

1 G. HOPKINS GUY, III (State Bar No. 124811)  
 2 I. NEEL CHATTERJEE (State Bar No. 173985)  
 3 MONTE COOPER (State Bar No. 196746)  
 4 THERESA A. SUTTON (State Bar No. 211857)  
 5 YVONNE P. GREER (State Bar No. 214072)  
 6 ORRICK, HERRINGTON & SUTCLIFFE LLP  
 7 1000 Marsh Road  
 8 Menlo Park, CA 94025  
 9 Telephone: 650-614-7400  
 10 Facsimile: 650-614-7401

11 Attorneys for Plaintiffs  
 12 FACEBOOK, INC. and MARK ZUCKERBERG

13 UNITED STATES DISTRICT COURT  
 14 NORTHERN DISTRICT OF CALIFORNIA  
 15 SAN JOSE DIVISION

16 FACEBOOK, INC., and MARK  
 17 ZUCKERBERG,

18 Plaintiffs,

19 v.

20 CONNECTU, INC. (formerly known as  
 21 CONNECTU, LLC), CAMERON  
 22 WINKLEVOSS, TYLER WINKLEVOSS,  
 23 DIVYA NARENDRA, PACIFIC  
 24 NORTHWEST SOFTWARE, INC.,  
 25 WINSTON WILLIAMS, WAYNE CHANG,  
 26 and DAVID GUCWA AND DOES 1-25,

27 Defendants.

CASE NO. 507-CV-01389-RS

**PLAINTIFFS' [PROPOSED] SECOND  
 AMENDED COMPLAINT FOR  
 VIOLATION OF CALIFORNIA PENAL  
 CODE § 502(C); CALIFORNIA AND  
 MASSACHUSETTS COMMON LAW  
 MISAPPROPRIATION / UNFAIR  
 COMPETITION; VIOLATION OF  
 MASSACHUSETTS GENERAL LAW  
 93A; 18 U.S.C. § 1030; AND 15 U.S.C.  
 §§ 7704 AND 7705**

1 Plaintiffs Facebook, Inc. and Mark Zuckerberg hereby allege violations of  
2 California Penal Code section 502(c), the Computer Fraud and Abuse Act, the Federal Can-Spam  
3 Act of 2003, Massachusetts General Law 93A § 2, and Common Law Misappropriation / Unfair  
4 Competition under California and Massachusetts law, against Defendant ConnectU, Inc.,  
5 Cameron Winklevoss, Tyler Winklevoss, Divya Narendra, Pacific Northwest Software, Inc.,  
6 Winston Williams, Wayne Chang, David Guca, and Does 1-25 inclusive (collectively, the  
7 “Defendants”), as follows:

8 **PARTIES, JURISDICTION, AND VENUE**

9 1. Facebook, Inc. is a Delaware corporation with its principal place of business at  
10 471 Emerson Street, Palo Alto, California. Facebook operates all of its servers in and/or from  
11 California and has done so since June 2004.

12 2. Mark Zuckerberg is an individual with a place of residence in the State of  
13 California.

14 3. On information and belief, Defendant ConnectU, Inc. (formerly known as  
15 ConnectU LLC) is incorporated in the State of Connecticut, with its principal place of business at  
16 500 West Putnam Avenue, Greenwich, Connecticut. ConnectU was at all relevant times doing  
17 business in California. ConnectU is an interactive website that purports to provide certain  
18 website services to university students and alumni. ConnectU has specifically targeted California  
19 universities and students in its business activities. For example, ConnectU purports to have  
20 created “environments” for California universities, including but not limited to University of  
21 California, Berkeley. In addition, on information and belief, ConnectU sent commercial email to  
22 hundreds, if not thousands, of California residents. Its activities in California have been  
23 substantial and continuous.

24 4. Plaintiffs are informed and believe and thereupon allege that Defendant Cameron  
25 Winklevoss is a citizen of the State of Connecticut. Plaintiffs are informed and believe and  
26 thereupon allege that Defendant Mr. Winklevoss was a resident of the State of Massachusetts  
27 until at least June 2004. Mr. Winklevoss purports to be a founder of ConnectU. On information  
28 and belief, Mr. Winklevoss is and always has been an officer of ConnectU and held an equivalent

1 position with ConnectU's predecessor, ConnectU LLC. As described below, Mr. Winklevoss  
2 has, in his individual capacity, engaged in conduct designed to harm Plaintiffs, when he knew  
3 Plaintiffs were located in California and that the harmful effects would be felt by Plaintiffs in  
4 California.

5 5. Plaintiffs are informed and believe and thereupon allege that Defendant Tyler  
6 Winklevoss is a citizen of the State of Connecticut. Plaintiffs are informed and believe and  
7 thereupon allege that Mr. Winklevoss was a resident of the State of Massachusetts until at least  
8 June 2004. Mr. Winklevoss purports to be a founder of ConnectU. On information and belief,  
9 Mr. Winklevoss is and always has been an officer of ConnectU and held an equivalent position  
10 with ConnectU's predecessor, ConnectU LLC. As described below, Mr. Winklevoss has, in his  
11 individual capacity, engaged in conduct designed to harm Plaintiffs, when he knew Plaintiffs  
12 were located in California and that the harmful effects would be felt by Plaintiffs in California.

