

APPEARANCES (CONTINUED) :

**FOR CAMERON WINKLEVOSS
TYLER WINKLEVOSS AND
DIVYA NARENDRA** MEADE & SCHRAG, LLP
1816 FIFTH STREET
BERKELEY, CALIFORNIA 94710
BY: TYLER R. MEADE, ESQUIRE

IRELL & MANELLA
1800 AVENUE OF THE STARS
SUITE 900
LOS ANGELES, CALIFORNIA 90067
BY: GREGORY B. KLEIN, ESQUIRE

FOR QUINN EMANUEL QUINN EMANUEL URQUHART & SULLIVAN
865 SOUTH FIGUEROA STREET, 10TH FLOOR
LOS ANGELES, CALIFORNIA 90017
BY: ADAM B. WOLFSON, ESQUIRE

**FOR FINNEGAN
HENDERSON** CHAPMAN, POPIK & WHITE
650 CALIFORNIA STREET
19TH FLOOR
SAN FRANCISCO, CALIFORNIA 94108
BY: JOHN C. HELLER, ESQUIRE

ZUCKERMAN SPAEDER
1800 M STREET NW
WASHINGTON, DC 20036
BY: THOMAS B. MASON, ESQUIRE

AS TRUSTEE BOIES, SCHILLER & FLEXNER LLP
575 LEXINGTON AVENUE
NEW YORK, NY 10022
BY: DAVID A. BARRETT, ESQUIRE

PROCEEDINGS; MONDAY, NOVEMBER 28, 2011

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2
3 **THE CLERK:** CALLING CASE C 07-1389, FACEBOOK, INC.
4 VERSUS CONNECTU, INC.

5 COUNSEL, PLEASE COME FORWARD AND STATE YOUR NAME FOR
6 THE RECORD.

7 **MR. MEADE:** GOOD MORNING, YOUR HONOR. TYLER MEADE,
8 MEADE & SCHRAG FOR CAMERON AND TYLER WINKLEVOSS AND DIVYA
9 NARENDRA. I HAVE MICHAEL SCHRAG OF MY OFFICE HERE. AND GREG
10 KLEIN OF IRELL & MANELLA.

11 **MR. KLEIN:** GREGORY KLEIN.

12 **MR. HELLER:** GOOD MORNING, YOUR HONOR. JOHN HELLER
13 FOR DEFENDANT HENDERSON GROUP.

14 **MR. MASON:** GOOD MORNING, YOUR HONOR. TOM MASON FOR
15 FINNEGAN HENDERSON.

16 **THE COURT:** MR. MASON.

17 **MR. CHATTERJEE:** GOOD MORNING, YOUR HONOR. NEEL
18 CHATTERJEE ON BEHALF OF FACEBOOK AND MARK ZUCKERBERG.

19 I ALSO RECEIVED AN E-MAIL FROM MR. WOLFSON AT QUINN
20 EMANUEL. APPARENTLY, HE WENT TO THE SAN JOSE COURTHOUSE THIS
21 MORNING, AND HE IS ON HIS WAY HERE.

22 **THE COURT:** OH, TOO BAD. WE COULD HAVE TIED HIM IN
23 ON THE PHONE. SO WHAT TIME DO YOU EXPECT HIM?

24 **MR. CHATTERJEE:** I DON'T KNOW. I JUST SAW AN E-MAIL,
25 AND HE INFORMED ME OF THAT.

1 **THE COURT:** IS MR. BARRETT HERE?

2 **MR. BARRETT:** I AM, YOUR HONOR. I WAS ABOUT TO
3 INTRODUCE MYSELF. DAVID BARRETT. I AM HERE SOLELY AS
4 REPRESENTATIVE OF BOIES, SCHILLER & FLEXNER AS THE TRUSTEE FOR
5 THE SETTLEMENT PROCEEDS.

6 **THE COURT:** ALL RIGHT. AND MR. WILSON REPRESENTS --

7 **MR. CHATTERJEE:** YOUR HONOR, I THINK HE'S AN ATTORNEY
8 AT QUINN EMANUEL.

9 **MS. BUCHANAN:** AND ALISON BUCHANAN FOR CONNECTU, YOUR
10 HONOR.

11 **THE COURT:** WITH ALL DUE RESPECT TO MR. WOLFSON'S
12 DESIRE TO BE HERE, I THINK I'LL GET STARTED AND SEE WHERE THIS
13 TAKES US. LET ME GIVE YOU MY UNDERSTANDING OF THE PROCEDURAL
14 POSTURE THAT BRINGS YOU ALL HERE.

15 **MR. MEADE:** YOUR HONOR?

16 **THE COURT:** YES.

17 **MR. MEADE:** MAY I INTERRUPT AND JUST ADDRESS THE
18 QUESTION OF SEALING OF THE TRANSCRIPT? I THINK THAT IF THERE'S
19 A DISCUSSION ABOUT WHETHER TO GRANT SOME SORT OF RELIEF, IT CAN
20 BE HAD IN OPEN COURT. I THINK AT THE MOMENT, THE DISCUSSION
21 CROSSES OVER TO WHAT RELIEF TO GRANT, WHAT THE NUMBERS ARE. I
22 THINK AT THAT POINT, WE SHOULD SEAL THE HEARING. THAT WOULD BE
23 OUR REQUEST.

24 **MR. CHATTERJEE:** YOUR HONOR, I THINK THE WAY TO GO ON
25 THIS IS: IN THE PAST WHEN WE HAVE HAD HEARINGS RELATED TO

1 ISSUES WHERE THERE MIGHT BE CONFIDENTIALITY, WE'LL
2 PRELIMINARILY SEAL THE TRANSCRIPT AND THEN FIGURE OUT WHAT
3 REDACTIONS SHOULD OCCUR AND THE REMAINDER WILL BE PUT INTO THE
4 OPEN RECORD.

5 **THE COURT:** I DON'T KNOW WHERE THOSE LINES ARE DRAWN.
6 IS THERE ANYONE HERE YOU RECOGNIZE IN THE AUDIENCE THAT YOU
7 WOULD BE CONCERNED ABOUT HEARING THESE MATTERS?

8 **MR. MEADE:** I DON'T KNOW WHETHER THERE'S ANYONE HERE
9 THAT'S NOT AFFILIATED WITH THE CASE AS A PARTY. THERE ARE A
10 FEW PEOPLE I DON'T RECOGNIZE, YOUR HONOR.

