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 FACEBOOK, INC. and MARK ZUCKERBERG

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

15 FACEBOOK, INC. and MARK
 16 ZUCKERBERG,
 17 Plaintiffs,
 18 v.
 19 CONNECTU, INC. (formerly known as
 CONNECTU, LLC), PACIFIC
 20 NORTHWEST SOFTWARE, INC.,
 WINSTON WILLIAMS, WAYNE CHANG,
 21 and DAVID GUCWA AND DOES 1-25,
 22 Defendants.

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

**PLAINTIFFS' MOTION TO SEAL
 EXHIBITS A AND E-H TO THE
 DECLARATION OF THERESA A.
 SUTTON IN SUPPORT OF ITS
 REPLY IN SUPPORT OF MOTION
 FOR PARTIAL SUMMARY
 JUDGMENT RE DEFENDANTS'
 LIABILITY PURSUANT TO PENAL
 CODE SECTION 502(C), 15 U.S.C. §
 7704(A)(1) & 15 U.S.C. § 7704(B)(1)
 AND EXHIBITS 1-3, 5 AND 7 TO THE
 DECLARATION OF I. NEEL
 CHATTERJEE IN SUPPORT OF
 REPLY IN SUPPORT OF MOTION
 TO COMPEL COMPLIANCE BY
 PACIFIC NORTHWEST SOFTWARE
 AND WINSTON WILLIAMS WITH
 ORDER GRANTING MOTION TO
 COMPEL SUPPLEMENTAL
 INTERROGATORY RESPONSES**

Date: February 27, 2008
 Time: 9:30 A.M.
 Judge: Honorable Richard Seeborg

1 Pursuant to Civil L.R. 7-11 and 79-5 (b) and (d), Plaintiffs respectfully submit this motion
2 asking the Court to file under seal Exhibits A and E-H to the Declaration of Theresa A. Sutton in
3 support of Plaintiffs' Reply in Support of Motion For Partial Summary Judgment Regarding
4 Defendants' Liability Pursuant to California Penal Code Section 502(C) and 15 U.S.C. §
5 7704(a)(1) and 15 U.S.C. § 7704(b)(1) ("Declaration of Theresa A. Sutton) and Exhibits 1-3, 5
6 and 7 to the Declaration of I. Neel Chatterjee in support of Plaintiffs' Reply In Support Of Motion
7 To Compel Compliance By Defendants Pacific Northwest Software And Winston Williams With
8 Order Granting Motion To Compel Supplemental Interrogatory Responses ("Declaration of I.
9 Neel Chatterjee").

10 The parties entered into, and the California Superior Court issued, a Stipulated Protective
11 Order on January 23, 2006¹, which prohibits either party from filing in the public record any
12 documents that have been designated as "Confidential" or "Highly Confidential" pursuant to the
13 Protective Order.

14 **DECLARATION OF THERESA A. SUTTON IN SUPPORT OF PLAINTIFFS' REPLY IN**
15 **SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT**

16 **Exhibit A** to the Declaration of Theresa A. Sutton is true and correct copy of relevant
17 excerpts from the deposition of Mark Zuckerberg, taken on April 25, 2006. The deposition
18 testimony contained in these excerpts is confidential and has been marked "Highly Confidential-
19 Attorneys Eyes Only" by Facebook pursuant to the Protective Order entered in this matter, and
20 hence is subject to Local Civil Rule 79-5(b).

21 **Exhibit E** to the Declaration of Theresa A. Sutton is a true and correct copy of an instant
22 message conversation between Mark Zuckerberg and Adam Goldberg, dated August 9, 2004.
23 This document was produced to Defendants in this action in response to a Rule 34 Request for
24 Production of Documents and is Bates numbered FBCA051217. It has been marked
25 "Confidential" by Facebook pursuant to the Protective Order entered in this matter, and hence is
26 subject to Local Civil Rule 79-5(b).

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28 ¹ The parties are in the process of drafting a new Stipulated Protective Order pursuant to this Court's instructions at
the January 16, 2008 Case Management Conference.

1 **Exhibit F** to the Declaration of Theresa A. Sutton is a true and correct copy of an instant
2 message conversation between Mark Zuckerberg and Fallick, dated August 6, 2004. This
3 document was produced to Defendants in this action in response to a Rule 34 Request for
4 Production of Documents and is Bates numbered FBCA051222. It has been marked
5 “Confidential” by Facebook pursuant to the Protective Order entered in this matter, and hence is
6 subject to Local Civil Rule 79-5(b).