13 6. Plaintiffs are informed and believe and thereupon allege that Defendant Divya  
14 Narendra is currently a citizen of the State of Massachusetts. Plaintiffs are informed and believe  
15 and thereupon allege that Mr. Narendra was a citizen of New York until late 2006, and a resident  
16 of the State of Massachusetts from September 2000 through June 2004. Mr. Narendra purports to  
17 be a founder of ConnectU. On information and belief, Mr. Narendra is an officer of ConnectU  
18 and held an equivalent position with ConnectU's predecessor, ConnectU LLC. As described  
19 below, Mr. Narendra has, in his individual capacity, engaged in conduct designed to harm  
20 Plaintiffs, when he knew Plaintiffs were located in California and that the harmful effects would  
21 be felt by Plaintiffs in California. Mr. Narendra also personally hired at least one other person to  
22 assist in the conduct alleged herein.

23 7. Plaintiffs are informed and believe and thereupon allege that Defendant Pacific  
24 Northwest Software, Inc. ("PNS") is incorporated in the State of Washington, with its principal  
25 place of business at 2210 177th Place, NE Redmond, Washington. On information and belief,  
26 PNS has entered into contracts with California residents and has derived substantial revenue from  
27 California residents. For example, in 2005 PNS issued a press release in which it announced a  
28 web development deal with the Chula Vista Elementary School District (located in California),

1 pursuant to which PNS would develop internet “portals” for 50 sites (including 43 district  
2 schools) that would be available to the public. Plaintiffs are informed and believe and thereupon  
3 allege that ConnectU and/or its founders hired PNS to gain unauthorized access to Facebook’s  
4 servers and website and to take, without permission, information found therein. Plaintiffs are  
5 informed and believe that PNS has entered into contracts in California, has clients in California,  
6 has received revenue from California residents, has solicited website users from California, has  
7 advertised in California, and has traveled to this state. As described below, PNS and its agents  
8 engaged in conduct designed to harm Plaintiffs, when they knew Plaintiffs were located in  
9 California and that the harmful effects would be felt by Plaintiffs in California.

10 8. Plaintiffs are informed and believe and thereupon allege that Defendant Winston  
11 Williams is a citizen of the State of Washington, and that he helped the Defendants develop a  
12 software application designed to hack into www.facebook.com and steal information. As  
13 described below, Mr. Williams has engaged in conduct designed to harm Plaintiffs, when he  
14 knew Plaintiffs were located in California and that the harmful effects would be felt by Plaintiffs  
15 in California. Mr. Williams has, at various times, been employed by ConnectU and PNS.

16 9. Plaintiffs are informed and believe and thereupon allege that Defendant Wayne  
17 Chang is a citizen of the State of Massachusetts, and that he was hired by ConnectU and/or its  
18 founders to gain unauthorized access to Plaintiffs’ server and website and to misappropriate  
19 information found therein. As described below, Mr. Chang has engaged in conduct designed to  
20 harm Plaintiffs, when he knew Plaintiffs were located in California and that the harmful effects  
21 would be felt by Plaintiffs in California. Plaintiffs are informed and believe and thereupon allege  
22 that Defendant Chang is currently employed by Defendant PNS.

23 10. Plaintiffs are informed and believe and thereupon allege that Defendant David  
24 Gucwa is a citizen of the State of Massachusetts, and that he was hired by ConnectU and/or its  
25 founders and/or Defendant Chang to gain unauthorized access to Plaintiffs’ server and website  
26 and to misappropriate information found therein. As described below, Mr. Gucwa has engaged in  
27 conduct designed to harm Plaintiffs, when he knew Plaintiffs were located in California and that  
28 the harmful effects would be felt by Plaintiffs in California.

1 11. Plaintiffs have not yet fully and independently identified the true names and  
2 capacities of the Defendants sued herein as Does 1-25, inclusive, and therefore sues those  
3 Defendants by such fictitious names. Plaintiffs reserve the right to amend this complaint to allege  
4 such Defendants' true names and capacities when they are ascertained. Plaintiffs are informed  
5 and believe and thereupon allege that each of the fictitiously designated Defendants has been  
6 acting as a partner, contractor, joint venturer, agent, or employee of one or more of the named  
7 Defendants and that each is jointly and severally responsible for the acts and omissions  
8 complained of herein.

9 12. Jurisdiction and venue are proper in this jurisdiction pursuant to Federal Rules of  
10 Civil Procedure Sections 1331, 1332, 1391(b) and (c). The cause of action arose and the injuries  
11 described herein occurred primarily or wholly within the County of Santa Clara. The wrongful  
12 acts causing such injuries were initiated at various times from the States of Massachusetts, New  
13 York, and Connecticut and directed at persons and equipment in California.

14 **GENERAL ALLEGATIONS**

15 **A. Mark Zuckerberg**

16 13. Mark Zuckerberg is a former Harvard student who, in June 2004, took a leave of  
17 absence from school to come to California. He hoped to launch a successful business. He  
18 succeeded and decided to stay in California.