11 AND MR. CHATTERJEE'S PROPOSAL IS ACCEPTABLE TO US, TO
12 SEAL AND THEN REVISIT OPENING PART OF THE TRANSCRIPT LATER.

13 **THE COURT:** ARE YOU ALL CONNECTED IN ANY WAY WITH
14 THIS CASE, OR JUST INTERESTED MEMBERS OF THE PUBLIC?

15 **UNIDENTIFIED SPEAKER:** I'M JUST HERE TO LISTEN.
16 THAT'S ABOUT IT.

17 **UNIDENTIFIED SPEAKER:** A STUDENT DOING A COURT
18 OBSERVATION.

19 **UNIDENTIFIED SPEAKER:** I'M WITH FACEBOOK, YOUR HONOR.

20 **THE COURT:** WELL, I THINK THAT I CAN HANDLE THIS ON
21 AN OPEN RECORD, I PREFER TO, AND LEAVE THE DETAILS OF THE
22 CONSIDERATION, WHATEVER THAT IS, TO SIMPLY SAY "THE
23 CONSIDERATION," WITHOUT GOING INTO THE DETAILS, BECAUSE I'M NOT
24 SURE THAT THE DETAILS MATTER TO WHAT I UNDERSTAND TO BE THE
25 PROBLEM HERE. AND SO I WON'T PRELIMINARILY SEAL IT, AND IF

1 YOU -- IF I START TO SAY SOMETHING TO WHICH YOU HAVE AN
2 OBJECTION, BECAUSE IT GETS INTO CONFIDENTIAL MATTERS, STATE
3 YOUR OBJECTION QUICKLY AND THEN I'LL RECONSIDER WHETHER OR NOT
4 TO ALLOW THE PEOPLE SITTING IN THE AUDIENCE TO REMAIN.
5 OTHERWISE, YOU CAN REMAIN.

6 HERE'S MY UNDERSTANDING OF THE PROCEDURAL POSTURE:
7 THE PROCEEDS OF THE SETTLEMENT IN THIS CASE HAVE NOW BEEN HELD
8 BY A TRUSTEE, AND THE TRUSTEE, SO FAR AS THE COURT IS
9 CONCERNED, IS EMPOWERED TO DISBURSE THOSE PROCEEDS IN
10 ACCORDANCE WITH THE TERMS OF THE SETTLEMENT BUT HAS CHOSEN TO
11 SEEK THIS COURT'S APPROVAL.

12 AND GIVEN THE FACT THAT THE COURT -- THIS CASE
13 CARRIES SOME CONTROVERSY, THE COURT IS DISPOSED TO LEND ITS EAR
14 TO HEARING THE REQUEST OF THE PARTIES WITH RESPECT TO WHAT
15 OTHERWISE APPEARS TO ME TO BE SOMETHING THAT THE TRUSTEE CAN DO
16 WITHIN ITS POWERS.

17 IN OTHER WORDS, THERE'S NO OUTSTANDING ORDER THAT
18 REQUIRES THE TRUSTEE TO HOLD THE MONEY FURTHER IN TRUST, SO FAR
19 AS THE COURT IS CONCERNED.

20 AND LET ME PAUSE AT THIS MOMENT AND HAVE ANYONE WHO
21 BELIEVES THERE IS AN OUTSTANDING ORDER OF THE COURT THAT
22 INTERFERES WITH THE TRUSTEE MAKING A DISBURSAL OF THE
23 SETTLEMENT PROCEEDS --

24 **MR. CHATTERJEE:** YOUR HONOR, IF I COULD BE HEARD ON
25 ONE ISSUE RELATED TO THAT?

1 FUNDAMENTALLY -- AND THIS IS, JUST FOR THE RECORD,
2 NEEL CHATTERJEE FOR FACEBOOK AND MARK ZUCKERBERG.

3 WE HAVE THESE COLLATERAL ATTACKS UPON YOUR JUDGMENT
4 GOING ON IN MASSACHUSETTS THAT THE WINKLEVOSS BROTHERS AND
5 DIVYA NARENDRA HAVE FILED. THEY ARE REFUSING TO HONOR YOUR
6 JUDGMENT THAT ENFORCES THE SETTLEMENT AGREEMENT AND THEN PUT
7 THE MONEY INTO THE ESCROW.

8 WE ARE NOT GETTING THE PEACE THAT WE BARGAINED FOR.
9 THREE YEARS AND 20 DAYS AGO YOUR HONOR ISSUED AN AMENDED
10 JUDGMENT. WE HAVE SINCE BEEN SUCKED INTO LITIGATION AT THE
11 NINTH CIRCUIT, BACK AT THIS COURT, AND EVEN AFTER THE CASES
12 WERE DISMISSED WITH PREJUDICE AND YOUR JUDGMENT WAS AFFIRMED
13 WHERE THE PARTIES WERE GRANTED RELEASES AS BROAD AS POSSIBLE.
14 THAT'S THE LANGUAGE FROM YOUR AMENDED JUDGMENT.

15 THE WINKLEVOSS BROTHERS AND NARENDRA ARE SEEKING TO
16 COLLATERALLY ATTACK THE DISMISSAL WITH PREJUDICE IN
17 MASSACHUSETTS. THEY ARE NOT HONORING YOUR JUDGMENT. AS LONG
18 AS THEY ARE NOT HONORING YOUR JUDGMENT, I DO NOT BELIEVE THAT
19 THE ESCROW AGENT IS AUTHORIZED TO RELEASE THE PROCEEDINGS.

20 THEY WANT TO GET THE BENEFITS OF THE BARGAIN THEY
21 STRUCK, BUT THEY DON'T WANT TO GIVE US THE BENEFITS OF WHAT WE
22 STRUCK. THREE YEARS, 20 DAYS WE HAVE BEEN WAITING FOR THIS
23 CASE TO BE OVER. WE NEGOTIATED A PEACE TREATY IN FEBRUARY OF
24 2008. IT IS NOT WITHIN THE JURISDICTION OF THE ESCROW AGENT TO
25 RELEASE THOSE FUNDS NOW SO LONG AS THE CASES ARE NOT DISMISSED

1 WITH PREJUDICE, AND THERE STILL REMAINS COLLATERAL LITIGATION.

2 **THE COURT:** ALL RIGHT. AND YOU'VE INSTRUCTED THE
3 ESCROW AGENT IN THAT REGARD?

