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9 Attorneys for Plaintiffs  
 THE FACEBOOK, INC. and MARK ZUCKERBERG

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

15 THE FACEBOOK, INC. and MARK  
 ZUCKERBERG,

16 Plaintiffs,

17 v.

18 CONNECTU, INC. (formerly known as  
 19 CONNECTU, LLC), PACIFIC  
 NORTHWEST SOFTWARE, INC.,  
 20 WINSTON WILLIAMS, WAYNE CHANG,  
 and DAVID GUCWA,

21 Defendants.  
 22

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

**DECLARATION OF MARK E.  
 ZUCKERBERG IN SUPPORT OF  
 PLAINTIFFS' MOTION FOR  
 PARTIAL SUMMARY JUDGMENT  
 RE DEFENDANTS' LIABILITY  
 PURSUANT TO CALIFORNIA  
 PENAL CODE SECTION 502(C) AND  
 15 U.S.C. § 7704(A)(1) AND 15 U.S.C. §  
 7704(B)(1)**

Date: February 13, 2008  
 Time: 9:30 A.M.  
 Judge: Honorable Richard Seeborg

1 I, Mark Zuckerberg, declare as follows:

2 1. I am the Chief Executive Officer and founder of Facebook, Inc., the company that  
3 runs the online social network [www.facebook.com](http://www.facebook.com). I have been integrally involved in the  
4 development and operation of Facebook and its website applications from its beginning. I make  
5 this declaration in support of Plaintiffs' Motion for Partial Summary Judgment re Defendants'  
6 Liability Pursuant To California Penal Code Section 502(c) and 15 U.S.C. § 7704(A)(1) and  
7 15 U.S.C. § 7704(B)(1). I make this declaration of my own personal knowledge and, if called as  
8 a witness, I could and would testify competently to the truth of the matters set forth herein.

9 2. By July 1, 2005, Facebook's website had approximately 3 million registered users.

10 3. Since its launch, use of the [www.facebook.com](http://www.facebook.com) website has been governed by  
11 Terms of Use, which have at all times been posted to the website on the Facebook's home page to  
12 ensure they are made accessible to everyone upon initial viewing of the site and registration. I  
13 have helped draft and reviewed the conditions, and hence I am familiar with the various iterations  
14 these Terms of Use have undergone. The "Wayback Machine" (*i.e.*, <http://web.archive.org>)  
15 contains true and accurate copies of the Terms of Use as I recall them. The Terms of Use as  
16 archived at the Wayback Machine are business records of Facebook, made by Facebook  
17 employees at or near the time they have been archived by the Wayback Machine, from  
18 information transmitted by persons at Facebook with knowledge of the Terms of Use, which have  
19 been kept in the course of both the Wayback Machine's and Facebook's regularly conducted  
20 business activities.

21 4. To complete the registration process, each user was required to agree to be bound  
22 by the Terms of Use. Accordingly, the Terms of Use are presented to the user on the registration  
23 page. As further described in paragraphs 4-6 and Exhibits A-C hereto, the Terms of Use  
24 conditioned an individual's access to the site upon the user's agreement (a) not to use the site for  
25 commercial endeavors, (b) to refrain from the "harvesting" of email addresses and other profile  
26 information of registered users, and (c) not to use information for the solicitation (*i.e.*,  
27 "spamming") of Facebook members. While the Terms of Use underwent minor changes over  
28 time, these provisions never changed.

1           5.       Attached as **Exhibit A** is a true and correct copy of an exemplar of the Facebook  
2 Terms of Use bearing a date of April 11, 2004, which was obtained from  
3 <http://web.archive.org/web/20040411014053/www.facebook.com/terms.php> and constitutes  
4 the effective Facebook Terms of Use from at least April 11, 2004, to approximately September  
5 2004.

6           6.       Attached as **Exhibit B** is a true and correct copy of an exemplar of the Facebook  
7 Terms of Use bearing a date of September 19, 2004, which was obtained from  
8 <http://web.archive.org/web/20040919100424/www.facebook.com/terms.php> and constitutes  
9 the effective Facebook Terms of Use from approximately September 2004 to approximately  
10 June 28, 2005.

11           7.       Attached as **Exhibit C** is a true and correct copy of an exemplar of the Facebook  
12 Terms of Use bearing a date July 19, 2005, which was obtained from  
13 <http://web.archive.org/web/20050719012523/www.facebook.com/terms.php> and constitutes  
14 the effective Facebook Terms of Use from approximately June 28, 2005 through at least August  
15 2005.

16           8.       At all times between February 4, 2004 and August 2005, the Facebook Privacy  
17 Policy stated that “Email addresses will never be sold to anyone, and they will not be used for  
18 spam or any other purpose outside of the site itself.” This provision is shown in the exemplars of  
19 Facebook’s Privacy Policy, obtained from  
20 <http://web.archive.org/web/20040613184140/www.facebook.com/policy.php> and  
21 <http://web.archive.org/web/20050624002804/www.facebook.com/policy.php>. True and  
22 correct copies are attached as **Exhibits D** and **E**, respectively.

23           9.       After registering and agreeing to the Terms of Use, a user of the Facebook  
24 computer system was permitted to communicate electronically with other Facebook members and  
25 have access to view the personal data of other users within his or her particular college network  
26 (*i.e.*, other students and alumni).

27           10.       Neither Facebook nor I have ever given anyone affiliated with ConnectU, Pacific  
28 Northwest Software or any other defendant in this litigation permission to access the Facebook

1 website to extract, copy, or use any information on the Facebook website for ConnectU-related  
2 purposes.

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

5 Executed this 3rd day of January 2008, at Palo Alto, California.

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9 Mark E. Zuckerberg

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