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 THE FACEBOOK, INC. and MARK ZUCKERBERG

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

15 THE FACEBOOK, INC. and MARK
 ZUCKERBERG,
 16
 Plaintiffs,
 17
 v.
 18
 19 CONNECTU, INC. (formerly known as
 CONNECTU, LLC), PACIFIC
 NORTHWEST SOFTWARE, INC.,
 20 WINSTON WILLIAMS, WAYNE CHANG,
 and DAVID GUCWA,
 21
 Defendants.

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

**PLAINTIFFS' MOTION TO SEAL
 PORTIONS OF THEIR 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),
 THE DECLARATION OF CHRIS
 SHIFLETT IN SUPPORT THEREOF
 INCLUDING EXHIBITS 1-3; AND
 EXHIBITS 1, 2, AND 4 TO THE
 DECLARATION OF MONTE M.F.
 COOPER IN SUPPORT THEREOF**

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

1 Pursuant to Civil L.R. 7-11 and 79-5 (d), Plaintiffs respectfully submit this motion asking
2 the Court to file under seal their Motion for Partial Summary Judgment Re Defendants' Liability
3 Pursuant to California Penal Code Section 502(c) and 15 U.S.C. § 7704(A)(1) and 15 U.S.C.
4 § 7704(B)(1), the Declaration of Chris Shiflett in support thereof (including the attached exhibits
5 1-6), and Exhibits 1, 2, 4, 6-7, 10-12, 28-34, 36, 37, 38, 40-43, 45-48, 50-55, 57-59, 61, 63, and
6 64 to the Declaration of Monte M.F. Cooper In Support of Plaintiffs' Motion for Partial Summary
7 Judgment.

8 The parties entered into, and the California Superior Court issued, a Stipulated Protective
9 Order on January 23, 2006, which prohibits either party from filing in the public record any
10 documents that have been designated as "Confidential" or "Highly Confidential" pursuant to the
11 Protective Order. In addition, Plaintiffs and ConnectU entered into, and the Court in the related
12 action *ConnectU, LLC v. Zuckerberg et al*, Civil Action No. 1:04-cv-11923, United States District
13 Court, District of Massachusetts. issued, a Stipulated Protective Order on July 6, 2005, which
14 prohibits either party from filing in the public record any documents that have been designated as
15 "Confidential" pursuant to the Protective Order.

16 **Exhibit 1** to the Cooper Declaration contains relevant excerpts from Mark Zuckerberg's
17 April 25, 2006 deposition. The deposition was marked Highly Confidential pursuant to the
18 Stipulated Protective Order, and therefore is subject to Local Civil Rule 79-5(d).

19 **Exhibit 2** to the Cooper Declaration contains relevant excerpts from Max Kelly's
20 March 1, 2006 deposition. The deposition was marked Highly Confidential pursuant to the
21 Stipulated Protective Order, and therefore is subject to Local Civil Rule 79-5(d).

22 **Exhibit 4** to the Cooper Declaration is the December 22, 2004 TerreNapSM West Data
23 Center Service Order, Bates numbered NAP00007-8. This contract was produced and designated
24 confidential by third party Terramark pursuant to the Stipulated Protective Order, and therefore is
25 subject to Local Civil Rule 79-5(d).

26 **Exhibit 6** to the Cooper Declaration is a May 4, 2004 e-mail from Cameron Winklevoss
27 to Marc M. Pierrat. This email, Bates numbered C003990-91, was produced and designated
28 Confidential action by ConnectU pursuant to the Stipulated Protective Order in the Massachusetts

1 action, and therefore is subject to Local Civil Rule 79-5(d). Plaintiffs take no position on whether
2 this exhibit contains confidential information.

3 **Exhibit 7** to the Cooper Declaration contains relevant excerpts from Cameron
4 Winklevoss' January 16, 2006, deposition. The deposition was marked Confidential pursuant to
5 the Stipulated Protective Order in the Massachusetts action, and therefore is subject to Local Civil
6 Rule 79-5(d). Plaintiffs take no position on whether this exhibit contains confidential
7 information.

8 **Exhibit 10** to the Cooper Declaration contains relevant excerpts from Divya Narendra's
9 January 16, 2006, deposition. The deposition was marked Confidential pursuant to the Stipulated
10 Protective Order in the Massachusetts action, and therefore is subject to Local Civil Rule 79-5(d).
11 Plaintiffs take no position on whether this exhibit contains confidential information.