4 **MR. CHATTERJEE:** WE -- YOUR HONOR, WE HAVE NOT TOLD
5 THE ESCROW AGENT THAT, BUT THEY ARE AWARE OF THE CONTROVERSY,
6 AND WE HAVE IDENTIFIED THE CONTROVERSY TO THEM.

7 IN ADDITION, WAYNE CHANG'S COUNSEL, I UNDERSTAND,
8 SENT A LETTER, BUT WE ARE NOT HERE REPRESENTING WAYNE CHANG,
9 AND WE DON'T REALLY HAVE INVOLVEMENT IN THAT CASE, ASKING FOR
10 SOME KIND OF NOTICE BEFORE THE FUNDS ARE RELEASED, BECAUSE
11 THERE'S ANOTHER COLLATERAL LITIGATION IN MASSACHUSETTS SUPERIOR
12 COURT.

13 **THE COURT:** THE REASON I ASK WHETHER OR NOT THERE
14 WERE -- ONE OF THE REASONS ESCROW AGENTS OR TRUSTEES HOLD ON TO
15 MONEY IS BECAUSE THEY HAVE CONFLICTING INSTRUCTIONS FROM
16 INDIVIDUALS OR ENTITIES FOR WHOM THEY MIGHT RECOGNIZE A
17 RESPONSIBILITY, AND SO ALTHOUGH YOU'RE TELLING ME, AS I
18 UNDERSTAND IT, THAT PARTIES TO THE SETTLEMENT ARE NOT COMPLYING
19 WITH THE TERMS OF THE SETTLEMENT OR THE JUDGMENT, THAT DOESN'T
20 NECESSARILY MEAN THAT THE TRUSTEE ISN'T FREE TO MAKE A
21 DISBURSAL, UNLESS THE COURT ORDERS THE FUNDS HELD SPECIFIC TO
22 THIS NEW CONTROVERSY.

23 I JUST WANTED TO CLARIFY WHETHER ANYONE WAS TAKING
24 THE POSITION THAT THE TRUSTEE RIGHT NOW HAS ANY IMPEDIMENT TO
25 DISBURSING THE PROCEEDINGS.

1 **MR. CHATTERJEE:** YOUR HONOR, WE DO NOT BELIEVE THE
2 TRUSTEE IS AUTHORIZED TO RELEASE THE PROCEEDS, AND WE HAVE
3 SERVED THEM WITH OUR PAPERS.

4 **THE COURT:** BECAUSE OF THE REASON YOU JUST STATED,
5 BECAUSE YOU BELIEVE THAT THE WINKLEVOSS BROTHERS OR NARENDRA
6 ARE THEMSELVES IN BREACH OF THE SETTLEMENT AGREEMENT AND THE
7 RELEASE.

8 **MR. CHATTERJEE:** YOUR HONOR, MORE THAN THAT. THEY
9 ARE REFUSING TO HONOR THE JUDGMENT THAT YOUR COURT ORDERED.
10 THEY ARE IN VIOLATION OF THE COURT'S JUDGMENT.

11 **THE COURT:** ALL RIGHT. NOW, IT DOES SEEM TO ME THAT
12 THAT DOES ARGUE FOR A PROCESS THAT THE COURT HAS IF PARTIES
13 INVOKE IT; NAMELY, THE CONTEMPT POWER OR A NEW LAWSUIT FOR
14 BREACH THAT CAN BE BROUGHT.

15 SO AT THIS POINT THERE IS NO MOTION ASKING THE COURT
16 TO HOLD THE PARTY IN CONTEMPT OF ITS ORDER, NOR IS THERE, AS I
17 UNDERSTAND IT, ANY NEW LITIGATION CLAIMING A BREACH OF THE
18 RELEASE OR THE SETTLEMENT AGREEMENT. AND SO WHY SHOULDN'T THAT
19 BE THE AVENUE TAKEN IF THE COURT -- WELL, IF YOUR CLIENTS WISH
20 TO HAVE THE FUNDS HELD FURTHER BY THE TRUSTEE?

21 **MR. CHATTERJEE:** SO, YOUR HONOR, IF THAT'S THE WAY
22 YOUR HONOR VIEWS AS THE APPROPRIATE WAY TO GO, WE'D ASK YOUR
23 HONOR ISSUE AN ORDER TO SHOW CAUSE WHY THE WINKLEVOSS BROTHERS
24 AND NARENDRA SHOULD NOT BE HELD IN CONTEMPT OR WHY THE COURT
25 SHOULD NOT ENFORCE THE JUDGMENT REQUIRING, BASICALLY,

1 WITHDRAWAL OF THE MOTIONS IN MASSACHUSETTS PRIOR TO THE ESCROW
2 FUNDS BEING RELEASED, BECAUSE THAT IS LIVING UP TO THE SPIRIT
3 OF THE AGREEMENT.

4 **THE COURT:** SO TELL ME WHAT HAS HAPPENED IN
5 MASSACHUSETTS.

6 **MR. CHATTERJEE:** YES, YOUR HONOR. WHAT'S HAPPENED IN
7 MASSACHUSETTS IS WHEN THE NINTH CIRCUIT ISSUED ITS --

8 **THE COURT:** ARE YOU MR. WOLFSON?

9 **MR. WOLFSON:** YES, YOUR HONOR.

10 **THE COURT:** COME FORWARD. WE WERE STARTING WITHOUT
11 YOU, KNOWING YOU HAD GONE TO SAN JOSE, BUT I DIDN'T THINK THAT
12 YOU WOULD MISS OUT ON ANYTHING IF WE GOT STARTED.

13 **MR. WOLFSON:** I APOLOGIZE, AND THANK YOU, YOUR HONOR.

14 **THE COURT:** HAVE A SEAT.

15 WHAT HAPPENED?

16 **MR. CHATTERJEE:** FOLLOWING ISSUANCE OF THE MANDATE,
17 YOUR HONOR, THE -- ESSENTIALLY, THE WINKLEVOSS BROTHERS AND
18 NARENDRA WITHDREW THEIR EFFORTS TO SEEK CERTIORARI AT THE
19 SUPREME COURT, THE MANDATE ISSUED, AND MOTIONS TO DISMISS WITH
20 PREJUDICE WERE FILED, BOTH HERE AND IN THE DISTRICT OF
21 MASSACHUSETTS, WHICH WAS WHAT THE SETTLEMENT AGREEMENT
22 REQUIRED.