19 **B. Facebook**

20 14. Facebook is an interactive computer service that enables social networking  
21 amongst present and former university students. Plaintiffs have been operating the popular  
22 website, [www.facebook.com](http://www.facebook.com),<sup>1</sup> from California since June 2004. During all relevant times herein,  
23 Plaintiffs are informed and believe that Defendants were aware that [www.facebook.com](http://www.facebook.com) operated  
24 from California.

25 15. Facebook is an industry leader in the business of social networking for college  
26 students. It currently has over 19 million registered users.

27 \_\_\_\_\_  
28 <sup>1</sup> The website was originally called [www.thefacebook.com](http://www.thefacebook.com). To avoid confusion, Plaintiffs refer to the site by its current name.

1           16. In order to legally access user data and other specific information on Plaintiffs'  
2 website, one must register and thereby agree to Plaintiffs' Terms of Use ("Terms of Use") and its  
3 Privacy Policy ("Privacy Policy"). Plaintiffs have authorized access only to those individuals  
4 who agree to the Terms of Use. The use of any information on the Facebook website contrary to  
5 the Terms of Use is unauthorized. Enabling users of the Facebook website to control the level of  
6 privacy to their personal information is of utmost importance to Plaintiffs and the success of their  
7 business. Facebook users are expected to respect the privacy of other users and abide by the  
8 Privacy Policy and Terms of Use. During all relevant times herein, Defendants were aware of  
9 these policies.

10           17. The Terms of Use and the Privacy Policy have, at all times since the launch of  
11 Facebook's website, prohibited all commercial use and access to data and communications  
12 therein, except as explicitly authorized by Plaintiffs.

13           18. From at least February 2004, the Terms of Use provided as follows (aside, on  
14 information and belief, from non-substantive modifications):

15           The Web site is for the personal use of individual Members only and may not be  
16           used in connection with any commercial endeavors. Organizations, companies,  
17           and/or businesses may not become Members and should not use the Service or the  
18           Web site for any purpose. Illegal and/or unauthorized uses of the Web site,  
19           including collecting email addresses or other contact information of members by  
20           electronic or other means for the purpose of sending unsolicited email and  
21           unauthorized framing of or linking to the Web site will be investigated, and  
22           appropriate legal action will be taken, including without limitation, civil, criminal,  
23           and injunctive redress."

24 (Emphasis added.) In addition, it provided that:

25           You may not engage in advertising to, or solicitation of, other Members to buy or  
26           sell any products or services through the Service. You may not transmit any chain  
27           letters or junk email to other members. Although Thefacebook cannot monitor the  
28           conduct of its members off the Web site, it is also a violation of these rules to use  
any information obtained from the Service in order to harass, abuse, or harm  
another person, or in order to advertise to, solicit, or sell to any member without  
their prior consent.

Lastly, it affirmed:

Thefacebook owns and retains all proprietary rights in the Web site and the  
Service. The Web site contains the copyrighted material, trademarks, and other  
proprietary information of Thefacebook, and its licensors. Except for that  
information which is in the public domain or for which you have been given  
written permission, you may not copy, modify, publish, transmit, distribute,

1 perform, display, or sell any such proprietary information.

2 19. By registering, and becoming a member, the user may have access to view the  
3 personal data of other users within his or her college (*i.e.*, other students and alumni), as well as  
4 to the personal data of friends at other schools who have explicitly granted such user access.  
5 Each user has the ability to add his or her own personal identifying information and determine  
6 who may view it. Such personal information may include his or her relationship status, birth date,  
7 phone numbers, email address, and home address. Each item of personal information is provided  
8 only by the user, and none of it is required in order to be a member of the website. At the  
9 relevant times, the default privacy setting on a user's account limited a user's access to a school  
10 network, but any user could have further limited access by selecting a more strict privacy setting  
11 such that only her confirmed friends could view her information. Even now, the default setting  
12 provides a limited view of a user's personal information, and the user has the option to make no  
13 information available publicly.

14 20. Plaintiffs also restrict access to and have always used their best efforts to keep  
15 their proprietary user and system information from unauthorized uses and parties.

16 21. Plaintiffs have generally expended substantial effort, money and time in  
17 developing the informational components of its website, as well as its aggregate user base. The  
18 data on the Plaintiffs' computers, computers systems, and computer networks is highly valuable.

19 22. At different times from the winter or spring of 2004 through at least 2005,  
20 Defendants Cameron and Tyler Winklevoss, Divya Narendra, Wayne Chang, Winston Williams,  
21 and David Guca knowingly circumvented the Terms of Use for the Facebook website by  
22 illicitly employing the user IDs and passwords of friends who were registered members of the  
23 Facebook website to mask Defendants' real identities. These defendants took these actions in  
24 order to gain access to the site and to steal information and data for commercial purposes, as well  
25 as to advertise to and solicit members of the Facebook website to join [www.connectu.com](http://www.connectu.com). Both  
26 Defendants and the friends who provided Defendants with their user IDs and passwords did so  
27 cognizant that such use was intended to harm Plaintiffs. Defendants' actions were at all times  
28 intentionally aimed at, and the effects were felt by, Plaintiffs in California.

