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19 IN THE UNITED STATES DISTRICT COURT  
 20 NORTHERN DISTRICT OF CALIFORNIA -- SAN FRANCISCO DIVISION

21 THE FACEBOOK, INC., et al.,

22 Plaintiffs,

23 vs.

24 CONNECTU, INC., et al.,

25 Defendants.

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

MOTION FOR DISBURSEMENT OF  
 SETTLEMENT PROCEEDS TO FINNEGAN  
 HENDERSON FOR ATTORNEYS FEES AND  
 COSTS

Hearing Date: November 28, 2011  
 Time: 9:00 a.m.  
 Courtroom: 9  
 Judge: Hon. James S. Ware

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 79-5(B)

26 TO ALL PARTIES AND TO THEIR COUNSEL, AND TO ALL OTHER PERSONS OR  
 27 ENTITIES INTERESTED IN THIS ACTION

28 Finnegan Henderson Farabow Garrett & Dunner LLP ("Finnegan") hereby moves,  
 through counsel, for an order disbursing to it the sum of \$[REDACTED] in

1 order to satisfy and extinguish its attorney's lien and to pay the fees and costs incurred by  
2 Cameron Winklevoss, Tyler Winklevoss, and Divya Narendra (collectively, the "Founders") in  
3 the course of Finnegan's representation of them in this action and in related Massachusetts  
4 actions. In support of this Motion, Finnegan states as follows:

5         1. Finnegan formerly represented the Founders. Specifically, Finnegan provided  
6 legal services to the Founders in this action and in related proceedings in the United States  
7 District Court for the District of Massachusetts and the United States Court of Appeals for the  
8 First Circuit, namely *ConnectU LLC v. Facebook, Inc., et al.*, 1:04-cv-10593-DPW (D. Mass);  
9 *ConnectU, Inc. v. Facebook, Inc. et al.*, 1:07-cv-10593-DPW (D. Mass) and *ConnectU LLC v.*  
10 *Zuckerberg, et al.*, 07-1796 (1st Cir.)(collectively the "Massachusetts Cases").

12         2. Substantial invoices for the above legal services have been outstanding for years.  
13 Such invoices remain outstanding.

14         3. Finnegan has an attorney's lien against the settlement proceeds currently held in  
15 trust by Boies Schiller & Flexner LLP pursuant to this Court's November 21, 2008 Amended  
16 Judgment. Finnegan filed a Notice of Lien with this Court on January 19, 2011 (Docket Entry  
17 757). Neither the Founders nor any other party has contested Finnegan's lien.

18         4. The Founders and Finnegan have agreed that the Founders shall pay Finnegan  
19 \$[REDACTED] for the services rendered and costs incurred in this action and in the  
20 Massachusetts Cases. Exhibit 1 to Declaration of Thomas B. Mason ("Mason Decl".) The  
21 Founders have further agreed that such funds should be paid from the settlement proceeds now  
22 held in trust pursuant to this Court's Amended Judgment. *Id.*

23         5. Finnegan is aware that an individual named Wayne Chang has filed a separate  
24 lawsuit in Massachusetts state court against the Founders in which Mr. Chang asserts that he is a  
25 stakeholder in ConnectU and therefore is entitled to a share of the settlement proceeds due to the  
26  
27  
28

1 Founders.<sup>1</sup> Mr. Chang has yet to file a claim with this Court, despite the fact that he has been  
2 aware of the trust established by this Court for well more than 1½ years.<sup>2</sup>

3 6. Neither Mr. Chang nor any other claimant has a right to the portion of the  
4 settlement proceeds that are owed to Finnegan. It is well established that, if Mr. Chang is  
5 entitled to a share of the settlement, he – like any other beneficiary of the settlement – has a right  
6 to a share of the proceeds that remain *only after the attorneys have been paid for their work in*  
7 *securing the settlement*. Indeed, the core function of an attorney’s lien is to preserve the corpus  
8 produced by an attorney's services so that the attorney can receive compensation for his services  
9 from such corpus. *Waltrip v. Kimberlin*, 164 Cal. App. 4th 517, 525-26 (Cal. App. 2008)  
10 ("Equitable considerations . . . favor the attorney lien. It is a principle of equity that those whose  
11 labor, skills, and materials resulted in the creation of a fund should be entitled to priority in the  
12 payment of their claims from such source.")(internal quotations omitted). If a judgment or  
13 settlement could be collected before (rather than after) the attorney is paid, an attorney’s lien  
14 would be meaningless. *Id.* at 526 ("a party should not be allowed to appropriate the whole of a  
15 judgment in his favor without paying for the services of his attorney in obtaining such  
16 judgment") (internal quotations omitted). Accordingly, Mr. Chang’s Massachusetts claims have  
17 no bearing on whether Finnegan should be permitted to collect its fees in this action.  
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20 For the reasons set forth above and for such further and other reasons as may appear to  
21 the Court, Finnegan moves this Court for an order requiring the disbursement of the sum of  
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23 <sup>1</sup> Mr. Chang also asserted claims in the Massachusetts state case against Finnegan based on  
24 Finnegan's prior representation of the Founders and Mr. Chang as defendants in these  
25 proceedings. But the Massachusetts court recently dismissed all claims against Finnegan.  
Exhibit 2 to Mason Decl.

26 <sup>2</sup> See Exhibit 3 to Mason Decl. at 8 (Finnegan motion in Massachusetts proceeding, filed in  
27 February 2010, warning Mr. Chang that he “would only have himself to blame” if he did not  
28 assert a claim in this Court to the trust proceeds); see also Exhibit 2 to Mason Decl. at 12 nn 7,8.  
(April 2011 Massachusetts court order advising Mr. Chang of his right to assert a claim under the  
November 21, 2008, Amended Judgment).

1 \$[REDACTED] by Boies Schiller to satisfy and extinguish its lien for attorneys' fees and costs  
2 as further described above.

3 Date: November 3, 2011

Respectfully submitted,

4 CHAPMAN, POPIK & WHITE, LLP  
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6  
7 By /s/ Merri A. Baldwin  
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\*Admitted *Pro Hac Vice*