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

22 THE FACEBOOK, INC., et al.,

23 Plaintiffs,

24 vs.

25 CONNECTU, INC., et al.,

26 Defendants.

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

REPLY IN SUPPORT OF 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

27 As set forth in its opening brief, Finnegan Henderson Farabow Garrett & Dunner LLP  
 28 ("Finnegan") has an attorney's lien against the settlement proceeds currently in trust pursuant to this  
 Court's November 21, 2008 Amended Judgment, in order to secure payment for legal services it  
 provided to the Founders. The Founders themselves do not contest the lien and agree that Finnegan is  
 entitled to immediate payment from the settlement proceeds.

1 Remarkably, Facebook, Inc. and Mark Zuckerberg oppose this basic relief. They claim that  
2 payment of Finnegan’s long-outstanding fees must be delayed further (and indefinitely) because (1) an  
3 individual named Wayne Chang (who himself has declined to assert a position in this Court) has filed a  
4 lawsuit against the Founders in Massachusetts state court claiming that he is entitled to a share of the  
5 settlement and (2) the Founders have filed discovery motions in their Massachusetts case against  
6 Facebook and Zuckerberg. As explained below, these points are meritless. They give Facebook and  
7 Zuckerberg no basis to interfere with the payment of Finnegan’s fees.<sup>1</sup>

8 **A. Wayne Chang’s Massachusetts Allegations**

9 Wayne Chang is not before this Court. He has made no appearance before this Court regarding  
10 the settlement proceeds. Nor has he made any submission to this Court regarding the settlement  
11 proceeds. He most certainly has made no request of this Court to block disbursement of the settlement  
12 proceeds. Significantly, Mr. Chang has taken no such action before this Court notwithstanding that he  
13 and his counsel have had full knowledge for nearly two years of the trust established by this Court and  
14 notwithstanding that they were supplied with a copy of this Court’s November 1, 2011 order, which  
15 imposed a deadline for opposing disbursement.<sup>2</sup> Mr. Chang and his counsel clearly have made an  
16 informed and studied decision not to lodge any objections with this Court and not to seek any relief  
17 from this Court at this time. Accordingly, there is no basis to block disbursement of the trust proceeds  
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19 <sup>1</sup> In their consolidated opposition to the various motions for disbursement, Facebook and Zuckerberg  
20 object to disbursement of the *stock* portion of the proceeds for the additional reason that the Founders  
21 seek changes to the legends on the stock certificates. This argument does not in any way pertain to  
Finnegan and does not in any way concern the *cash* portion of the proceeds to which Finnegan’s  
motion relates.

22 <sup>2</sup> Indeed, in a legal brief Finnegan filed against Mr. Chang *nearly 21 months ago* in his Massachusetts  
23 lawsuit, Finnegan itself brought to Mr. Chang’s (and his counsel’s) attention the order entered by this  
24 Court establishing the trust. *See* Ex. 3 to Mason Decl. at 2, 5, 7-8 (Docket Entry 776-4). In doing so,  
25 Finnegan expressly warned Mr. Chang that he “would only have himself to blame” if he did not assert  
26 a claim in this Court to the trust proceeds. *Id.* at 8. *Seven months ago*, the Massachusetts judge  
27 presiding over Mr. Chang’s lawsuit similarly advised Mr. Chang of his right to assert a claim under  
28 this Court’s November 21, 2008 Amended Judgment. *See* Ex. 2 to Mason Decl. at 12 nn. 7, 8 (Docket  
Entry 776-3). And *one week ago*, the law firm designated by this Court as trustee of the proceeds  
(Boies, Schiller & Flexner LLP) supplied Mr. Chang’s counsel with a copy of this Court’s Order of  
November 1, 2011, which set forth the deadline for objecting to disbursement of the trust proceeds.  
*See* Barrett Decl. at ¶ 8 (Docket Entry 779).

1 by virtue of Mr. Chang and certainly no basis to afford Facebook and Zuckerberg standing to make  
2 arguments on Mr. Chang’s behalf that Mr. Chang himself has elected not to make.

3           And in any event, under no circumstances would Mr. Chang even have a claim to the portion of  
4 the settlement proceeds sought by Finnegan. Even assuming Mr. Chang prevailed on his claims against  
5 the Founders and proved that he was entitled to a share of the settlement proceeds, it is well-settled that  
6 he – like any other beneficiary of a settlement – only would be entitled to a share of what remains after  
7 all attorneys’ liens have been satisfied.<sup>3</sup> For this reason as well, Chang’s Massachusetts claims provide  
8 no basis to block disbursement to Finnegan.