1           23.     The users whose passwords Defendants (including, at least, Messrs. Winklevoss,  
2 Narendra, Chang, and Gucwa) used to knowingly and improperly access the Facebook website in  
3 California for commercial purposes and in violation of Plaintiffs' Terms of Use include, but were  
4 not limited to, user IDs and passwords associated with the email addresses carlsson@stanford.edu  
5 and stinab8@ucla.edu. The use of such user IDs and passwords for commercial purposes by  
6 Defendants in violation of Plaintiffs' Terms of Use harmed Plaintiffs in California. Defendants  
7 knew that such actions were improper, and that the harm would be uniquely felt by Plaintiffs in  
8 California.

9     **B.     Unauthorized Access, Misappropriation, and Commercial Use by Defendants**

10           24.     ConnectU offers an interactive computer service that purports to enable social  
11 networking amongst present and former university students.

12           25.     ConnectU has attempted to aggressively compete with Facebook.

13           26.     Beginning in 2004, and upon information and belief continuing through and  
14 including 2005, ConnectU and/or its founders hired PNS, Winston Williams, Wayne Chang, and  
15 David Gucwa to write software to gain access, without permission, to Plaintiffs' website and steal  
16 information, including email addresses and personal user information. ConnectU and/or its  
17 founders also requested that friends of the founders, such as Divya Narendra's friend Deva  
18 Mishra, attempt on behalf of ConnectU and the founders to violate Plaintiffs' Terms of Use and  
19 steal email addresses; personal user information such as birthdates, addresses, and phone  
20 numbers; course information; and other data from the Facebook website so that ConnectU could  
21 solicit Facebook users (including users of the Facebook website located in California) to join  
22 www.connectu.com. ConnectU, Messrs. Winklevoss and Narendra knew the harm from such  
23 activities would be felt by Plaintiffs in California. They directed their activities through third  
24 parties such as Deva Mishra knowing that the activities would result in the solicitation of  
25 California-based Facebook members to join the website www.connectu.com .

26           27.     In the Spring 2004, Tyler and Cameron Winklevoss and Divya Narendra hired  
27 iMarc, a website developer, to help build the ConnectU website. On or around June 11, 2004,  
28 "the boyz from" ConnectU asked iMarc to

1 write a little script that logs into www.thefacebook.com, loops  
2 through http: //www. thefacebook.com/profile.php?id=xxxxxx  
replacing xxxxxx with numbers to grab people’s email addresses.

3 iMarc refused, because its employees believed that the request was unethical. Despite iMarc’s  
4 caution against such activity, on July 22, 2004, “the boyz from” ConnectU “sent thousands of  
5 invite emails [over a 12 hour period]. Every single one was sent using a bogus ‘From’ address:  
6 ... .”<sup>2</sup> For example, some of the “invite emails” purported to come from “god@harvard.edu.”  
7 Many of these emails were sent to California college students via email addresses extracted from  
8 the Facebook website. The email addresses were obtained by ConnectU, Messrs. Winklevoss and  
9 Narendra through their illicit use of third party user accounts on the Facebook website. The  
10 “invite emails” did not indicate that they contained an advertisement for users to join a competing  
11 website, www.connectu.com. iMarc’s relationship with ConnectU soured and ended shortly after  
12 this incident.

13 28. Messrs. Winklevoss engaged Wayne Chang, PNS and Winston Williams to  
14 develop a computer program designed to retrieve user account names, personal data (including  
15 email addresses and personal data of such user’s “friends”) from Facebook and its servers located  
16 in California. Mr. Chang hired David Gucwa, a computer programmer, to write the programs  
17 necessary to retrieve email accounts, course information and other data from the Facebook  
18 website and Plaintiffs’ servers in California. Mr. Chang and Mr. Gucwa, with the knowledge and  
19 support of ConnectU, Cameron Winklevoss, Tyler Winklevoss, and Divya Narendra, collaborated  
20 with PNS and Mr. Williams to achieve the goal of writing programs to retrieve email account  
21 information, course information and other data from the Facebook website and its servers in  
22 California.

23 29. Mr. Chang, in aid of his “partners” Tyler Winklevoss, Cameron Winklevoss and  
24 Divya Narendra, provided Mr. Gucwa with fake and/or “borrowed” user accounts, including (but  
25 not limited to) stinab8@ucla.edu and carlsson@stanford.edu, and gave him specific instructions  
26 to play “cat and mouse” with Facebook. Mr. Chang noted that Facebook was “run by a techie,” a

27  
28 <sup>2</sup> All quotes in this complaint are taken directly from documents produced in response to  
discovery requests.