12 **Exhibit 11** to the Cooper Declaration contains relevant excerpts from ConnectU's
13 January 16, 2006, deposition. The deposition was marked Confidential pursuant to the Stipulated
14 Protective Order in the Massachusetts action, and therefore is subject to Local Civil Rule 79-5(d).
15 Plaintiffs take no position on whether this exhibit contains confidential information.

16 **Exhibit 12** to the Cooper Declaration contains relevant excerpts from Tyler Winklevoss'
17 January 16, 2006, deposition. The deposition was marked Confidential pursuant to the Stipulated
18 Protective Order in the Massachusetts action, and therefore is subject to Local Civil Rule 79-5(d).
19 Plaintiffs take no position on whether this exhibit contains confidential information.

20 **Exhibit 28** to the Cooper Declaration contains relevant excerpts from Divya Narendra's
21 October 5, 2006, deposition. The deposition was marked Confidential pursuant to the Stipulated
22 Protective Order in the Massachusetts action, and therefore is subject to Local Civil Rule 79-5(d).
23 Plaintiffs take no position on whether this exhibit contains confidential information.

24 **Exhibit 29** to the Cooper Declaration is an August 26, 2004 (3:09 p.m.) e-mail from Marc
25 Pierrat to Cameron Winklevoss. This email, Bates numbered C007512-7517, was produced and
26 designated Confidential by ConnectU pursuant to the Stipulated Protective Order in the
27 Massachusetts action, and therefore is subject to Local Civil Rule 79-5(d). Plaintiffs take no
28 position on whether this exhibit contains confidential information.

1 **Exhibit 30** to the Cooper Declaration contains relevant excerpts from Pacific Northwest
2 Software's January 29, 2007, deposition. The deposition was marked Confidential pursuant to
3 the Stipulated Protective Order, and therefore is subject to Local Civil Rule 79-5(d). Plaintiffs
4 take no position on whether this exhibit contains confidential information.

5 **Exhibit 31** to the Cooper Declaration contains relevant excerpts from Winston Williams'
6 June 19, 2007, deposition. The deposition was marked Confidential pursuant to the Stipulated
7 Protective Order, and therefore is subject to Local Civil Rule 79-5(d). Plaintiffs take no position
8 on whether this exhibit contains confidential information.

9 **Exhibit 32** to the Cooper Declaration is a timesheet detailing Winston Williams' (and
10 other PNS employees') billing records. This document, Bates numbered PNS01766-1777, was
11 produced and designated Confidential by Pacific Northwest Software pursuant to the Stipulated
12 Protective Order, and therefore is subject to Local Civil Rule 79-5(d). Plaintiffs take no position
13 on whether this exhibit contains confidential information.

14 **Exhibit 33** to the Cooper Declaration is an invoice from i2Hub to ConnectU, Bates
15 numbered C011073-82. It was produced and designated Confidential by ConnectU pursuant to
16 the Stipulated Protective Order in the Massachusetts action, and therefore is subject to Local Civil
17 Rule 79-5(d). Plaintiffs take no position on whether this exhibit contains confidential
18 information.

19 **Exhibit 34** to the Cooper Declaration is a May 25, 2005 e-mail from Wayne Chang to
20 John Taves. This document, Bates numbered PNS000015-16, was produced and designated
21 Confidential by Pacific Northwest Software pursuant to the Stipulated Protective Order, and
22 therefore is subject to Local Civil Rule 79-5(d). Plaintiffs take no position on whether this exhibit
23 contains confidential information.

24 **Exhibit 36** to the Cooper Declaration is a Diagram of ConnectU Profile Importer (Social
25 Butterfly). This document, Bates numbered PNS002096, was produced and designated
26 Confidential by Pacific Northwest Software pursuant to the Stipulated Protective Order, and
27 therefore is subject to Local Civil Rule 79-5(d). Plaintiffs take no position on whether this exhibit
28 contains confidential information.

1 **Exhibit 37** to the Cooper Declaration is a “screen shot” from ConnectU’s website, Bates
2 numbered C011010. It was produced and designated Confidential by ConnectU pursuant to the
3 Stipulated Protective Order in the Massachusetts action, and therefore is subject to Local Civil
4 Rule 79-5(d). Plaintiffs take no position on whether this exhibit contains confidential
5 information.