23 ONCE THAT HAPPENED, FOLLOWING THAT, DIVYA NARENDRA
24 AND THE WINKLEVOSS BROTHERS FILED SEVERAL MOTIONS. THE TWO
25 MOTIONS THAT I THINK ARE REALLY THE RELEVANT ONES HERE ARE --

1 THERE WAS ONE WHERE THE PROTECTIVE ORDER IN MASSACHUSETTS AND
2 CALIFORNIA REQUIRES PEOPLE TO ESSENTIALLY DESTROY DOCUMENTS IN
3 PRODUCTION, JUST KIND OF A STANDARD PROTECTIVE ORDER PROVISION.

4 THEY FILED A MOTION TO ENSURE THAT ALL DOCUMENTS THAT
5 HAVE BEEN PRODUCED IN DISCOVERY WERE PRESERVED, NOTWITHSTANDING
6 THE PROTECTIVE ORDER THAT INVOKED DESTRUCTION OF DOCUMENTS ONCE
7 THE CASES WERE TERMINATED.

8 THEY ALSO FILED A MOTION FOR DISCOVERY IN ORDER TO
9 FILE A 60(B) MOTION TO TRY AND SET ASIDE THE DISMISSAL IN
10 BOSTON THAT WAS INCIDENT TO THE SETTLEMENT AGREEMENT AND YOUR
11 HONOR'S JUDGMENT IN ORDER TO INVESTIGATE -- THAT WAS THE TERM
12 THEY USED -- WHETHER THERE WAS SOME SORT OF DISCOVERY
13 MISCONDUCT PRIOR TO THE SETTLEMENT, AND THEY PUT IT UNDER THE
14 GUISE OF HAVING AN ARTICLE FROM THE FACEBOOK BOARD MEMBER IN
15 *THE NEW YORKER* MAGAZINE.

16 ALL THE ISSUES ABOUT DISCOVERY DISPUTES, WHETHER
17 DOCUMENTS WERE PRODUCED, NOT PRODUCED, WHETHER THEY WERE
18 REQUIRED TO BE PRODUCED WERE PRESENTED TO YOUR HONOR. YOUR
19 HONOR REJECTED THEM. THEY ENFORCED THE SETTLEMENT AGREEMENT.
20 THEY DID NOT APPEAL THE DISCOVERY ISSUES. YET THEY'RE STILL
21 CONTINUING TO COLLATERALLY ATTACK THE JUDGMENT THAT YOUR HONOR
22 ISSUED THAT GRANTED RELEASES AS BROAD AS POSSIBLE AND REQUIRED
23 DISMISSAL OF THE BOSTON CASE, AND THEY'RE SEEKING TO REOPEN THE
24 BOSTON CASE.

25 THAT'S THE PROCEDURAL POSTURE OF WHAT'S GOING ON. I

1 DON'T THINK THEY'RE ALLOWED TO DO IT, YOUR HONOR.

2 **THE COURT:** LET ME HEAR WHETHER THERE'S A DENIAL OF
3 THAT STATEMENT OF WHAT IS GOING ON IN MASSACHUSETTS.

4 **MR. MEADE:** THANK YOU, YOUR HONOR. I APPRECIATE THE
5 OPPORTUNITY TO ADDRESS A LOT OF GROUND THAT WAS COVERED. I
6 THINK YOUR HONOR STARTED OUT CORRECTLY TO SORT OF SKETCH OUT
7 THE LAY OF THE LAND AND GIVE US AN INDICATION OF WHAT YOUR
8 HONOR WAS THINKING.

9 WE'VE NOW JUMPED FORWARD TO THE NOTION THAT THE
10 WINKLEVOSS BROTHERS AND MR. NARENDRA HAVE DISHONORED YOUR
11 HONOR'S JUDGMENT OR SOMEHOW VIOLATED AN ORDER OF THIS COURT,
12 AND I THINK BEFORE WE DO ANYTHING ELSE, WE NEED TO PUT THAT
13 ALLEGATION IN CONTEXT. I DON'T THINK IT'S A FAIR ALLEGATION,
14 YOUR HONOR.

15 THE FEDERAL RULES OF CIVIL PROCEDURE GRANT CERTAIN
16 RIGHTS TO ALL LITIGANTS, AND MY CLIENTS ARE AVAILING THEMSELVES
17 OF THOSE RIGHTS. I'LL SKETCH OUT WHAT IS HAPPENING IN
18 MASSACHUSETTS, BECAUSE I THINK DISHONORING AN ORDER OF THIS
19 COURT IS THE FURTHEST THING FROM THE TRUTH. I'M SHOCKED THAT
20 THAT'S A STATEMENT THAT'S BEEN MADE HERE IN THIS COURT.

21 BEFORE I OUTLINE WHAT IS HAPPENING IN MASSACHUSETTS,
22 I'D LIKE TO DIRECT YOUR HONOR'S ATTENTION TO FOOTNOTE TWO OF
23 OUR MOVING PAPERS. WE HAVE THE DOCKET NUMBERS THERE.
24 EVERYTHING THAT WE FILED IN MASSACHUSETTS WE BROUGHT TO YOUR
25 HONOR'S ALLEGATION.

1 AT THE TIME THIS COURT ENFORCED THE SETTLEMENT, THERE
2 WAS A GARDEN-VARIETY DISCOVERY DISPUTE WHICH WAS, IN FACT,
3 BROUGHT TO YOUR HONOR'S ATTENTION. YOUR HONOR SAID THAT'S NOT
4 A BASIS TO SET ASIDE THIS SETTLEMENT, AND I'M GOING TO ORDER IT
5 ENFORCED. I DON'T THINK THERE'S ANY PROBLEM WITH THE COURT'S
6 ANALYSIS IN THAT.

7 WHAT HAPPENED IS THAT WHILE THE ISSUE ABOUT
8 SECURITIES FRAUD WAS WENDING ITS WAY THROUGH THE NINTH CIRCUIT,
9 THERE WAS A RATHER STARTLING REVELATION IN *THE NEW YORKER*.

