

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

United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

The Facebook, Inc., et al.,
Plaintiffs,
v.
ConnectU, Inc, et al.,
Defendants.

NO. C 07-01389 JW

**ORDER OVERRULING CONNECTU'S
OBJECTION TO CHIEF MAGISTRATE
JUDGE JAMES' DECEMBER 30, 2009
ORDER AS PREMATURE**

Presently before the Court is ConnectU's Objection to Chief Magistrate Judge James' Order denying ConnectU's Request for Hearing Date and Briefing Schedule. (Docket Item No. 742.) The Court treats the objection as a motion for relief from a nondispositive order of a Magistrate Judge made pursuant to Fed. R. Civ. P. 72 and Civ. L.R. 72-2. Facebook and Mark Zuckerberg have joined in the Motion. (Docket Item No. 746.)

A district court may modify or set aside a magistrate judge's ruling on a non-dispositive matter if the order is "clearly erroneous" or "contrary to law." 28 U.S.C. §636(b)(1)(A); Fed. R. Civ. P. 72(a); Bahn v. NME Hospitals, Inc., 929 F.2d 1404, 1414 (9th Cir. 1991).

Upon review, the Court finds that Chief Magistrate Judge James' Order is neither erroneous nor contrary to law. Moreover, the Court finds that ConnectU's motion is premature. In the December 30, 2009 Order, Judge James denied ConnectU's request "without prejudice" and specifically stated that "should ConnectU be able to establish that no appeals are pending in this case before the Ninth Circuit, the Court shall issue an order as to how the parties should proceed."

1 (Docket Item No. 736.) Thus, Judge James invited ConnectU to refile its motion with an appropriate
2 showing that the district court had jurisdiction to proceed with a review of files to be turned over.

3 The Court recognizes that Judge James' Order might be broadly interpreted to require a
4 showing that "no appeals are pending" before the Ninth Circuit, even if the appeal would not affect
5 the jurisdiction of the district court to enforce its Order that client files be reviewed and turned over
6 to successor counsel. There are multiple appeals pending in this case. However, an appeal does not
7 divest the district court of jurisdiction to hear ancillary matters unaffected by the appeal. The
8 motion for disqualification of counsel and for turnover of client files is an ancillary matter that the
9 Ninth Circuit referred back to the district court for disposition. Of course, appellate relief might be
10 available with respect to the district court's disposition of these ancillary matters. Unless or until
11 appellate relief is sought, the district court retains jurisdiction to enforce its disposition.

12 Chief Magistrate Judge James' Order allows ConnectU to refile its motion with a proper
13 showing. If ConnectU determines to re-file a motion with the Magistrate Judge for further
14 proceedings with respect to the turnover of client files, it would satisfy its requirement for showing
15 that the Magistrate Judge has jurisdiction by showing that there are no appeals pending from the
16 September 2, 2009 Order disqualifying counsel or from that portion of the September 2, 2009 Order
17 directing a limited handover of its client files ("documents necessary for new ConnectU to carry on
18 ConnectU's business operations") from its former counsel to its present counsel.

19 Accordingly, the Order of Chief Magistrate Judge James is affirmed. The objection is
20 overruled as premature, without prejudice to a renewed motion that is consistent with this Order.

21

22 Dated: January 14, 2010

23

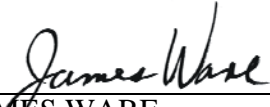
24

25

26

27

28



JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

- 2 Alison Paige Buchanan apb@hogefenton.com
- 3 Bruce Eric Van Dalsem brucevandalsem@quinnemanuel.com
- 4 Chester Wren-Ming Day cday@orrick.com
- 5 D. Michael Underhill Munderhill@BSFLLP.com
- 6 David A. Barrett d Barrett@bsflp.com
- 7 Evan A. Parke eparke@bsflp.com
- 8 George C. Fisher georgecfisher@gmail.com
- 9 George C. Fisher georgecfisher@gmail.com
- 10 George Hopkins Guy hoppguy@orrick.com
- 11 I. Neel Chatterjee nchatterjee@orrick.com
- 12 James Earl Towery jet@hogefenton.com
- 13 Jerome B. Falk jfalk@howardrice.com
- 14 John Phillip Duchemin jduchemin@howardrice.com
- 15 Jonathan M. Shaw jshaw@bsflp.com
- 16 Kalama M. Lui-Kwan kml@severson.com
- 17 Mark A. Weissman mweissman@osheapartners.com
- 18 Mark A. Weissman mweissman@osheapartners.com
- 19 Mark Andrew Byrne markbyrne@byrnenixon.com
- 20 Mark Andrew Byrne markbyrne@byrnenixon.com
- 21 Monte M.F. Cooper mcooper@orrick.com
- 22 Rachel E. Matteo-Boehm rachel.matteo-boehm@hro.com
- 23 Randy Garteiser randy@sftrialattorneys.com
- 24 Roger Rex Myers roger.myers@hro.com
- 25 Scott Richard Mosko scott.mosko@finnegan.com
- 26 Sean Alan Lincoln slincoln@Orrick.com
- 27 Sean F. O'Shea soshea@osheapartners.com
- 28 Sean M. SeLegue sselegue@howardrice.com
- Steven Christopher Holtzman sholtzman@bsflp.com
- Theresa Ann Sutton tsutton@orrick.com
- Tyler Alexander Baker Tbaker@fenwick.com
- Valerie Margo Wagner vwagner@gcalaw.com
- Warrington S. Parker wparker@orrick.com
- Yvonne Penas Greer ygreer@orrick.com

19
20
21
22
23
24
25
26
27
28

Dated: January 14, 2010

Richard W. Wieking, Clerk

By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy