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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

THE FACEBOOK, INC. and MARK
 ZUCKERBERG,

Plaintiffs,

v.

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

Defendants.

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

**PLAINTIFFS' OPPOSITION TO
 QUINN EMANUEL'S
 ADMINISTRATIVE REQUEST FOR
 ORDER DISBURSING
 SETTLEMENT PROCEEDS**

Judge: The Honorable James Ware

1 **I. INTRODUCTION**

2 Plaintiffs Facebook, Inc. and Mark Zuckerberg (“Facebook”) oppose Quinn Emanuel’s
3 request for an order disbursing settlement proceeds for the following reasons:

- 4 1. This Court’s Amended Judgment Ordering Specific Performance of Settlement
5 Agreement expressly requires the proceeds to remain in trust for “any lawful
6 claimant.” Other potential lawful claimants exist. Specifically, Wayne Chang, a
7 defendant in this action and beneficiary of the settlement, has sued the ConnectU
8 Founders in Massachusetts Superior Court for “proceeds of the settlement of the
9 Facebook Litigation and the ConnectU Litigation.”
- 10 2. The ConnectU Founders are seeking in the District of Massachusetts to vacate the
11 order of dismissal entered as a result this Court’s entering Judgment enforcing the
12 settlement. The Court should not permit the escrow agent to disburse any funds
13 until the ConnectU Founders’ challenges are resolved.
- 14 3. The ConnectU Founders have sufficient funds to pay Quinn Emanuel
15 independently of the escrow.
- 16 4. Facebook cannot evaluate the propriety of any release of funds at this time,
17 because Quinn Emanuel has in violation of Civil Local Rule 7-11 not served
18 Facebook with all exhibits in support of its Administrative Request.

19 Facebook is sympathetic to the fact that the ConnectU Founders have not honored their
20 contract with Quinn Emanuel. The ConnectU Founders, however, can resolve their indebtedness
21 to Quinn Emanuel without compromising Facebook’s rights.

22 **II. ARGUMENT**

23 **A. Other Lawful Claimants May Exist, Precluding Disbursement.**

24 The escrow funds should not be release because other potential claimants remain. for
25 example, Wayne Chang was a defendant in this matter who was dismissed with prejudice, on
26 December 15, 2008, pursuant to this Court’s Judgment enforcing the Settlement Agreement. Dkt.
27 No. 667. On November 21, 2008, this Court entered an Amended Judgment in which it ordered
28 Boies Schiller to hold in trust the proceeds of the settlement for the ConnectU Founders and “any
lawful claimant.” Dkt. No. 665.

On December 21, 2009, Mr. Chang and The I2HUB Organization sued the ConnectU
Founders in Massachusetts Superior Court for breach of contract, among other claims. In his
complaint against the ConnectU Founders, Mr. Chang alleges he was deprived of his share of the
settlement proceeds at issue here, and seeks damages, including his interest in “the proceeds of

1 the settlement of the Facebook Litigation and the ConnectU Litigation.” *See* Dkt. No. 771-1, Ex.
2 2 at 32. In January 2011, the ConnectU Founders agreed that the settlement proceeds “wouldn’t
3 be distributed until [Mr. Chang’s] claim” is resolved.” *Id.*, Ex. 3. It is not. *Id.*

4 It is essential that the Court be reassured that there are no competing liens being asserted,
5 in order to ensure that no other party is entitled to the assets held in escrow and, accordingly, to
6 eliminate the possibility of claims for underpayment being made against third parties.

7 Accordingly, before this Court orders the release of any settlement funds held in escrow by Boies
8 Schiller, the Court must determine that no other lawful claimant is entitled to the proceeds. That
9 includes Wayne Chang.

10 **B. Funds Should Not Be Disbursed While The CU Founders Challenge The**
11 **Judgment**

12 The ConnectU Founders acknowledge the “propriety of this Court’s judgment,” (Dkt. No.
13 771-1, Ex. 1 at 1), and ask that the Court “expeditiously [complete enforcement] in order to
14 preserve the bargain embodied in the Term Sheet.” *Id.* Nonetheless, they recently filed two
15 motions in the District of Massachusetts seeking to undo this Court’s July 2, 2008 Judgment
16 Enforcing the Settlement Agreement, and intend to strip Facebook of the deal the parties struck
17 which was affirmed by the Ninth Circuit. Dkt. No. 771-1, Exs. 4, 5. Until the collateral litigation
18 in the District of Massachusetts is over and the validity of this Court’s Judgment is finally and
19 completely resolved, Boies Schiller should not be permitted to disburse any of the funds held in
20 escrow.

21 **C. The ConnectU Founders Are Capable Of Satisfying The Quinn Judgment**
22 **Without Disbursing The Settlement Proceeds**

23 The ConnectU Founders were required to post a bond to cover the amount awarded by the
24 New York judgment confirming the arbitration award to Quinn Emanuel while their appeal to the
25 New York Supreme Court Appellate Division was pending. *See* Declaration of Monte M.F.
26 Cooper (“Cooper Decl.”), Ex. 1. As that bond reflects, they are capable of satisfying their
27 payment obligation to Quinn Emanuel without the present need for disbursement of the settlement
28 proceeds. For this reason, Facebook’s rights need not – indeed, should not – be compromised