10 THE TIMELINE HERE IS CRITICAL. IN 2005, MY CLIENTS
11 ASKED FOR ALL COMMUNICATIONS RELATING TO CONNECTU AND FACEBOOK.
12 IN JANUARY 2006, ACCORDING TO *THE NEW YORKER*, SOMETHING WE
13 DIDN'T KNOW DURING EARLIER PROCEEDINGS IN THIS COURT, THERE WAS
14 A MEETING BETWEEN FACEBOOK EXECUTIVES AND FACEBOOK COUNSEL, AT
15 WHICH TIME THEY DISCUSSED CERTAIN TEXT MESSAGES THAT WERE
16 RESPONSIVE TO OUR REQUEST FOR DISCOVERY BUT NOT PRODUCED. THEY
17 DIDN'T SURFACE, YOUR HONOR, UNTIL THEY WERE LEAKED IN THE
18 ONLINE PRESS AFTER THE NINTH CIRCUIT BRIEFING WAS COMPLETED.

19 SO WHY IS THAT IMPORTANT, YOUR HONOR? THE REASON IS
20 IS THAT WHAT WE THOUGHT WAS A GARDEN VARIETY DISCOVERY DISPUTE
21 DURING PROCEEDINGS IN 2008 TO ENFORCE THE SETTLEMENT ACTUALLY
22 WAS SOMETHING MUCH BIGGER. I DON'T KNOW IF THAT *NEW YORKER*
23 ARTICLE IS ACCURATE, BUT IF IT IS, WHAT IT TELLS US IS THAT
24 FACEBOOK AND ITS COUNSEL SAT ON AND SUPPRESSED CASE-WINNING
25 EVIDENCE FOR TWO YEARS.

1 NOW WHAT WE'VE ASKED THE MASSACHUSETTS COURT TO DO IS
2 GRANT US SOME DISCOVERY. WE NEED TO KNOW WHETHER THAT'S REALLY
3 THE FACTUAL --

4 **THE COURT:** WHY DID YOU GO THERE? WHY DIDN'T YOU
5 COME HERE?

6 **MR. MURRAY:** WE THOUGHT ABOUT IT, YOUR HONOR. THE
7 REASON WHY WE WENT THERE, IT WAS THE DISCOVERY REQUEST IN THE
8 MASSACHUSETTS COURT, AND IF THE CORE ALLEGATION IS CORRECT --
9 AND I DON'T KNOW, YOUR HONOR, AS I SIT HERE NOW. I'M NOT GOING
10 TO SAY THEY DID THIS. WHAT I'M GOING TO SAY IS WE HAVE A
11 REASONABLE SUSPICION.

12 IF I AM CORRECT, THERE WERE MISREPRESENTATIONS MADE
13 TO THE MASSACHUSETTS JUDGE, AND THE DISCOVERY AT ISSUE WAS IN
14 THE MASSACHUSETTS PROCEEDING, AND WE FELT IT BEST TO BRING IT
15 TO THE MASSACHUSETTS COURT'S ATTENTION. IT WAS TOUGH. I'VE
16 NEVER FACED THIS SITUATION BEFORE.

17 **THE COURT:** SO TAKE ME DOWN THAT ROAD. IF THE
18 MASSACHUSETTS COURT REOPENS THE LITIGATION THAT WAS PENDING
19 THERE, WHAT HAPPENS?

20 **MR. MURRAY:** OKAY. I'LL ANSWER THAT QUESTION IN A
21 MOMENT. I'D LIKE TO POINT OUT --

22 **THE COURT:** ANSWER IT NOW.

23 **MR. MEADE:** OKAY.

24 SO IF THAT HAPPENS -- AND MANY THINGS WOULD HAVE TO
25 HAPPEN BETWEEN NOW AND THAT POINT, I'M NOT SURE THAT THAT POINT

1 WILL EVER COME, YOUR HONOR.

2 **THE COURT:** I AGREE. BUT WHAT HAPPENS?

3 **MR. MEADE:** SO AT THAT POINT, IF THE MASSACHUSETTS
4 COURT SAYS THERE WAS DISCOVERY MISCONDUCT IN THIS CASE
5 SUFFICIENTLY EGREGIOUS TO REINSTATE THAT LITIGATION, THEN I
6 THINK WHAT HAPPENS IS THAT THEY CAN COME HERE UNDER 12(B) --

7 **THE COURT:** "THEY" WHO?

8 **MR. MEADE:** FACEBOOK CAN COME TO THIS COURT UNDER
9 RULE 60(B), AND THERE'S A SUBDIVISION, SORT OF A CATCHALL
10 SUBDIVISION, AND I THINK WHAT THEY WOULD SAY TO YOUR HONOR IS:
11 WE PAID SETTLEMENT CONSIDERATION TO GET PEACE, WE DIDN'T GET
12 IT, THEREFORE, THIS COURT'S JUDGMENT SHOULD BE SET ASIDE AS
13 WELL, SO THEN BOTH CASES ARE REOPENED.

14 AND QUITE FRANKLY --

15 **THE COURT:** THAT'S ONE POSSIBILITY. THE OTHER IS TO
16 COME HERE AND ASK THAT THE COURT ENFORCE THE SETTLEMENT. IN
17 OTHER WORDS, SETTING IT ASIDE SAYS THE SETTLEMENT GOES AWAY.
18 ENFORCING IT SAYS WE WANT THE SETTLEMENT. IT DOES SEEM TO ME
19 THAT AMONG THE THINGS THAT NEED TO HAPPEN IF THE MASSACHUSETTS
20 STATE COURT LITIGATION IS REINSTITUTED IS YOU NEED TO GET
21 RELIEF FROM MY JUDGMENT, AND HOW DO YOU GET THAT IN
22 MASSACHUSETTS?

23 **MR. MEADE:** WELL, YOUR HONOR, I THINK THE THRESHOLD
24 QUESTION IS WHETHER RELIEF FROM YOUR HONOR'S JUDGMENT IS
25 NECESSARY, AND I'M NOT SURE WE GET THERE. FOR EXAMPLE --

1 **THE COURT:** IN OTHER WORDS, YOU BELIEVE THAT YOU
2 COULD LITIGATE IN MASSACHUSETTS IN THE FACE OF MY JUDGMENT?

