

1 SEAN A. LINCOLN (State Bar No. 136387)
 salincoln@orrick.com
 2 I. NEEL CHATTERJEE (State Bar No. 173985)
 nchatterjee@orrick.com
 3 MONTE COOPER (State Bar No. 196746)
 mcooper@orrick.com
 4 THERESA A. SUTTON (State Bar No. 211857)
 tsutton@orrick.com
 5 YVONNE P. GREER (State Bar No. 214072)
 ygreer@orrick.com
 6 ORRICK, HERRINGTON & SUTCLIFFE LLP
 1000 Marsh Road
 7 Menlo Park, CA 94025
 Telephone: 650-614-7400
 8 Facsimile: 650-614-7401

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

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

**PLAINTIFFS' MOTION FOR
 ADMINISTRATIVE RELIEF,
 PURSUANT TO CIVIL LOCAL
 RULE 7-11, FOR CLARIFICATION
 OF NOVEMBER 3, 2008, ORDERS**

1 **I. REQUESTED RELIEF**

2 Pursuant to Civil Local Rule 7-11, Plaintiffs seek clarification of the Court’s November 3,
3 2008, Order Directing Special Master to Deliver Property per Settlement Agreement (Doc. No.
4 653) and Judgment Ordering Specific Performance of Settlement Agreement and Declaratory
5 Judgment of Release (Doc. No. 654). In both of these orders, the Court orders the transfer of
6 specified stock and cash to counsel for the parties “in trust for [counsel’s] clients and any lawful
7 claimant.”¹

8 The terms “in trust” and “lawful claimant” are not included in the parties’ Settlement
9 Agreement. The parties disagree about Plaintiffs’ obligations arising out of the Court’s use of
10 these terms. ConnectU and its Founders recently asserted that this language is meant to include at
11 least Tyler and Cameron Winklevoss and Divya Narendra, ConnectU’s Founders. ConnectU and
12 its Founders assert that the language requires Plaintiffs’ counsel to hold the ConnectU stock “in
13 trust” for them. Plaintiffs disagree. While at least two “lawful claimants” apparently exist with
14 regard to the stock and cash transferred from Facebook to ConnectU, *i.e.*, Quinn Emanuel and
15 Finnegan Henderson, there are no similarly situated persons interested in the ConnectU stock
16 transferred to Plaintiffs. Thus, the “in trust” and “lawful claimant” language with regard to
17 consideration transferring from Facebook to ConnectU is appropriate. It is not a reciprocal
18 requirement.

19 Consequently, Plaintiffs request that the Court clarify that, through its November 3
20 Orders, the transfer of ConnectU stock to Plaintiffs need not be held “in trust” for “any lawful
21 claimant,” and specifically not for Tyler, Cameron or Howard Winklevoss or Divya Narendra.

22 **II. BACKGROUND**

23 On November 3, 2008, the Court issued an Order Directing Special Master to Deliver
24 Property per Settlement Agreement (Doc. No. 653).² The Order directs the Special Master, in
25 relevant part, to:

26 ¹ To the extent the Court considers the relief sought to be a substantive change, Plaintiffs request
27 that the Court consider this a Motion for Reconsideration of its November 3, 2008, Orders.

28 ² On that same day, the Court also issued a Judgment Ordering Specific Performance of
Settlement Agreement and Declaratory Judgment of Release (Doc. No. 654). The language at
issue in this Administrative Request is identical in both November 3rd Orders.

1 (1) transfer to the law firm of Orrick, Herrington & Stueliff [sic],
2 LLP, counsel for The Facebook, Inc., and Mark Zuckerberg, **in**
3 **trust** for its clients and **any lawful claimant**, the shares of
4 ConnectU being held by the Master; and

5 (2) transfer to Boies, Schiller & Flexner, as counsel for ConnectU,
6 Inc., Cameron Winklevoss, Tyler Winklevoss, and Divya Narendra,
7 **in trust** for its clients and **any lawful claimant**, (a) the cash or its
8 equivalent in the form of a bank check or cashiers check and (b)
9 The Facebook Inc., common shares being held by the Master;

10 Doc. Nos. 653, 654 (emphasis added). These provisions appear to be in response to the Special
11 Master’s September 5, 2008, Report No. 1 in which the Master recommended that the Court
12 instruct him to transfer: a) all ConnectU stock in his possession **to Facebook** (Doc. No. 630, pg. 8
13 (Recommendation #3)) (emphasis added); and b) the Facebook cash and stock, for the ConnectU
14 Founders and Quinn Emanuel, **into an escrow or trust** account (or to ConnectU founders and
15 Quinn Emanuel jointly). *Id.* (Recommendation #4) (emphasis added).³

16 On November 6, 2008, counsel for ConnectU wrote to Plaintiffs’ counsel contending, for
17 the first time, that they believe Messrs. Winklevoss and Narendra are “lawful claimants” to the
18 ConnectU stock and are, therefore, entitled to 10 days’ notice of any proposed transfer of
19 ConnectU stock by Plaintiffs’ counsel. Declaration of Theresa A. Sutton in Support of Motion
20 for Administrative Relief (“Sutton Decl.”), Ex. A. Plaintiffs disagree that anyone other than they
21 are “lawful claimants” to the ConnectU stock.

