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6 Attorneys for Plaintiff
 7 THE FACEBOOK, INC.

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN JOSE DIVISION

12 FACEBOOK, INC.,
 13 Plaintiff,
 14 v.
 15 CONNECTU, LLC; PACIFIC NORTHWEST
 16 SOFTWARE; AND WINSTON WILLIAMS,
 17 Defendants.

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

**DECLARATION OF
 THERESA A. SUTTON IN SUPPORT
 OF FACEBOOK INC.'S REPLY
 MEMORANDUM IN SUPPORT OF
 MOTION FOR EXPEDITED
 DISCOVERY RE: PERSONAL
 JURISDICTION**

Date: May 16, 2007
 Time: 9:30 A.M.
 Judge: Honorable Richard Seeborg

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1 I, Theresa Sutton, declare:

2 1. I am an attorney with the law firm of Orrick, Herrington & Sutcliffe LLP, counsel
3 for Plaintiff Facebook, Inc. in the above captioned case. I am an active member in good standing
4 of the California State Bar, and I am admitted to appear before this Court.

5 2. I make this declaration based upon my own personal knowledge and knowledge of
6 the documents in this case. If called as a witness, I could and would competently testify to the
7 facts stated herein.

8 3. Attached hereto as **Exhibit A** is a true and correct copy of the Declaration of John
9 Taves in Support of Motion to Dismiss for Lack of Personal Jurisdiction to Fed. R.Civ. P.
10 12(B)(2).

11 4. Attached hereto as **Exhibit B** is a true and correct copy of the Declaration of
12 Winston Williams in Support of Motion to Dismiss for Lack of Personal Jurisdiction to Fed.
13 R.Civ. P. 12(B)(2).

14 5. Attached hereto as **Exhibit C** is a true and correct copy of Pacific Northwest
15 Software Press Release regarding its contract the Chula Vista Elementary School District located
16 in California, dated July 26, 2005.

17 6. Attached hereto as **Exhibit D** is a true and correct copy of the relevant deposition
18 testimony of ConnectU, by Cameron Winkelovss, taken in the United States District of
19 Massachusetts, No. 1:04-cv-11923 (DPW) on August 9, 2005.

20 7. Attached hereto as **Exhibit E** is a true and correct copy of the relevant deposition
21 testimony of ConnectU LLC, by Cameron Winklevoss, taken in the California state action, Case
22 No. 1 05 CV 0473281 on January 16, 2006. **[DOCUMENT SUBMITTED UNDER SEAL]**.

23 8. Attached hereto as **Exhibit F** is a true and correct copy of the Order Granting
24 Facebook, Inc.'s Ex Parte Application to Reschedule the November 17, 2005 Hearing in Regards
25 to Defendants' Motion to Quash [so that Plaintiff ...may take discovery related to jurisdiction] in
26 the California State Action, Case No. 1 05 CV 0473281 on November 3, 2005.

27 9. Attached hereto as **Exhibit G** is a true and correct copy of Facebook's First Set of
28 Special Interrogatories to Cameron Winklevoss in the California State Action, Case No. 1 05 CV

1 0473281, served November 3, 2005.

2 10. Attached hereto as **Exhibit H** is a true and correct copy of ConnectU's Motion for
3 Sanctions in the California State Action, Case No. 1 05 CV 0473281 filed on January 16, 2006.

4 **[DOCUMENT SUBMITTED UNDER SEAL]**

5 11. Attached hereto as **Exhibit I** is a true and correct copy of the relevant deposition
6 testimony of Pacific Northwest Software by John Taves, taken in the California state action, Case
7 No. 1 05 CV 0473281 on January 29, 2007. **[DOCUMENT SUBMITTED UNDER SEAL]**.

8 12. Facebook has requested the depositions of Defendant Winston Williams, Wayne
9 Chang (a current employee of PNS with material knowledge regarding PNS's and Mr. Williams'
10 involvement with ConnectU and their actions against Facebook), David Gucwa (a person with
11 material knowledge regarding PNS's and Mr. Williams' involvement with ConnectU and their
12 actions against Facebook), Defendant Pacific Northwest Software, and Defendant ConnectU, to
13 last no more than four hours each for the limited purpose of discovery regarding Mr. Williams'
14 and PNS's contacts with California.

15 13. In addition, Facebook seeks to propound jurisdictional discovery through five
16 interrogatory questions, and five requests for production of documents to each of the Defendants.

17 14. Defendants countered insisting that the Facebook ask all questions, jurisdictional
18 and substantive, at these proposed depositions so as to conduct them "efficiently" and any further
19 depositions would only be allowed for what they determined to be "good cause."

20 15. On April 23, 2007, my colleague, Yvonne Greer, and I met and conferred with
21 Scott Mosko, counsel for defendants, on the issue of jurisdictional discovery regarding PNS and
22 Mr. Williams.

23 16. On that call Mr. Mosko indicated that he had responsive documents to produce
24 from PNS. He also indicated that he believed relevant documents from Mr. Chang were included
25 in that production but would confirm that and let me know. He did not indicate when PNS would
26 produce the documents, and he has not informed me of the outcome of his investigation on this
27 issue.

28 17. I also told Mr. Mosko that ConnectU had previously failed to produce any

1 software code related to the applications that ConnectU, PNS and Mr. Williams created and used
2 to obtain Facebook's protected data.

3 18. Mr. Mosko said that he did not believe ConnectU had any such code, that Mr.
4 Chang would have had that code, but that he would verify this information and let me know what
5 he learned. The code has not been produced, and Mr. Mosko has not informed me of the outcome
6 of his investigation on this matter.

7 19. Just prior to the removal of this case to the District of California, Honorable Judge
8 Socrates P. Manoukian of the Santa Clara Superior Court granted Facebook's Motion to Compel
9 certain documents, including but not limited to, documents specifically related to Facebook's
10 claims and affirmative defenses at issue in this litigation.

11 20. Attached hereto as **Exhibit J** is a true and correct copy of Judge Manoukian's
12 Order Granting Facebook's Motion to Compel in the California State Action, Case No. 1 05 CV
13 0473281 on March 16, 2007.

14 21. While Mr. Mosko indicated that he did not believe that the Order was binding in
15 the federal action, he indicated that he would go back to review the Order for reconsideration.

16 22. As of the filing of this reply, Mr. Mosko has not produced the additional PNS
17 documents and has not followed up with the production of any documents related to the software
18 code, or any conclusions regarding his review of Judge Manoukian's Order on Facebook's
19 motion to compel.

20 23. Facebook noticed several depositions to occur in late-March and early-April,
21 including that of Mr. Gucwa and Mr. Chang. Mr. Chang, who is represented by the same firm as
22 ConnectU, refused to appear for deposition or produce documents. Mr. Gucwa produced
23 documents and initially agreed to appear. Mr. Mosko indicated that the depositions should not go
24 forward because the case had been removed to federal court and the deposition subpoenae were
25 issued from state court. I explained that two of the witnesses, including Mr. Gucwa, volunteered
26 to appear. Two days before Mr. Gucwa's deposition was set to begin, I received an email from
27 Mr. Gucwa saying that "something has come up" and he was in the process of retaining a lawyer.
28 He then wrote that he would not be appearing for his deposition. Later that day I received a letter