3 **MR. MEADE:** OUR BELIEF IS THAT THE MASSACHUSETTS
4 COURT HAS JURISDICTION TO FIGURE OUT WHETHER THERE WAS
5 MISCONDUCT IN DISCOVERY IN THAT COURT, AND THAT'S ALL WE'VE
6 ASKED FOR AT THIS POINT, YOUR HONOR.

7 **THE COURT:** THAT'S NOT MY QUESTION, THOUGH. IN OTHER
8 WORDS, YOU'RE CHARACTERIZING IT AS A LIMITED REQUEST; IN OTHER
9 WORDS, GIVE US DISCOVERY, AND IF WE FIND THAT THE DISCOVERY
10 DOESN'T CARRY US ANYWHERE, WE JUST WASTED EVERYBODY'S TIME WITH
11 DISCOVERY, BUT IF WE FIND IT SHOWS US -- FRAUD WAS THE WORD
12 THAT YOU USED, THEN YOU WOULD, AS I UNDERSTOOD YOUR
13 PRESENTATION TO THE COURT, SEEK THE AID OF THE MASSACHUSETTS
14 COURT TO PROCEED TO JUDGMENT IN THE MASSACHUSETTS ACTION AND
15 MAYBE EVEN STATE A NEW CLAIM OF MISABUSE OF PROCESS AND GRANT
16 YOU JUDGMENT ON THAT IN THE MASSACHUSETTS CASE.

17 THAT'S HOW I SEE THE SCENARIO FROM WHAT YOU PRESENTED
18 TO ME. DO YOU DISAGREE?

19 **MR. MEADE:** I SEE IT A LITTLE BIT DIFFERENTLY. STEP
20 ONE, YOUR HONOR, IS TO FIGURE OUT WHAT HAPPENED. WE DON'T KNOW
21 WHAT HAPPENED. I CAN'T TELL YOU, YOUR HONOR, THAT THERE WAS AN
22 ABUSE OF DISCOVERY IN THE MASSACHUSETTS COURT. I SEE SOMETHING
23 THAT IS VERY CONCERNING TO ME.

24 I THINK STEP ONE IS TO FIGURE OUT WHAT HAPPENED,
25 THUS, THE MOTION FOR AN INQUIRY. THAT'S ALL WE'VE ASKED FOR.

1 **THE COURT:** IS YOUR POSITION THAT WHAT'S GOING ON IN
2 MASSACHUSETTS IS NOT COVERED BY THE RELEASE?

3 **MR. MEADE:** THAT IS MY POSITION.

4 **THE COURT:** WHAT'S YOUR BASIS FOR THAT?

5 **MR. MEADE:** MY BASIS FOR THAT, YOUR HONOR, IS THAT
6 FEDERAL RULE OF CIVIL PROCEDURE 60(B) IS A RIGHT THAT LITIGANTS
7 HAVE, AND I DON'T INTERPRET THE RELEASE IN THIS CASE AS
8 BARRING -- NOW, THAT IS AN ISSUE THAT HAS BEEN RAISED BY
9 FACEBOOK, AND THEY RAISED IT TO THE MASSACHUSETTS COURT. IT
10 MAY BE, YOUR HONOR, THAT THAT'S A GATEWAY ISSUE, AND THE
11 MASSACHUSETTS COURT IS PERSUADED THAT BARS A 60(B) ACTION IN
12 MASSACHUSETTS.

13 I HAVEN'T SEEN ANY AUTHORITY TO THAT EFFECT, YOUR
14 HONOR. THEY CITED NONE. I HAVEN'T FOUND ANY.

15 **THE COURT:** WELL, I KNOW THAT THE ANTIINJUNCTION ACT
16 TEACHES ME NOT TO USE IT TO ENJOIN STATE COURT PROCEEDINGS, BUT
17 THERE IS AN EXCEPTION THAT IS WHERE IT'S IN PROTECTION OF THE
18 FEDERAL COURT'S JURISDICTION.

19 WHAT IS YOUR RESPONSE TO THE COURT'S CONCERN THAT IF
20 I SIT IDLE AND ALLOW THIS ACTION TO PROCEED, I AM DOING
21 VIOLENCE TO THE JURISDICTION OF FEDERAL COURTS TO ENFORCE THEIR
22 JUDGMENTS?

23 **MR. MEADE:** I VIEW IT DIFFERENTLY, YOUR HONOR,
24 BECAUSE OUR MOTION IS BROUGHT IN FEDERAL COURT IN
25 MASSACHUSETTS, AND I THINK THE FIRST QUESTION WE HAVE --

1 **THE COURT:** THE MASSACHUSETTS ACTION IS A FEDERAL
2 COURT ACTION?

3 **MR. MEADE:** ABSOLUTELY, YOUR HONOR.

4 **THE COURT:** I'M SORRY. I UNDERSTOOD IT TO BE A STATE
5 COURT ACTION.

6 **MR. MEADE:** NO. FURTHERMORE, YOUR HONOR, THE FIRST
7 QUESTION IS WHETHER ORDERS OF A MASSACHUSETTS FEDERAL JUDGE
8 WERE VIOLATED. LET'S FIGURE THAT OUT FIRST AND THEN THE
9 PROCEDURAL ISSUES LATER.

10 **THE COURT:** BUT DON'T I RISK A CIRCUMSTANCE WHERE
11 BETWEEN ME AND THE JUDGE IN MASSACHUSETTS, THAT JUDGE HAS TO
12 IGNORE MY ORDER?

13 **MR. MEADE:** I DON'T BELIEVE THERE'S ANY POSSIBILITY
14 OF JUDGE WOODLOCK IGNORING THIS COURT'S ORDER.

15 **THE COURT:** MY ORDER IS TO DISMISS THAT CASE. HOW DO
16 YOU PROCEED WITH A CASE IN THE FACE OF MY ORDER OF DISMISSAL?

17 **MR. MEADE:** YOUR HONOR, 60(B) NEVER COMES INTO PLAY
18 UNLESS THERE'S AN ORDER OF DISMISSAL OR A JUDGMENT. BY
19 DEFINITION 60(B) IS THE MECHANISM BY WHICH A FEDERAL JUDGE CAN
20 SAY SOMETHING HAPPENED BEFORE JUDGMENT, BEFORE DISMISSAL, THAT
21 I NEED TO LOOK AT. AND, YOUR HONOR, FROM THE COURT'S
22 PERSPECTIVE --

23 **THE COURT:** WASN'T THE DISMISSAL AT MY AUSPICES, AS
24 OPPOSED TO THE FEDERAL JUDGE IN MASSACHUSETTS' AUSPICES?

