

EXHIBIT E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

THE FACEBOOK, INC. AND) C-07-01389 JW
MARK ZUCKERBERG,)
) SAN JOSE, CALIFORNIA
PLAINTIFFS,)
) OCTOBER 28, 2008
VS.)
) PAGES 1-76
CONNECTU, INC. (FORMERLY)
KNOWN AS CONNECTU, LLC),)
PACIFIC NORTHWEST)
SOFTWARE, INC., WINSTON)
WILLIAMS, AND WAYNE)
CHANG,)
)
DEFENDANT.)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES WARE
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: ORRICK, HERRINGTON & SUTCLIFFE
BY: I. NEEL CHATTERJEE
1000 MARSH ROAD
MENLO PARK, CALIFORNIA 94025

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

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APPEARANCES (CONTINUED)

FOR DEFENDANTS: BOIES, SCHILLER & FLEXNER, LLP
 BY: DAVID A. BARRETT
 575 LEXINGTON AVENUE, 7TH FLOOR
 NEW YORK, NEW YORK 10022

 BY: EVAN ANDREW PARKE
 5301 WISCONSIN AVENUE, N.W.
 WASHINGTON, D.C. 20015

FOR QUINN, QUINN, EMANUEL, URQUHART,
EMANUEL: OLIVER & HEDGES, LLP
 BY: BRUCE E. VAN DALSEM
 865 SOUTH FIGUEROA STREET
 10TH FLOOR
 LOS ANGELES, CALIFORNIA 90017

 BY: RANDY GARTEISER
 555 TWIN DOLPHIN DRIVE
 SUITE 560
 REDWOOD SHORES, CALIFORNIA 94065

SPECIAL MASTER: GEORGE C. FISHER
 2600 EL CAMINO REAL, SUITE 410
 PALO ALTO, CALIFORNIA 94306

11:18:01 1 CLAIMANTS THAT MIGHT EXIST IN THE WORLD AGAINST,
11:18:05 2 AGAINST THE CONNECTU PARTIES.

11:18:07 3 AND I THINK, YOU KNOW, IF THE COURT IS,
11:18:11 4 YOU KNOW, INCLINED TO MOVE IN THAT DIRECTION, THAT
11:18:16 5 WITH RESPECT TO FACEBOOK, YOU KNOW, CASH MEANS
11:18:19 6 CASH. IT DOESN'T MEAN A CHECK PAYABLE TO TWO
11:18:23 7 PARTIES. IT DOESN'T MEAN A CHECK IN A TRUST.

11:18:26 8 IT MEANS -- YOU KNOW, IN THIS CASE IT
11:18:30 9 WOULD BE SOME RATHER LARGE SUITCASES, BUT THAT'S
11:18:33 10 LITERALLY WHAT THEY SAID.

11:18:34 11 AND IF THEY WANTED TO PROTECT THEMSELVES
11:18:37 12 AGAINST THESE KINDS OF CLAIMS, AS THE COURT HAS
11:18:39 13 SAID IN OTHER CONTEXTS, THAT SHOULD HAVE BEEN
11:18:42 14 SOMETHING THAT WAS INCLUDED IN THE AGREEMENT.

11:18:44 15 SO IF, IF THERE'S A POTENTIAL PROBLEM FOR
11:18:47 16 FACEBOOK -- AND, AGAIN, I THINK IT'S A VERY REMOTE
11:18:50 17 ONE -- IT'S REALLY A PROBLEM OF THEIR OWN MAKING IN
11:18:54 18 THAT REGARD.

11:18:55 19 THE COURT: THANK YOU, COUNSEL.

11:18:57 20 DID YOU WANT TO ADDRESS THE COURT ON
11:18:59 21 BEHALF OF QUINN, EMANUEL?

11:19:01 22 MR. VAN DALSEM: IF THE COURT IS INCLINED
11:19:04 23 TO HEAR US, I WOULD LIKE TO, YOUR HONOR.

11:19:06 24 THE COURT: OF COURSE.

11:19:06 25 MR. VAN DALSEM: AND THE REASON I SAY

11:19:08 1 THAT IS WE'RE NOT A PARTY AND WE HAVEN'T
11:19:10 2 INTERVENED, AND I'LL TOUCH UPON WHY WE HAVEN'T DONE
11:19:13 3 THAT IN MY REMARKS.

