 - Against All Defendants)**

6 69. GUCWA incorporates by this reference his answers to Paragraphs 1 through 68  
7 above.

8 70. GUCWA denies the allegations of Paragraph 70.

9 71. GUCWA denies the allegations of Paragraph 71.

10 72. GUCWA denies the allegations of Paragraph 72.

11 73. GUCWA denies the allegations of Paragraph 73.

12 74. GUCWA denies the allegations of Paragraph 74.

13 75. GUCWA denies the allegations of Paragraph 75.

14 **PRAYER FOR RELIEF**

15 GUCWA denies that the Plaintiffs are entitled to any of the relief prayed for in the Second  
16 Amended Complaint.

17 **AFFIRMATIVE DEFENSES**

18 Without conceding that any of the following necessarily must be pleaded as an affirmative  
19 defense, or that any of the following is not already at issue by way of the foregoing denials, and  
20 without prejudice to GUCWA's right to plead additional affirmative defenses as discovery into  
21 the facts of the matter warrants, GUCWA hereby asserts the following affirmative defenses:

22 **FIRST AFFIRMATIVE DEFENSE**

23 76. Plaintiffs' Second Amended Complaint is barred in whole or in part by the  
24 applicable statutes of limitations, including but not limited to, Section 1030(g) of Title 18 of the  
25 United States Code.

26 **SECOND AFFIRMATIVE DEFENSE**

27 77. Plaintiffs were at fault in and about the matters referred to in the Second Amended  
28 Complaint and such fault on the part of the Plaintiffs proximately caused and contributed to the



1 damages complained of, if any there were; and GUCWA further alleges that any fault not  
2 attributable to said Plaintiffs was a result of fault on the part of persons and/or entities other than  
3 GUCWA.

4 **THIRD AFFIRMATIVE DEFENSE**

5 78. Plaintiffs have failed and neglected to use reasonable care to minimize and  
6 mitigate the losses, injury and damage complained of, if any there were.

7 **FOURTH AFFIRMATIVE DEFENSE**

8 79. Plaintiffs' Second Amended Complaint is barred in whole or in part by the  
9 doctrine of equitable estoppel.

10 **FIFTH AFFIRMATIVE DEFENSE**

11 80. Plaintiffs' Second Amended Complaint is barred in whole or in part by the  
12 doctrine of waiver.

13 **SIXTH AFFIRMATIVE DEFENSE**

14 81. Plaintiffs' Second Amended Complaint is barred in whole or in part because this  
15 Court lacks personal jurisdiction over one or all of the Defendants.

16 **SEVENTH AFFIRMATIVE DEFENSE**

17 82. Plaintiffs are barred by virtue of Plaintiffs' conduct in causing the damages alleged  
18 by Plaintiffs under the doctrine of unclean hands.

19 **EIGHTH AFFIRMATIVE DEFENSE**

20 83. Plaintiffs' damages, if any occurred, were caused and/or brought by intervening  
21 and superseding causes, and were not caused by GUCWA.

22 **NINTH AFFIRMATIVE DEFENSE**

23 84. Plaintiffs have no standing to sue as they were not the owner of the property  
24 alleged to have been appropriated.

25 **TENTH AFFIRMATIVE DEFENSE**

26 85. Plaintiffs' Second Amended Complaint, in whole or in part, fails to state a cause of  
27 action as there is no privity between the parties.

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**ELEVENTH AFFIRMATIVE DEFENSE**

86. Plaintiffs' Second Amended Complaint is barred in whole or in part by the doctrine of in pari delicto.

**TWELFTH AFFIRMATIVE DEFENSE**

87. Plaintiffs' Second Amended Complaint, in whole or in part, does not state facts sufficient to constitute a cause of action against GUCWA.

**THIRTEENTH AFFIRMATIVE DEFENSE**

88. Plaintiffs' Third Cause of Action is barred because the conduct alleged in Plaintiffs' Second Amended Complaint did not occur primarily and substantially in Massachusetts.

WHEREFORE, GUCWA prays for judgment against the Plaintiffs as follows:

- (1) that the Plaintiffs take nothing from their Second Amended Complaint;
- (2) that this Court dismiss the Plaintiffs' Second Amended Complaint with prejudice;
- (3) that this Court award GUCWA his costs and reasonable attorney's fees incurred in defending against this action;
- (4) for such other and further relief as the Court deems proper.

Dated: September 7, 2007

**DECHERT LLP**

By: /s/Valerie M. Wagner  
Valerie M. Wagner

Attorneys for Defendant  
DAVID GUCWA