25 **MR. MEADE:** SO THE WAY IT WORKS, YOUR COURT'S

1 JUDGMENT REQUIRED THAT A JUDGMENT OF DISMISSAL BE ENTERED IN
2 MASSACHUSETTS, AND THEN AN ORDER OF DISMISSAL WAS ENTERED IN
3 MASSACHUSETTS.

4 **THE COURT:** BY THE JUDGE THERE.

5 **MR. MEADE:** BY THE FEDERAL JUDGE IN MASSACHUSETTS.

6 YOUR HONOR, LET ME MAKE SOMETHING CLEAR HERE, BECAUSE
7 IT MAY HELP.

8 I DON'T WANT THERE TO BE ANY SUGGESTION THAT THERE
9 WAS A STRATEGIC CHOICE TO RAISE THESE ISSUES IN MASSACHUSETTS
10 BECAUSE THERE'S SOME ADVANTAGE TO BE GAINED BY DOING SO. IN
11 FACT, I WILL TELL YOUR HONOR RIGHT NOW THAT IF THIS COURT OR
12 THAT COURT SAYS, I WANT YOU TO RAISE THOSE ISSUES HERE, I'M
13 MORE THAN HAPPY TO DO SO.

14 **THE COURT:** NO, THAT ISN'T MY SUGGESTION. I'M IN A
15 CIRCUMSTANCE WHERE I'M TRYING TO BE CAREFUL TO RESPECT TWO
16 THINGS: THE JUDGMENT OF THE COURT AND THE POWER OF A LITIGANT
17 TO SEEK TO GET OUT OF A JUDGMENT OF THE COURT. IT DOES SEEM TO
18 ME THAT HAVING GONE THROUGH THE PROCEDURAL PROCESS OF AN APPEAL
19 THAT FAILED, I RISK A CIRCUMSTANCE WHERE IT APPEARS THAT THE
20 JUDGMENT IS BEING IGNORED, AND I DON'T TAKE THAT PERSONALLY.

21 WHAT I HAVE TO DO IS TO SAY IF I WERE TO BE RUN OVER
22 BY A TRUCK TOMORROW AND SOMEONE ELSE IS SITTING IN THIS CHAIR,
23 WOULD THE COURT FIND THAT IT'S APPROPRIATE TO HAVE A LITIGANT
24 WHO DISMISSED A LAWSUIT IN ONE JURISDICTION AS A RESULT OF A
25 SETTLEMENT AND ORDER OF COURT BE ABLE TO GO TO THAT OTHER FORUM

1 AND REOPEN THAT CASE WITHOUT COMING TO THE COURT THAT ORDERED
2 IT DISMISSED?

3 NOW, I DON'T HAVE JURISDICTION NECESSARILY OVER THE
4 COURT, BUT I DO OVER THE PARTIES, AND IT SEEMS TO ME THAT'S WHY
5 I RAISE THE QUESTION AS TO WHETHER OR NOT IT SHOULD BE A
6 CONTEMPT PROCEEDING, BECAUSE THE COURT DIDN'T INITIATE THIS,
7 THE PARTIES DID, AND IF PARTIES TO AN ORDER THAT I MADE IGNORE
8 THAT AND START SOME OTHER PROCEEDING, IT SEEMS TO ME I NEED TO
9 BRING THEM BEFORE THE COURT AND HAVE THEM SHOW CAUSE WHY THEY
10 SHOULDN'T BE PUNISHED FOR THAT.

11 NOW, THE PUNISHMENT COULD REACH AS FAR AS
12 SURRENDERING CONSIDERATION, BECAUSE THAT IS WHY THE ORDER WAS
13 MADE IN THEIR FAVOR. THEY SETTLED THIS. IT WAS A MUTUAL
14 SETTLEMENT. AND I DIDN'T PUT IT TOGETHER; THE PARTIES DID. I
15 DIDN'T MAKE UP THE EXCHANGES; THE PARTIES DID.

16 SO IF I SAY, OKAY, YOU GET THE EXCHANGE THAT YOU
17 BARGAINED FOR, YOU GET THE BARGAIN, AND THE OTHER SIDE VIOLATES
18 THAT, IT SEEMS TO ME THEY COULD FORFEIT THE RIGHT AS A CONTEMPT
19 OF COURT, BECAUSE THAT WOULD CERTAINLY BRING TO THEIR MINDS I
20 CAN'T IGNORE THE COURT'S ORDER.

21 BUT I DON'T HAVE THAT PROCEDURAL POSTURE BEFORE ME.
22 THE INVITATION IS THAT PERHAPS I SHOULD ISSUE SUCH AN ORDER, SO
23 ADDRESS THAT.

24 **MR. MEADE:** CERTAINLY, YOUR HONOR.

25 I THINK THAT THE PROCEEDINGS IN MASSACHUSETTS ARE

1 VERY DIFFERENT FROM HOW THEY HAVE BEEN CHARACTERIZED HERE. WE
2 HAVE NOT SAID TO THE MASSACHUSETTS COURT, YOU SHOULD VACATE THE
3 JUDGMENT IN THIS CASE. WHAT WE HAVE DONE IS OUTLINED --

4 **THE COURT:** THE ARGUMENT IS YOU SHOULDN'T BE TALKING
5 AT ALL. IT DOESN'T MATTER WHAT YOU SAY TO THE MASSACHUSETTS
6 COURT IF MY ORDER SAYS DISMISS THAT CASE, GIVE A FULL RELEASE,
7 AND NOW I'VE ENFORCED IT WITH MY JUDGMENT. I'VE SUBSTITUTED
8 THE AGREEMENT OF RELEASE WITH A JUDGMENT. IT SEEMS TO ME THAT
9 TO ARGUE THAT WHAT WE'RE DOING IN MASSACHUSETTS IN THAT
10 LITIGATION BECOMES IRRELEVANT AS LONG AS YOU'RE DOING ANYTHING.

11 **MR. MEADE:** YOUR HONOR, ALL I CAN SAY IN RESPONSE TO
12 THAT -- AND I'M NOT SURE IT'S A COMPLETE ANSWER TO YOUR HONOR'S
13 QUESTION, I THINK YOUR HONOR'S QUESTION IS TELEGRAPHING A WAY
14 OF ANALYZING THIS SITUATION.