7 **Exhibit G** to the Declaration of Theresa A. Sutton is a true and correct copy of an email
8 string between Mark Zuckerberg and Scott Sassa, dated February 19, 2005. This document was
9 produced to Defendants in this action in response to a Rule 34 Request for Production of
10 Documents and is Bates numbered FBCA001268. It has been marked “Confidential” by
11 Facebook pursuant to the Protective Order entered in this matter, and hence is subject to Local
12 Civil Rule 79-5(b).

13 **Exhibit H** to the Declaration of Theresa A. Sutton is a true and correct copy of an email
14 string between Facebook and a user, Alexander Lee, dated February 20, 2005. This document
15 was produced to Defendants in the Massachusetts action in response to a Rule 34 Request for
16 Production of Documents and is Bates numbered FBMA0095515. It has been marked
17 “Confidential” by Facebook pursuant to the Protective Order entered in this matter, and hence is
18 subject to Local Civil Rule 79-5(b).

19 **DECLARATION OF I. NEEL CHATTERJEE IN SUPPORT OF PLAINTIFFS’ REPLY**
20 **IN SUPPORT OF MOTION TO COMPEL COMPLIANCE BY DEFENDANTS PACIFIC**
21 **NORTHWEST SOFTWARE AND WINSTON WILLIAMS**

22 **Exhibit 1** to the Declaration of I. Neel Chatterjee is a true and correct copy of an email
23 communication from Cameron Winklevoss to Wayne Chang, dated February 13, 2005. This
24 document was produced to Plaintiffs by Wayne Chang in this action in response to a Rule 34
25 Request for Production of Documents and is Bates numbered CHANG-0001376-1378. It has
26 been marked “Confidential” by Chang pursuant to the Protective Order entered in this matter, and
27 hence is subject to Local Civil Rule 79-5(d). Facebook takes no position regarding the propriety
28 of the confidentiality designation of this document.

1 **Exhibit 2** to the Declaration of I. Neel Chatterjee is a true and correct copy of an email
2 communication from Dave Tufts of IMarc to Cameron Winklevoss, dated February 13, 2005.
3 This document was produced to Plaintiffs by Wayne Chang in this action in response to a Rule 34
4 Request for Production of Documents and is Bates numbered CHANG-0001389-1390. It has
5 been marked Confidential by Chang pursuant to the Protective Order entered in this matter, and
6 hence is subject to Local Civil Rule 79-5(d). Facebook takes no position regarding the propriety
7 of the confidentiality designation of this document.

8 **Exhibit 3** to the Declaration of I. Neel Chatterjee is true and correct copy of an email
9 communication from Cameron Winklevoss to Wayne Chang (drttol@gmail.com), dated January
10 11, 2005. This document was produced to Plaintiffs by Wayne Chang in this action in response
11 to a Rule 34 Request for Production of Documents and is Bates numbered CHANG-0000931. It
12 has been marked “Confidential” by Chang pursuant to the Protective Order entered in this matter,
13 and hence is subject to Local Civil Rule 79-5(d). Facebook takes no position regarding the
14 propriety of the confidentiality designation of this document.

15 **Exhibit 5** to the Declaration of I. Neel Chatterjee is a true and correct copy of an email
16 communication from Mike Hayner to Wayne Chang and John Taves, dated October 11, 2005.
17 This document was produced to Plaintiffs by Pacific Northwest Software in this action in
18 response to a Rule 34 Request for Production of Documents and is Bates numbered PNS01133-
19 01136. It has been marked “Confidential” by Pacific Northwest Software pursuant to the
20 Protective Order entered in this matter, and hence is subject to Local Civil Rule 79-5(d).
21 Facebook takes no position regarding the propriety of the confidentiality designation of this
22 document.

23 **Exhibit 7** to the Declaration of I. Neel Chatterjee is a true and correct copy of an email
24 communication from Cameron Winklevoss to Wayne Chang (drttol@gmail.com and Winston
25 Williams (mrprimate@pnwsoft.com), dated February 15, 2005. This document was produced to
26 Plaintiffs by Wayne Chang in this action in response to a Rule 34 Request for Production of
27 Documents and is Bates numbered CHANG-0001403. It has been marked “Confidential” by
28 Chang pursuant to the Protective Order entered in this matter, and hence is subject to Local Civil

1 Rule 79-5(d). Facebook takes no position regarding the propriety of the confidentiality
2 designation of this document.

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Dated: February 13, 2008

Orrick, Herrington & Sutcliffe LLP

/s/ Yvonne P. Greer /s/
Yvonne P. Greer
Attorneys for Plaintiffs
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 __, 2008.

Dated: February 13, 2008.

Respectfully submitted,

/s/ Yvonne P. Greer /s/
Yvonne P. Greer