1 reference that upon information and belief was to California resident Mark Zuckerberg, so they  
2 should “be careful.” Mr. Gucwa indeed wrote a “script” that worked in two steps: it retrieved the  
3 user ids and then the user profile information. It was a slow process, according to Mr. Gucwa,  
4 “because the program has to “descend” into each separate profile for each separate friend.”  
5 Mr. Gucwa eventually “[w]rote a script that catches up to 10k [user i.d.s] at a time.” Mr. Chang  
6 was pleased by this news because he wanted to “seed ConnectU as much as possible.” The “good  
7 news,” he said, “is that I’m sending thefacebook several thousand requests in a couple minutes  
8 and they haven’t blocked my IP yet.” Mr. Chang was concerned, of course, about setting off  
9 “huge” alarms at Facebook, and wondered how they could steal the information “faster.” On  
10 January 27, 2005, Mr. Gucwa boasted that he had implemented the program he developed to  
11 collect 46,000 “ids” from the Facebook website.

12 30. The programs that Mr. Chang, Mr. Gucwa, Mr. Williams, and PNS developed in  
13 2005 to misappropriate Facebook email account and other information so that ConnectU could  
14 spam Facebook users with invitations to join [www.connectu.com](http://www.connectu.com) were called variously  
15 “importer,” “Facebook importer,” “crawler,” “grabFacebook.php,” “grabFacebook2.php,” and  
16 “Social Butterfly.” Upon information and belief, ConnectU, Cameron Winklevoss, Tyler  
17 Winklevoss, and Divya Narendra knew about the actions of Mr. Chang, Mr. Gucwa,  
18 Mr. Williams, and PNS, were familiar with the importer, Facebook importer, crawler,  
19 grabFacebook.php, grabFacebook2.php, and Social Butterfly programs and their purposes, and  
20 were aware that the programs required access to Plaintiffs’ servers in California in order for the  
21 programs to have their intended effects. Upon information and belief, the intended effects of  
22 these programs included, but were not limited to, crawling the Facebook website, illicitly  
23 importing without permission email addresses and personal user information into the  
24 [www.connectu.com](http://www.connectu.com) website, and soliciting via spam email with false and/or misleading header  
25 information Facebook users, including users located in California, to join the [www.connectu.com](http://www.connectu.com)  
26 website. Such misleading header information included false information suggesting that the  
27 invitation was not a commercial advertisement and that the spam request had originated as a  
28 result of the stated wishes of third parties. Instead, on information and belief, the commercial

1 advertisement emails were sent by Defendants.

2 31. Upon information and belief, among other methods Mr. Chang, Mr. Gucwa,  
3 Mr. Williams and PNS (with the support and knowledge of ConnectU, Cameron Winklevoss,  
4 Tyler Winklevoss, and Divya Narendra) “spoofed” the Facebook website to gain access to email  
5 account and other information. Said “spoofing” was accomplished by using an email header or  
6 browser to make it appear as though the communication link originated from someone other than  
7 a source associated with Mr. Chang, Mr. Gucwa, Mr. Williams or PNS. Upon information and  
8 belief, Defendants “spoofed” the website to illicitly circumvent the Facebook website security  
9 measures designed to prevent parties such as Defendants from hacking into the Facebook website  
10 in order to steal data contained on the Facebook website and its California servers.

11 32. In February 2005, Mr. Chang was notified that his account had been suspended  
12 because the web service Defendants were using had received complaints from someone at  
13 Facebook that its California servers had been attacked through the web service. The web service  
14 indicated that it noticed a significant amount of activity and wondered what Defendants’ interest  
15 in www.facebook.com was. In response, Mr. Chang notified defendants Cameron Winklevoss,  
16 PNS (through its CEO, John Taves), Mr. Williams, and Mr. Gucwa that Facebook learned of their  
17 activity. Mr. Chang described a method for working around the suspended account and asked  
18 Mr. Williams, Mr. Gucwa, PNS and others to provide thoughts on how best to work around  
19 Plaintiffs’ website security mechanisms. Mr. Winklevoss then indicated to these other defendants  
20 that the “importer” script, designed to breach Facebook’s security mechanisms in order to steal  
21 user data, was top priority for them.

22 33. In late 2004, Messrs. Winklevoss and Narendra hired defendants PNS and  
23 Williams to help develop the connectu.com website. PNS/Mr. Williams joined forces with  
24 Messrs. Chang and Gucwa to develop the “importer/crawler” program, as well as the Social  
25 Butterfly program. All Defendants knew the “importer/crawler” and Social Butterfly programs  
26 would be used to spam and solicit California-based and other users of the Facebook website to  
27 invite them to join the ConnectU website. On information and belief, all Defendants also knew  
28 that the “importer/crawler” and/or Social Butterfly programs employed misleading email header

1 information that failed to indicate the solicitation was a commercial advertisement and/or which  
2 failed to apprise the solicited Facebook account holder that the email had not actually been sent  
3 by the person from whom it appeared to be sent. In early 2005, Mr. Williams logged many hours  
4 developing the “importer” program and stealing millions of emails from [www.facebook.com](http://www.facebook.com)  
5 website, including emails of users located in California and known to Mr. Williams and the other  
6 Defendants to be associated with California schools. Much of his activity was targeted at  
7 California residents.