6 **Exhibit 38** to the Cooper Declaration is a the Privacy Statement for www.ConnectU.com,
7 Bates labeled C000027. This document was produced and designated confidential by ConnectU
8 pursuant to the Stipulated Protective Order in the Massachusetts action, and therefore is subject to
9 Local Civil Rule 79-5(d). Plaintiffs take no position on whether this exhibit contains confidential
10 information.

11 **Exhibit 40** to the Cooper Declaration is an April 21, 2005 (5:28 a.m.) e-mail from
12 ‘jsteven3@nd.edu’ to Mark Ruocco. This document, Bates numbered C004512, was produced
13 and designated Confidential by ConnectU pursuant to the Stipulated Protective Order in the
14 Massachusetts action, and therefore is subject to Local Civil Rule 79-5(d). Plaintiffs take no
15 position on whether this exhibit contains confidential information.

16 **Exhibit 41** to the Cooper Declaration contains source code produced by Pacific Northwest
17 Software. These documents, Bates numbered PNS001377-86, PNS0281451-54, PNS0281495,
18 PNS0281504-14, PNS0281520, PNS0281522-26, PNS0296805-06 and PNS0320945, were
19 produced and designated Confidential pursuant to the Stipulated Protective Order, and therefore
20 are subject to Local Civil Rule 79-5(d). Plaintiffs take no position on whether this exhibit
21 contains confidential information.

22 **Exhibit 42** to the Cooper Declaration is a May 10, 2005, e-mail from Winston Williams to
23 Cameron Winklevoss, Tyler Winklevoss, Joel Voss and John Taves. This document, Bates
24 numbered CUCA02972, was produced and designated Confidential by ConnectU pursuant to the
25 Stipulated Protective Order, and therefore is subject to Local Civil Rule 79-5(d). Plaintiffs take
26 no position on whether this exhibit contains confidential information.

27 **Exhibit 43** to the Cooper Declaration is a April 22, 2005 e-mail from Hanah Kim to
28 Thomas Cheng. This document, Bates numbered CUCA000172, was produced and designated

1 Confidential by ConnectU pursuant to the Stipulated Protective Order, and therefore is subject to
2 Local Civil Rule 79-5(d). Plaintiffs take no position on whether this exhibit contains confidential
3 information.

4 **Exhibit 45** to the Cooper Declaration is a February 17, 2005 e-mail from Cameron
5 Winklevoss to Wayne Chang, David Gucwa, John Taves, Winston Williams and Joel Voss. This
6 document, Bates numbered PNS000842-43, was produced and designated Confidential by Pacific
7 Northwest Software pursuant to the Stipulated Protective Order, and therefore is subject to Local
8 Civil Rule 79-5(d). Plaintiffs take no position on whether this exhibit contains confidential
9 information.

10 **Exhibit 46** to the Cooper Declaration is a February 18, 2005 e-mail from Tyler
11 Winklevoss to Tyler Winklevoss, Cameron Winklevoss, 'drttol@gmail.com', Winston Williams,
12 Joel Voss and John Taves. This document, Bates numbered PNS001238-39, was produced and
13 designated Confidential by Pacific Northwest Software pursuant to the Stipulated Protective
14 Order, and therefore is subject to Local Civil Rule 79-5(d). Plaintiffs take no position on whether
15 this exhibit contains confidential information.

16 **Exhibit 47** to the Cooper Declaration is a February 22, 2005 (6:59 p.m.) e-mail from
17 Cameron Winklevoss to Winston Williams, Wayne Chang and David Gucwa. This document,
18 Bates numbered C004243, was produced and designated Confidential by ConnectU pursuant to
19 the Stipulated Protective Order in the Massachusetts action, and therefore is subject to Local Civil
20 Rule 79-5(d). Plaintiffs take no position on whether this exhibit contains confidential
21 information.

22 **Exhibit 48** to the Cooper Declaration is a May 25, 2005 e-mail from Wayne Change to
23 John Taves. This document, Bates numbered PNS001334-1340, was produced and designated
24 Confidential by Pacific Northwest Software pursuant to the Stipulated Protective Order, and
25 therefore is subject to Local Civil Rule 79-5(d). Plaintiffs take no position on whether this exhibit
26 contains confidential information.