9           Notwithstanding Facebook and Zuckerberg’s suggestions to the contrary, these positions are  
10 entirely consistent with the positions Finnegan took in Mr. Chang’s Massachusetts lawsuit. In its  
11 motion to dismiss in that action, Finnegan explained to the Massachusetts court that Mr. Chang could  
12 be a “lawful claimant” under this Court’s Amended Judgment if, among other things, he filed some  
13 form of a claim with this Court. *See* Ex. 3 to Mason Decl. at 8 (Docket Entry 776-4). Mr. Chang,  
14 however, has declined to take that step. Moreover, Finnegan never remotely suggested to the  
15 Massachusetts court that Mr. Chang, under any circumstances, would be a lawful claimant to the  
16 portion of the settlement proceeds owed to attorneys.

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21 <sup>3</sup> Again asserting claims on Mr. Chang’s behalf that Mr. Chang himself has elected not to assert,  
22 Facebook and Zuckerberg suggest that Mr. Chang’s alleged (and unasserted) interest in the proceeds  
23 should take priority over Finnegan’s lien, because Facebook and Zuckerberg believe that Mr. Chang  
24 filed his Massachusetts lawsuit before Finnegan notified this Court of its lien. *See* Opp. at 8. But  
25 while Facebook and Zuckerberg rely on *Waltrip v. Kimberlin*, 164 Cal. App. 4<sup>th</sup> 517, 526 (2008) for  
26 this position, *Waltrip* offers them no support. The opinion makes clear that attorney liens have priority  
27 over all but a limited set of liens, principally those of judgment creditors that have been filed in  
28 accordance with statutory directives. 164 Cal. App. 4<sup>th</sup> at 526 (citing Cal. Code of Civ. Proc. §§  
708.410 and 708.420). Chang is not a judgment creditor and has not filed notice of a judgment lien as  
required by the statute. And in any event, Facebook and Zuckerberg have the facts wrong. Finnegan  
notified this Court of its lien on July 2, 2008 – approximately 18 months in advance of Mr. Chang’s  
lawsuit. *See* July 2, 2008 Hearing Tr. at 31 (Docket Entry 481) (“The Court should be aware that, in  
fact, Finnegan Henderson has perfected liens with respect to this matter”). Thus, even if Chang’s  
claim somehow qualified as a judgment lien (which it does not), Chang’s alleged interest still would  
not have priority over Finnegan’s lien.

1 **B. The Founders’ Massachusetts Motions Practice**

2 Nor do the Founders’ pending discovery motions against Facebook give Facebook a basis  
3 to block payment of Finnegan’s legal fees from the trust proceeds. The motions do not concern  
4 Finnegan in any way, and Finnegan played no role in them. Moreover, the motions make plain  
5 that the Founders seek nothing from Facebook at this time other than mere discovery because the  
6 Founders “cannot know what relief to request” until they obtain further information. Ex. 6 to  
7 Chatterjee Decl. at 22 (Docket Entry 784). The speculative possibility that these motions, if  
8 granted, will lead to some form of indeterminate relief against Facebook and Zuckerberg, at  
9 some indeterminate time, is not sufficient to block the disbursement of the proceeds of a  
10 settlement that this Court determined long ago was immediately enforceable. *See* November 21,  
11 2008 Order at 4 (Docket Entry 664).

12 In this regard, the trust was not established for the purpose of protecting *Facebook* and  
13 *Zuckerberg* from unanticipated future litigation with the Founders. Rather, it was established for  
14 the sole and exclusive purpose of protecting *third parties* – namely, attorney lienholders and any  
15 other lawful claimants. *Id.* at 3. By seeking the protection of the trust for themselves because  
16 they fear that the Founders may obtain relief against them in Massachusetts, Facebook and  
17 Zuckerberg are attempting to put the trust created by this Court to a use that was never intended.  
18 They seek, in effect, a stay of execution, the concept of which this Court already rejected. *Id.* at  
19 4.

20 The fallacy of Facebook and Zuckerberg’s position is underscored by the fact that  
21 Facebook sought and received years ago the ConnectU stock that it was entitled to under the  
22 settlement. *See* November 21, 2008 Amended Judgment (Docket Entry 665). Facebook not only  
23 received this consideration and assumed control of ConnectU, but it put this controlling interest  
24 to strategic use, using it to obtain the disqualification of Finnegan from its representation of the  
25 Founders and to force the Founders to retain new counsel. *See* September 2, 2009 Order (Docket  
26 Entry 704). Having already received the tangible assets that they were entitled to under the  
27 settlement, and having already used those assets to their own advantage and to the irreparable  
28 detriment of the Founders and Finnegan, Facebook and Zuckerberg have no basis to block

1 disbursement of the limited portion of the settlement proceeds necessary to satisfy Finnegan's  
2 attorney's lien.

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4 For these reasons and those set forth in its opening brief, Finnegan respectfully requests  
5 that the Court enter an order requiring the disbursement of the funds necessary to satisfy and  
6 extinguish Finnegan's lien for attorneys' fees and cost.

7 Date: November 9, 2011

Respectfully submitted,

8 CHAPMAN, POPIK & WHITE, LLP

9  
10 By /s/ Merri A. Baldwin  
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