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10
 11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN JOSE DIVISION

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15 THE FACEBOOK, INC., et al.,
 16 Plaintiffs,
 17 v.
 18 CONNEXU, INC., et al.,
 19 Defendants.

No. C 07-01389 JW

RESPONSE TO FACEBOOK, INC. AND
 MARK ZUCKERBERG'S JOINDER IN
 CONNEXU'S RENEWED REQUEST
 FOR HEARING DATE RELATING TO
 PRODUCTION OF CONNEXU'S
 DOCUMENTS

Chief Magistrate Judge Maria-Elena James
 (San Francisco Division)

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1 **I. INTRODUCTION.**

2 Facebook, Inc. and Mark Zuckerberg (collectively, “Facebook”) seek to join in
 3 ConnectU, Inc.’s renewed request (the “Renewed Request”) for a hearing concerning
 4 production of ConnectU’s documents. The ConnectU Founders¹ have previously objected
 5 to, and moved to strike, ConnectU’s Renewed Request. Facebook’s joinder should be
 6 stricken not only for the same reasons previously expressed concerning ConnectU’s
 7 Renewed Request but also because Facebook is improperly asking Chief Magistrate Judge
 8 James to revisit a question already ruled upon by Judge Ware.

9 **II. DISCUSSION.**

10 Facebook’s joinder appears to request a briefing and hearing schedule concerning
 11 whether ConnectU’s privilege has been waived over certain documents possessed by the law
 12 firms of Finnegan, Henderson, Farabow, Garrett & Dunner, LLP (“Finnegan”) and Boies,
 13 Schiller & Flexner, LLP (“Boies”). Through this argument, Facebook apparently seeks an
 14 order that Finnegan and Boies turn over privileged, litigation-related materials to ConnectU,
 15 which is now a subsidiary of Facebook. However, Judge Ware’s disqualification order
 16 expressly denied ConnectU’s request for the files Facebook wishes to be transferred to
 17 ConnectU. Dkt. 704, at 18:12-13 (“The Court . . . declines to order Finnegan and Boise to
 18 hand over files pertaining to ConnectU’s litigation against Facebook”). Judge Ware
 19 recognized that it would be unfair for Facebook to gain access to privileged litigation files
 20 the Finnegan and Boies firms created while they represented ConnectU and its Founders
 21 against Facebook.

22 Facebook’s request to Chief Magistrate Judge James to reconsider Judge Ware’s ruling
 23 exceeds Chief Magistrate Judge James’ authority. Judge Ware did not delegate to Chief
 24 Magistrate Judge James the power to reconsider Judge Ware’s ruling that ConnectU was not
 25 entitled to the litigation-related documents that Facebook apparently now seeks. Judge Ware
 26 assigned to Chief Magistrate Judge James only the power to resolve any disputes concerning

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 28 ¹Cameron Winklevoss, Tyler Winklevoss and Divya Narendra.

1 compliance with Judge Ware’s order that Finnegan and Boies turn over business, but not
2 litigation-related, documents to ConnectU. Therefore, Chief Magistrate Judge James lacks
3 jurisdiction to reconsider Judge Ware’s order.

4 A separate and independent jurisdictional barrier to the relief Facebook seeks is the
5 pendency of appellate proceedings at the Ninth Circuit arising from this case. The
6 Founders’ appeal of Judge Ware’s disqualification order remains pending, despite ConnectU
7 and Facebook’s arguments to the Ninth Circuit that the appeal should be dismissed. The
8 Ninth Circuit has effectively consolidated the appeal of Judge Ware’s disqualification appeal
9 with the pending appeals from Judge Ware’s orders enforcing a purported settlement of this
10 litigation. *See* Dkt. 725 (12/14/09 Ninth Circuit order). Chief Magistrate Judge James has
11 correctly been reluctant to conduct proceedings when an appeal is pending.

12 **III. CONCLUSION**

13 This matter is now on appeal to the Ninth Circuit. Facebook and ConnectU’s efforts to
14 continue litigating this case at the District Court level should be denied.

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16 DATED: December 28, 2009.

17 Respectfully,

18 JEROME B. FALK, JR.
19 SEAN M. SELEGUE
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24 By: _____ /s/
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