27 **Exhibit 50** to the Cooper Declaration contains a Promissory Note between ConnectU and
28 RowAmerica, as well as related correspondence. It is Bates numbered CUCA3087-3090 and was

1 produced and designated Confidential by ConnectU pursuant to the Stipulated Protective Order,
2 and therefore is subject to Local Civil Rule 79-5(d). Plaintiffs take no position on whether this
3 exhibit contains confidential information.

4 **Exhibit 51** to the Cooper Declaration is a February 16, 2005 e-mail from John Taves to
5 Wayne Chang and Cameron Winklevoss. This document, Bates numbered C008392, was
6 produced and designated Confidential by ConnectU pursuant to the Stipulated Protective Order in
7 the Massachusetts action, and therefore is subject to Local Civil Rule 79-5(d). Plaintiffs take no
8 position on whether this exhibit contains confidential information.

9 **Exhibit 52** to the Cooper Declaration is a February 20, 2005 e-mail from Wayne Chang to
10 Winston Williams. This document, Bates numbered C008657, was produced and designated
11 Confidential by ConnectU pursuant to the Stipulated Protective Order in the Massachusetts
12 action, and therefore is subject to Local Civil Rule 79-5(d). Plaintiffs take no position on whether
13 this exhibit contains confidential information.

14 **Exhibit 53** to the Cooper Declaration is a February 19, 2005 (12:37 a.m.) e-mail from
15 Wayne Chang to David Gucwa, Cameron Winklevoss and Winston Williams. This document,
16 Bates numbered C008662, was produced and designated Confidential by ConnectU pursuant to
17 the Stipulated Protective Order in the Massachusetts action, and therefore is subject to Local Civil
18 Rule 79-5(d). Plaintiffs take no position on whether this exhibit contains confidential
19 information.

20 **Exhibit 54** to the Cooper Declaration is a February 19, 2005 e-mail from Cameron
21 Winklevoss to Wayne Chang, Winston Williams and David Gucwa. This document, Bates
22 numbered C010359, was produced and designated Confidential by ConnectU pursuant to the
23 Stipulated Protective Order in the Massachusetts action, and therefore is subject to Local Civil
24 Rule 79-5(d). Plaintiffs take no position on whether this exhibit contains confidential
25 information.

26 **Exhibit 55** to the Cooper Declaration is an invoice from i2Hub to ConnectU, Bates
27 numbered C009887-96, which was produced and designated Confidential by ConnectU pursuant
28 to the Stipulated Protective Order in the Massachusetts action, and therefore is subject to Local

1 Civil Rule 79-5(d). Plaintiffs take no position on whether this exhibit contains confidential
2 information.

3 **Exhibit 57** to the Cooper Declaration contains relevant excerpts from Pacific Northwest
4 Software's June 12, 2007, deposition. The deposition was marked Confidential pursuant to the
5 Stipulated Protective Order, and therefore is subject to Local Civil Rule 79-5(d). Plaintiffs take
6 no position on whether this exhibit contains confidential information.

7 **Exhibit 58** to the Cooper Declaration is a February 16, 2005 e-mail from John Taves to
8 Winston Williams. This document, Bates numbered C008389-91, was produced and designated
9 Confidential by ConnectU pursuant to the Stipulated Protective Order in the Massachusetts
10 action, and therefore is subject to Local Civil Rule 79-5(d). Plaintiffs take no position on whether
11 this exhibit contains confidential information.

12 **Exhibit 59** to the Cooper Declaration is a February 17, 2005 e-mail from Cameron
13 Winklevoss to 'drttol@gmail.com', Winston Williams, Tyler Winklevoss, Joel Voss and John
14 Taves. This document, Bates numbered C006537, was produced and designated Confidential by
15 ConnectU pursuant to the Stipulated Protective Order in the Massachusetts action, and therefore
16 is subject to Local Civil Rule 79-5(d). Plaintiffs take no position on whether this exhibit contains
17 confidential information.

18 **Exhibit 61** to the Cooper Declaration is a February 6, 2006 (2:59 a.m.) e-mail from
19 Winston Williams to Cameron Winklevoss. This document, Bates numbered CUCA02976-77,
20 was produced and designated Confidential by ConnectU pursuant to the Stipulated Protective
21 Order, and therefore is subject to Local Civil Rule 79-5(d). Plaintiffs take no position on whether
22 this exhibit contains confidential information.