22 **III. DISCUSSION**

23 Plaintiffs seek clarification of the terms “in trust” and “lawful claimants” in Section (1) of
24 the Court’s November 3, 2008, Order. Although titled an order apparently designed to effectuate
25 the Settlement Agreement (*i.e.*, deliver property “**in accordance** with the terms of their
26 Settlement Agreement”), the Court’s Order contains language not found in the Settlement
27 Agreement. Specifically, the Court orders the Special Master to transfer ConnectU stock to
28 Orrick, Herrington & Sutcliffe LLP “in trust” for Plaintiffs and “any lawful claimant.” Doc. No.

³ In a September 19, 2008, Order to Show Cause, the Court also acknowledged that “that claims or liens have been asserted by third-parties.” This is apparently a reference to the Notice of Lien filed by the Quinn Emanuel law firm, and perhaps Finnegan Henderson, with regard to the stock and cash paid by Facebook to ConnectU’s Founders as a result of the Settlement Agreement. Neither of these parties, or any other third party, has asserted an interest in the ConnectU stock.

1 653. No such “claimants” exists, nor is there a requirement in the Settlement Agreement that
2 Plaintiffs’ counsel hold the consideration in trust for them or anyone else.

3 By its terms, the Settlement Agreement requires Facebook to transfer a specified amount
4 of cash and number of shares of Facebook stock to Messrs. Winklevoss and Narendra. In
5 exchange for this transfer, the Settlement Agreement requires the transfer of “all ConnectU
6 stock,” to Plaintiffs. Because the “in trust” and “lawful claimant” language does not appear in the
7 Settlement Agreement, Plaintiffs ask that the Court clarify its use of these terms. More
8 specifically, Plaintiffs request that the Court specify that the Order was not intended to identify
9 Tyler, Cameron and Howard Winklevoss and Divya Narendra as “lawful claimants” to the
10 ConnectU stock, and that Plaintiffs’ counsel need not hold such stock “in trust.”

11 Clarification is necessary because ConnectU has recently asserted that Messrs.
12 Winklevoss and Narendra are “lawful claimants” pursuant to the Order. Sutton Decl., Ex. A.
13 Plaintiffs disagree. Unlike the Facebook stock and cash in which the Quinn Emanuel firm asserts
14 an interest (and has filed a Notice of Lien), no person has filed a Notice of Lien or other notice of
15 interest in the ConnectU stock. Consequently, the parties are not similarly situated.⁴ Placing
16 restrictions on the consideration Plaintiffs are entitled to pursuant to the Settlement Agreement
17 and the November 3 Order is, therefore, inappropriate.

18 For the same reasons, Plaintiffs also seek clarification of the term “in trust,” as nothing in
19 the Settlement Agreement requires Plaintiffs’ counsel to hold the ConnectU stock in trust for
20 anyone, including any nonexistent third party “lawful claimants.” Indeed, the Special Master, in
21 his Report, recommended that the Court instruct him to transfer the ConnectU stock directly to
22 Facebook. *See* Recommendation #3. Further, in response to this recommendation, the Court
23 issued an Order to Show Cause why it should not do so. Doc. No. 634, 1:18. Neither ConnectU
24 or its Founders objected to the recommended transfer on the ground that the Founders are lawful
25 claimants. Doc. No. 637, pg. 16. They objected solely to the timing of the transfer to the extent it

26 ⁴ The consideration flowing from Facebook to the ConnectU founders pursuant to the Settlement
27 Agreement cannot be transferred at this time directly to the founders because Quinn Emanuel has
28 filed a Notice of Lien asserting an interest in those proceeds. As a result, restrictions on that part
of the transaction are appropriate and necessary to protect Quinn Emanuel’s (a “lawful claimant”) interest in the settlement proceeds.

1 would affect their rights on appeal. *Id.*

2 **IV. CONCLUSION**

3 For these reasons, Plaintiffs seek clarification of the terms “in trust” and “lawful
4 claimant,” as used in Section (1) of the Order, to ensure Plaintiffs are in full compliance thereof.
5 Specifically, Plaintiffs request that the Court specify that Tyler, Cameron, and
6 Howard Winklevoss, and Divya Narendra are not “lawful claimants” pursuant to Section (1) of
7 the Order, and Plaintiffs are not required to hold the ConnectU stock “in trust.”

8

9 November 10, 2008

10

11

/s/ Theresa A. Sutton /s/
Theresa A. Sutton

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 November 10, 2008.

Dated: November 10, 2008.

Respectfully submitted,

/s/ Theresa A. Sutton /s/
Theresa A. Sutton