8 34. In 2004 and 2005, ConnectU, Messrs. Winklevoss, Narendra and Chang received  
9 multiple complaints related to the spamming of Facebook users. In March of 2005, ConnectU,  
10 Cameron Winklevoss, Tyler Winklevoss, and Divya Narendra were specifically informed by one  
11 or more of the other Defendants that “some person from thefacebook” identified how the  
12 “headers” used by ConnectU worked, and why the spamming of Facebook users (including those  
13 based in California) had generated complaints. Upon information and belief, the headers that  
14 Defendants were aware created these complaints were email headers originating from  
15 connectu.com, and were misleading because they did not identify the solicitations as commercial  
16 solicitations and did not accurately reflect that the email originated from the administrators of  
17 connectu.com rather than friends of the Facebook users who received the email.

18 35. Through its actions, ConnectU and the other Defendants gained unauthorized  
19 access to Plaintiffs’ servers and network. They have stolen extensive amounts of proprietary and  
20 personal user data from Plaintiffs, including but not limited to user data such as email addresses  
21 and other personal identifying information collected in Plaintiffs’ servers. The Defendants’  
22 actions, which included using other users’ accounts and passwords (as well as fake accounts and  
23 passwords), violated Plaintiffs’ Terms of Use and Privacy Policy. Defendants’ actions affected  
24 thousands, if not millions, of individuals who had no direct contact or prior business relationship  
25 with ConnectU. Their actions had a direct effect on thousands of California residents, including  
26 (but not limited to) students at UCLA, the University of California at Berkeley and Stanford.

27 36. At the time of Defendants’ unauthorized access, all users were required to register  
28 and abide by the website’s Terms of Use and Privacy Policy. The Terms of Use in effect at the

1 time of Defendants' unauthorized access of the www.facebook.com prohibited use of the website  
2 for commercial endeavors. In addition, the Terms of Use prohibited the collection of email  
3 addresses or other contact information of Plaintiffs' members for the purpose of sending  
4 unsolicited e-mail, including unsolicited e-mail to California-based users of the Facebook  
5 website. Defendants' activity violated Plaintiffs' Terms of Use and Privacy Policy.

6 37. On information and belief, Defendants willfully and maliciously engaged in  
7 unauthorized access to, and unauthorized appropriation of, Plaintiffs' data, computers, computer  
8 systems, and computer networks, at least in part in the hope of gaining competitive advantage for  
9 ConnectU through such activities and to avoid the effort, time and money needed to develop such  
10 data, user lists, and other matter on its own. At the time of Defendants' unauthorized access via  
11 importer, Facebook importer, crawler, grabFacebook.php, grabFaceboo2.php, and the solicitation  
12 of Facebook users via Social Butterfly, Plaintiffs and/or their data, computers, computer systems  
13 and computer networks were principally located in California.

14 38. Defendants sought commercial gain and competitive advantage through their  
15 unauthorized access as explained, in May 2004, by Cameron Winklevoss to his father, when he  
16 described how he and his colleagues would steal course information and other data from  
17 www.facebook.com in order to launch connectu.com with as many or more schools than  
18 Facebook. Defendant Cameron Winklevoss explained to his father Howard Winklevoss, who  
19 encouraged him, that such theft would give them a competitive advantage over Plaintiffs without  
20 investing the time it took Plaintiffs to become successful.

21 39. As a result of these incidents of unauthorized access and unauthorized  
22 appropriations by Defendants, Plaintiffs were damaged, including being damaged in California.

23 40. As a result of their deliberate actions, Defendants improperly benefited from  
24 Plaintiffs' business efforts and established reputation, including its business efforts and  
25 established reputation in California, gaining substantial advantage from access and use of  
26 Plaintiffs' commercial and proprietary information.

27 41. At various times, Defendants distributed e-mails to members of  
28 www.facebook.com and otherwise sought to solicit Plaintiffs' members, including the solicitation

1 of California-based members and members with whom ConnectU had no prior or direct  
2 relationship, in an effort to lure them to www.connectu.com. ConnectU used the email addresses  
3 that had been gathered by and/or for ConnectU through Defendants' unauthorized access to and  
4 unauthorized appropriations from Plaintiffs' computers, computer systems, and computer  
5 networks to unjustly enrich ConnectU, and to spam and solicit Facebook users to join the website  
6 www.connectu.com.

7 42. In response to ConnectU's mass e-mailings and Defendants' other actions,  
8 Plaintiffs were forced to notify certain of its members of the apparent breach of their privacy by  
9 ConnectU, along with its agents and partners. Plaintiffs are informed and believe and thereupon  
10 allege that such notice damaged the trust their members placed in Plaintiffs and harmed Plaintiffs'  
11 business, including its business in California.

12 43. Plaintiffs are informed and believe and thereupon allege that each of the  
13 Defendants had knowledge of the wrongful acts described herein (including that such wrongful  
14 acts would harm Facebook in California), as well as their commercial purpose. Defendants  
15 carried out such wrongful acts willfully and maliciously.

16 44. Plaintiffs are informed and believe and thereupon allege that Defendants and/or  
17 those similarly situated may continue to engage in such unauthorized access and unauthorized  
18 appropriations in the future. In addition, Plaintiffs are informed and believe and thereupon allege  
19 that Defendants continue to exploit the misappropriated data for their own commercial benefit, to  
20 Plaintiffs' detriment. Plaintiffs do not have an adequate remedy at law.