23 **Exhibit 63** to the Cooper Declaration is a April 20, 2005 e-mail from 'Danny Abad' to
24 'vreoneno@ucdavis.eud'. This document, Bates numbered CUCA000208, was produced and
25 designated Confidential by ConnectU pursuant to the Stipulated Protective Order, and therefore is
26 subject to Local Civil Rule 79-5(d). Plaintiffs take no position on whether this exhibit contains
27 confidential information.

28 **Exhibit 64** to the Cooper Declaration is a April 20, 2005 (6:19 a.m.) e-mail from 'JoJo

1 Lagace' to 'alchou@ucds.edu'. This document, Bates numbered CUCA000210, was produced
2 and designated Confidential by ConnectU pursuant to the Stipulated Protective Order, and
3 therefore is subject to Local Civil Rule 79-5(d). Plaintiffs take no position on whether this exhibit
4 contains confidential information.

5 The **Declaration of Chris Shiflett** in Support of Plaintiffs' Motion for Partial Summary
6 Judgment ("Shiflett Declaration") contains discussions about the confidential materials filed in
7 support of the Motion, including Facebook's and ConnectU's source code.

8 **Exhibit 1** to the Shiflett Declaration contains source code produced by Facebook. This
9 document, Bates numbered FBCA051064-1101, was produced and designated Confidential by
10 Facebook pursuant to the Stipulated Protective Order, and therefore are subject to Local Civil
11 Rule 79-5(d).

12 **Exhibit 2** to the Shiflett Declaration contains source code produced by Facebook. This
13 document, Bates numbered FBCA051102-32, was produced and designated Confidential by
14 Facebook pursuant to the Stipulated Protective Order, and therefore are subject to Local Civil
15 Rule 79-5(d).

16 **Exhibit 3** to the Shiflett Declaration contains source code produced by Facebook. This
17 document, Bates numbered FBCA051063, was produced and designated Confidential by
18 Facebook pursuant to the Stipulated Protective Order, and therefore are subject to Local Civil
19 Rule 79-5(d).

20 **Exhibit 4** to the Shiflett Declaration contains source code produced by Pacific Northwest
21 Software. These documents, Bates numbered PNS 0281444 – PNS 0281449; PNS 0281455 –
22 PNS 0281458; PNS 0281459 – PNS 0281462; PNS 0281469 – PNS 0281473; PNS 0281489 –
23 PNS 0281493; PNS 0281496 – PNS 0281503; PNS 0310219 – PNS 0310221, were produced and
24 designated Confidential by Pacific Northwest Software pursuant to the Stipulated Protective
25 Order, and therefore are subject to Local Civil Rule 79-5(d). Plaintiffs take no position on
26 whether this exhibit contains confidential information.

27 **Exhibit 5** to the Shiflett Declaration is a Diagram of ConnectU Profile Importer (Social
28 Butterfly). This document, Bates numbered PNS002096, was produced and designated

1 Confidential by Pacific Northwest Software pursuant to the Stipulated Protective Order, and
2 therefore is subject to Local Civil Rule 79-5(d). Plaintiffs take no position on whether this exhibit
3 contains confidential information.

4 **Exhibit 6** to the Shiflett Declaration contains source code produced by Pacific Northwest
5 Software. These documents, Bates numbered PNS 0310177 – PNS 0310179; PNS 0310185 –
6 PNS 0310186; PNS 0310455; PNS 0312063; PNS 0312353; PNS 0312717; PNS 0313436, were
7 produced and designated Confidential by Pacific Northwest Software pursuant to the Stipulated
8 Protective Order, and therefore are subject to Local Civil Rule 79-5(d). Plaintiffs take no position
9 on whether this exhibit contains confidential information.

10 Dated: January 7, 2008

ORRICK, HERRINGTON & SUTCLIFFE LLP

11
12
13 /s/ I. Neel Chatterjee /s/

I. Neel Chatterjee
Attorneys for Plaintiffs
THE FACEBOOK, INC. and MARK
ZUCKERBERG

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CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on January 7, 2008.

Dated: January 7, 2008.

Respectfully submitted,

/s/ I. Neel Chatterjee /s/
I. Neel Chatterjee