11:19:15 4 I AGREE WITH WHAT MR. BARRETT SAYS WITH
11:19:17 5 ONE SIGNIFICANT EXCEPTION, AND THAT SIGNIFICANT
11:19:19 6 EXCEPTION IS THAT THE COURT'S PROPOSAL SET FORTH IN
11:19:22 7 THE OSC WOULD ALTER THE STATUS QUO THAT WOULD HAVE
11:19:25 8 EXISTED BUT FOR THIS DISPUTE.

11:19:29 9 QUINN, EMANUEL HAS A CONTRACTUAL LIEN
11:19:32 10 OVER THIS RECOVERY, AND IN THE NORMAL COURSE,
11:19:34 11 REALLY BECAUSE OF THE LEVIN CASE WHICH WE'VE CITED,
11:19:38 12 A DEFENDANT PAYING A PLAINTIFF WILL ISSUE THE
11:19:41 13 PAYMENT INSTRUMENTS, BE THEY CHECKS OR OTHERWISE,
11:19:45 14 JOINTLY TO THE PLAINTIFF AND THEIR COUNSEL.

11:19:48 15 AND THE REASON THEY DO THAT IS BECAUSE
11:19:50 16 THE LEVIN CASE IN CALIFORNIA HOLDS THAT IF THEY'RE
11:19:53 17 ON NOTICE OF A CONTRACTUAL RIGHT OF THE LAWYERS TO
11:19:55 18 RECEIVE A PORTION OF THAT MONEY AND THEY FAIL TO
11:19:58 19 INCLUDE THE LAWYERS AS A PAYEE, THEN THE DEFENDANT,
11:20:01 20 IN THIS CASE FACEBOOK, FACES POTENTIAL LIABILITY.

11:20:06 21 SO IN THE NORMAL COURSE OF THINGS, HAD
11:20:08 22 THIS SETTLEMENT NOT BEEN CONTESTED AND IN THE
11:20:10 23 ABSENCE OF SOME WRITTEN INSTRUCTION TO FACEBOOK TO
11:20:14 24 DO OTHERWISE, FACEBOOK WOULD HAVE ISSUED THE
11:20:16 25 CONSIDERATION JOINTLY TO CONNECTU, ITS FOUNDERS,

11:20:19 1 AND THE FIRM.

11:20:20 2 AND I THINK FACEBOOK HAS TAKEN THAT
11:20:23 3 POSITION HERE AND HAS CONFIRMED THAT THAT'S WHAT
11:20:25 4 WOULD HAVE HAPPENED IN THE NORMAL COURSE.

11:20:27 5 IF THE COURT FOLLOWS THROUGH ON WHAT IT
11:20:29 6 STATED IN THE OSC, IT WOULD BE DELIVERING THE
11:20:32 7 CONSIDERATION FROM FACEBOOK DIRECTLY TO THE
11:20:34 8 CONNECTU FOUNDERS WHO COULD -- WHO WOULD THEN BE
11:20:38 9 FREE TO DO WITH IT WHATEVER THEY WISH, AND THAT
11:20:40 10 WOULD ALTER THE STATUS QUO THAT WOULD HAVE EXISTED
11:20:43 11 BUT FOR THIS DISPUTE.

11:20:45 12 AND THAT -- IN MY OPINION, THAT IS NOT
11:20:47 13 SOMETHING THE COURT SHOULD DO BECAUSE IT WOULD
11:20:49 14 DESTROY THE LIEN RIGHT.

11:20:51 15 I AGREE WITH MR. BARRETT THAT IT IS NOT
11:20:53 16 FOR THIS COURT TO ADJUDICATE ANY PORTION OF THE
11:20:56 17 DISPUTE BETWEEN QUINN, EMANUEL AND ITS FORMER
11:20:59 18 CLIENTS.

11:20:59 19 THERE'S AN ARBITRATION CLAUSE. WE HAVE
11:21:01 20 COMMENCED AN ARBITRATION IN NEW YORK BEFORE THE
11:21:05 21 TRIPLE A. THEY TRIED TO ENJOIN IT.