21 45. Defendants were aware at all times from the summer of 2004 through the present  
22 that their actions would harm Plaintiffs in California. For instance, in January, 2006, Defendant  
23 Williams discussed with attorneys for ConnectU how many California student members of  
24 Facebook had been spammed by ConnectU through the combined use of the Facebook  
25 importer/crawler, grabFacebook.php/grabFacebook2.php, and Social Butterfly.

26 **FIRST CAUSE OF ACTION**

27 **(Violation of California Penal Code § 502(c) – Against All Defendants)**

28 46. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 45,

1 inclusive, of this complaint as though fully set forth herein.

2 47. Defendants have knowingly and without permission accessed, caused to be  
3 accessed, and used Plaintiffs' computers, computer systems, computer networks, and data stored  
4 therein, in order to wrongfully obtain and control data, website components, and other  
5 information of monetary value.

6 48. Defendants have knowingly and without permission taken, copied, and made use  
7 of data from Plaintiffs' computers, computer systems, and computer networks, as well as taken  
8 and copied resident data.

9 49. Defendants have knowingly and without permission provided or assisted in  
10 providing a means of accessing Plaintiffs' computers, computer systems, and computer networks  
11 in violation of California Penal Code Section 502. Furthermore, Defendants have knowingly  
12 instructed others to access, use, and copy information from Plaintiffs' computers, computer  
13 systems, and computer networks, without permission.

14 50. Defendants' unauthorized access and use has damaged and caused loss to  
15 Plaintiffs.

16 51. Defendants' actions constitute violations of California Penal Code section 502(c).

17 **SECOND CAUSE OF ACTION**  
18 **(Common Law Misappropriation / Unfair Competition under Massachusetts and California**  
19 **Law– Against All Defendants)**

20 52. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 51,  
21 inclusive, of this complaint as though fully set forth herein.

22 53. Plaintiffs expended considerable time and money developing their commercially  
23 valuable user base (including account information), website components, network, and other  
24 information specified in this complaint ("Facebook's Information").

25 54. Defendants have taken such information and without authorization used, disclosed,  
26 and held out as their own Facebook's Information, without compensation to Facebook.

27 55. Defendants' unauthorized access, use and disclosure of Facebook's Information  
28 was the result of the deceptive and unfair actions described above.

56. As a consequence, Plaintiffs have been harmed. Plaintiffs are informed and

1 believe, and on that basis allege, that Defendants' acts and conduct constitute common law  
2 misappropriation / unfair competition and were carried out willfully, fraudulently, maliciously,  
3 and with the wanton disregard of Plaintiffs' rights, thereby entitling Plaintiffs to compensatory  
4 and punitive damages to be proven at trial.

5 **THIRD CAUSE OF ACTION**

6 **(Violation of Massachusetts General Law 93A § 2 – Against All Defendants)**

7 57. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 56,  
8 inclusive, of this complaint as though fully set forth herein.

9 58. Defendants' actions in gaining unauthorized access to www.facebook.com,  
10 misappropriating data, and sending unsolicited emails are unlawful, unfair, and deceptive.

11 59. Plaintiffs have been harmed as a direct consequence of Defendants' unlawful  
12 actions.

13 60. Defendants' unlawful, unfair and deceptive actions are in violation of  
14 Massachusetts General Law 93A.

15 **FOURTH CAUSE OF ACTION**

16 **(Violation of 15 U.S.C. §§ 7704(a)(1), (2), (3) and 7705 – Against All Defendants)**

17 61. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 60,  
18 inclusive, of this complaint as though fully set forth herein.

19 62. Defendants accessed Facebook's computer system without authorization and  
20 intentionally initiated the transmission of multiple commercial electronic mail messages through  
21 Plaintiffs' computer system. Said commercial electronic mail messages contained materially  
22 false and/or materially misleading header information. The header information was materially  
23 false and/or misleading because it included a technically accurate originating electronic mail  
24 address, domain name, and/or Internet Protocol address purporting to be from a particular  
25 Facebook user, but the access to the email address for purposes of initiating the message was  
26 obtained by means of false or fraudulent pretenses or representations.

27 63. Defendants initiated the transmission of a commercial electronic mail message  
28 with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that  
the subject heading of their email solicitations to Facebook users would be likely to mislead a

1 recipient, acting reasonably under the circumstances, about a material fact regarding the contents  
2 or subject matter of the message because the message did not indicate that Defendants sent the  
3 email, that the email was an advertisement to join www.connectu.com, or that the email was not  
4 initiated by the sender from whom it appeared to be initiated.

5 64. On information and belief, Defendants initiated commercial electronic mail  
6 messages that did not contain a functioning return electronic mail address (*e.g.*,  
7 god@harvard.edu, jstarr@georgetown.edu, jstarr@amherst.edu, and jstarr@dartmouth.edu) or  
8 other Internet-based mechanism, to provide the recipient to submit, in a manner specified in the  
9 message, a reply electronic mail message or other form of Internet-based communication  
10 requesting not to receive future commercial electronic mail messages from ConnectU,  
11 Messrs. Winklevoss and/or Narendra at the electronic mail address where the message was  
12 received.

13 65. ConnectU, Messrs. Winklevoss and Narendra promoted, or allowed the promotion  
14 of www.connectu.com in a commercial electronic mail message, the transmission of which is in  
15 violation of 15 U.S.C. § 7704 (a)(1) because they knew or should have known in the ordinary  
16 course of their business that www.connectu.com was being promoted in such a message; they  
17 received or expected to receive an economic benefit from such promotion; and they took no  
18 reasonable action to prevent the transmission.

19 66. Defendants knowingly and willfully collected electronic mail addresses and other  
20 information from www.facebook.com using automated means.

21 67. At the time of Defendants actions, Plaintiffs' website contained a notice that  
22 member electronic mail addresses were not to be given, sold, or otherwise transferred to any other  
23 party.

24 68. Defendants' actions constitute violations of the Federal Can-Spam Act of 2003,  
25 15 U.S.C. § 7701 *et. seq.*

26 **FIFTH CAUSE OF ACTION**  
27 **(Violation of 18 U.S.C. § 1030 – Against All Defendants)**

28 69. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 68,

1 inclusive, of this complaint as though fully set forth herein.

2 70. Defendants knowingly and with intent to defraud accessed Plaintiffs' computers  
3 without authorization.

4 71. Defendants' conduct involved interstate communications.

5 72. Through their unauthorized access, Defendants obtained information of value from  
6 Plaintiffs' computers.

7 73. Defendants' actions were committed for the purpose of commercial advantage.

8 74. Defendants' actions damaged and caused loss to Plaintiffs.

9 75. Defendants' actions constitute violations of the Computer Fraud and Abuse Act,  
10 18 U.S.C. § 1030.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, based upon the foregoing, Plaintiffs pray for the following relief:

13 1. An entry of judgment in favor of Plaintiffs and against all Defendants on all causes  
14 of action.

15 2. Compensatory, consequential, and incidental damages including, without  
16 limitation, compensatory damages reasonably incurred by Plaintiffs to verify that each incidence  
17 of Defendants' access did not alter, damage, or otherwise harm the integrity of Plaintiffs'  
18 computer systems, computer networks, computer programs, or the data stored thereon, pursuant  
19 to California Penal Code § 502(e)(1);

20 3. Exemplary and punitive damages in an amount to exceed \$25,000, as provided by  
21 law, including exemplary damages under California Civil Code § 3426.3(c) and punitive damages  
22 under California Penal Code § 502(e)(4) (exemplary or punitive damages);

23 4. Economic damages under 18 U.S.C. § 1030 (a)(5)(B)(i);

24 5. Compensatory damages under 18 U.S.C. § 1030 (a)(4), including the cost of  
25 responding to Defendants' actions, conducting a damage assessment, and restoring the system to  
26 its condition prior to Defendants' actions, and revenue lost, cost incurred and other consequential  
27 damages incurred;

28 6. Statutory damages under 15 U.S.C. § 7701, *et seq.*, calculated as the number of

1 violations multiplied by up to \$250, in an amount not to exceed \$2,000,000;

2 7. Aggravated damages under 15 U.S.C. § 7701, in an amount not to exceed three  
3 times the amount of statutory damages available;

4 8. General damages in an amount to exceed \$25,000;

5 9. An accounting to establish, and an order requiring disgorgement of, the sums by  
6 which Defendants have been unjustly enriched, at any time, including that resulting from  
7 Defendants' use of Facebook's Information;

8 10. Pre-judgment and post-judgment interest at the maximum rate allowed by law;

9 11. Injunctive relief which assures that any future misappropriation of Plaintiffs'  
10 commercial proprietary and other information be immediately stopped on the part of Defendants  
11 and other appropriate persons and/or entities, irrespective of whether any such Defendant, other  
12 person and/or entities is under the control of any (other) Defendant;

13 12. All injunctive relief allowed under California Penal Code § 502(c) *et seq.*

14 13. Further equitable relief in the most appropriate form that will have the effect of  
15 "undoing" any past and current misappropriations of Facebook's commercial proprietary and  
16 other information on the part of Defendants and other appropriate persons and/or entities,  
17 irrespective of whether under the control of any of Defendants;

18 14. Attorneys' fees and costs incurred by virtue of this action, if authorized by law –  
19 including attorneys' fees and costs authorized by California Penal Code § 502(e)(2); Civil Code  
20 § 1021.5; 15 U.S.C. § 7701 *et seq.*, and

21 15. Such other relief, in law or equity, as the Court may deem just and appropriate in  
22 the circumstances.

23 **JURY DEMAND**

24 Plaintiff hereby demands a trial by jury for all issues which may be tried by jury.  
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

Dated: May 30, 2007

G. HOPKINS GUY, III  
I. NEEL CHATTERJEE  
MONTE M. F. COOPER  
THERESA A. SUTTON  
YVONNE P. GREER  
ORRICK, HERRINGTON & SUTCLIFFE LLP

\_\_\_\_\_  
/s/ I. Neel Chatterjee /s/  
I. Neel Chatterjee  
Attorneys for Plaintiffs  
FACEBOOK, INC. and MARK ZUCKERBERG