11:21:07 22 THAT WAS DEFEATED. JUSTICE LOWE IN THE
11:21:10 23 SUPREME COURT IN NEW YORK HELD THAT THE MATTER WAS
11:21:13 24 ARBITRABLE. THEY'VE ASSERTED COUNTERCLAIMS.

11:21:15 25 AND THAT IS THE PROPER FORUM IN WHICH TO

1 RESOLVE ALL OF THESE QUESTIONS AS BETWEEN QUINN,
2 EMANUEL AND ITS FORMER CLIENTS.

3 WHAT SHOULDN'T HAPPEN IN THE MEANTIME IS
4 THE FORMER CLIENTS OBTAIN ALL OF THE MONEY AND THEY
5 CAN DO WITH IT WHATEVER THEY -- WITH THAT MONEY
6 WHATEVER THEY WISH ONCE THEY HAVE THEIR HANDS ON IT
7 AND THEREBY DEFEAT OUR LIEN INTEREST.

8 AND THE COURT'S OSC WOULD ALTER WHO WOULD
9 NORMALLY BE THE PROTECTION FOR QUINN, EMANUEL UNDER
10 THESE CIRCUMSTANCES.

11 THE COURT: WELL, THE OBLIGATION THAT
12 YOU'RE CITING OF A CONTRACTUAL LIEN HAS NOT BEEN
13 ADJUDICATED AS OF YET; CORRECT?

14 MR. VAN DALSEM: WELL, THE LIEN IS
15 PERFECTED AND WE'VE CITED CASES UPON EXECUTION OF
16 THE FEE AGREEMENT. THE MOMENT THAT AGREEMENT WAS
17 SIGNED, THE LIEN WAS PERFECTED.

18 THE COURT: WHAT DOES IT MEAN FOR A LIEN
19 TO BE PERFECTED?

20 MR. VAN DALSEM: THAT MEANS THAT QUINN,
21 EMANUEL, AS COUNSEL FOR THE CONNECTU PARTIES, HAS A
22 LIEN OVER WHAT WERE THEN CAUSES OF ACTION, WHICH
23 WERE THEN CONVERTED INTO THINGS OF VALUE AS PART OF
24 THE SETTLEMENT.

25 SO WE HAVE AN ABILITY TO THEN FORECLOSE

11:22:19 1 ON THAT LIEN, AND CALIFORNIA LAW IS VERY CLEAR THAT
11:22:22 2 WE -- THAT THAT FORECLOSURE PROCEEDING DOES NOT
11:22:25 3 HAPPEN HERE. IT HAS TO HAPPEN IN AN INDEPENDENT
11:22:28 4 ACTION BROUGHT BY THE LAWYERS AGAINST THE FORMER
11:22:30 5 CLIENTS.

11:22:32 6 WE'VE DONE THAT. THAT'S BEFORE THE
11:22:33 7 TRIPLE A IN NEW YORK AND THAT WILL PROCEED HOWEVER
11:22:35 8 IT PROCEEDS.

11:22:37 9 THE COURT: THE -- YOUR -- THE
11:22:39 10 OBLIGATION, THOUGH, IS ONLY TO FACEBOOK WITH
11:22:48 11 RESPECT TO THE LIEN?

11:22:50 12 MR. VAN DALSEM: THE OBLIGATION --
11:22:51 13 FACEBOOK FACES POTENTIAL LIABILITY IF THESE FUNDS
11:22:55 14 ARE TURNED OVER TO THE CONNECTU PARTIES WITHOUT
11:22:57 15 ACCOUNTING FOR THAT LIEN.

11:22:58 16 THE COURT: RIGHT. BUT -- AND I GUESS SO
11:23:02 17 DO THE FOUNDERS AND CONNECTU?

11:23:04 18 MR. VAN DALSEM: THAT'S CORRECT.

11:23:05 19 THE COURT: ALL RIGHT. BUT IF THE FUNDS
11:23:08 20 ARE NEVER TURNED OVER TO FACEBOOK, WHAT HAPPENS?

11:23:11 21 MR. VAN DALSEM: YOU MEAN NEVER TURNED
11:23:13 22 OVER TO CONNECTU?

11:23:14 23 THE COURT: NO, NEVER TURNED OVER BY
11:23:17 24 FACEBOOK.

11:23:18 25 MR. VAN DALSEM: OH. IF THE FUNDS ARE