15 LET ME SAY THIS IN RESPONSE: I DON'T KNOW WHY IT'S
16 CONTROVERSIAL THAT PARTIES WHO HAVE EVIDENCE OF A VERY SERIOUS
17 DISCOVERY VIOLATION, NOT A RUN-OF-THE-MILL DISPUTE OVER TIMING
18 OF WHEN SOMETHING HAS BEEN DISCLOSED, BUT SOMETHING VERY
19 SERIOUS THAT, IN MY MIND, SULLIES THE COURT.

20 IT'S SURPRISING TO ME THAT IT'S CONTROVERSIAL THAT WE
21 BROUGHT THAT TO THE FEDERAL JUDGE'S ATTENTION WHO WAS PRESIDING
22 OVER THE MATTER AT THE TIME. IF --

23 **THE COURT:** WHAT YOU HAVE TO ARGUE IS THAT THE
24 RELEASE IS NO GOOD. IN OTHER WORDS, PARTIES WHO GIVE A
25 RELEASE, IS WHAT YOU'RE SAYING, WHO SUBSEQUENTLY DISCOVER

1 INFORMATION THAT WOULD HAVE AFFECTED THEIR GIVING A RELEASE
2 SHOULD BE ABLE TO GET OUT OF THE RELEASE. THAT'S THE ARGUMENT.
3 BECAUSE AS LONG AS THE RELEASE IS IN PLACE, THERE SHOULD BE NO
4 CLAIM, AND THE DISCOVERY THAT YOU'RE SEEKING IS IN AID OF A
5 CLAIM.

6 SO YOU'VE GOT TO GET RID OF THE RELEASE BEFORE -- AND
7 THERE ARE CIRCUMSTANCES WHERE PARTIES CAN BE RELIEVED OF A
8 RELEASE AND RE -- LIKE THE PHOENIX, THEIR CLAIM ARISES AGAIN,
9 BUT UNTIL THAT HAPPENS -- NOW, I'M NOT SURE THAT IN SAYING THAT
10 THERE IS AN OPPORTUNITY FOR THESE LITIGANTS TO REVIVE THE
11 CLAIMS THAT OTHERWISE THEY HAVE RELEASED, BUT THAT'S THE PROPER
12 QUESTION.

13 **MR. MEADE:** YEAH. LET ME SAY THIS, YOUR HONOR: YOUR
14 HONOR'S COMMENTS SUGGEST THE COURT VIEWS THE RELEASE AS BARRING
15 A PROCEEDING UNDER 60(B). AS I'VE INDICATED, I'VE SEEN NO
16 AUTHORITY TO THAT EFFECT. IT'S AN ARGUMENT THAT THEY RAISED IN
17 MASSACHUSETTS AND JUDGE WOODLOOK HAS NOT YET RULED ON THAT
18 MOTION.

19 IF YOUR HONOR'S VIEW IS THAT YOUR HONOR -- IS THAT
20 THE RELEASE --

21 **THE COURT:** WHAT WOULD BE -- WHAT WOULD KEEP THEM
22 FROM FILING A NEW ACTION IN MASSACHUSETTS?

23 **MR. MEADE:** I THINK THAT 60(B) IS A VERY CABINED
24 PROCEDURE.

25 **THE COURT:** I KNOW. BUT WHAT WOULD BE THE IMPEDIMENT

1 TO FILING A NEW ACTION ANYWHERE HAVING TO DO WITH THIS CLAIM?

2 **MR. MEADE:** YOUR RELEASE.

3 **THE COURT:** SO WHY DOESN'T THE RELEASE REACH THE
4 MASSACHUSETTS ACTION?

5 **MR. MEADE:** WELL, YOUR HONOR, I BELIEVE THAT THE
6 COURT IN MASSACHUSETTS HAS THE AUTHORITY TO DETERMINE WHETHER
7 THERE WAS A SERIOUS DISCOVERY VIOLATION WITHIN ITS COURT. AND
8 I KNOW YOUR HONOR'S APPROACHING IT FROM THE PERSPECTIVE OF THE
9 RELEASE, ARE WE BARRED, ESTOPPED FROM RAISING THAT IN THAT
10 COURT.

11 YOUR HONOR, I HAVE TO TELL YOU I KNOW OF NO AUTHORITY
12 ONE WAY OR THE OTHER ON THAT QUESTION. I THINK IT'S A QUESTION
13 OF FIRST IMPRESSION.

14 I WILL SAY THAT -- AND MAYBE I CAN SHORTCIRCUIT THE
15 DISCUSSION HERE. IF YOUR HONOR'S VIEW IS THAT THE RELEASE BARS
16 US FROM RAISING FACTS IN THE MASSACHUSETTS COURT THAT SUGGEST A
17 VERY SERIOUS DISCOVERY VIOLATION, WE HAVE TO STOP UNLESS WE CAN
18 HAVE THAT DETERMINATION BY YOUR HONOR REVERSED BY A HIGHER
19 COURT.

20 THE REASON WHY I'M RAISING THIS, YOUR HONOR, IS THAT
21 THERE'S -- WE ARE HEMMED IN HERE, AND I THINK IT'S IMPORTANT TO
22 INTRODUCE ANOTHER CONCEPT HERE.

23 WE HAVE LAWYERS WHO REPRESENTED MY CURRENT CLIENTS,
24 THEIR FORMER CLIENTS. ONE OF THEM HAS A JUDGMENT FOR
25 ORIGINALLY 13 MILLION DOLLARS THAT HAS NOW GROWN TO MORE.

1 THEY'RE GOING TO COLLECT ON THAT JUDGMENT. AND IF -- UNLESS
2 THEY'RE PAID OUT OF THE ESCROW. AND, IN EFFECT, THAT'S GOING
3 TO MEAN THAT WE HAVE TO ABANDON WHAT WE'RE DOING IN
4 MASSACHUSETTS.

5 IF THE PROCEEDINGS IN MASSACHUSETTS WHEREBY WE
6 BROUGHT TO THE FEDERAL COURT'S ATTENTION VERY SERIOUS DISCOVERY
7 MISCONDUCT, OR WHAT APPEARED TO BE -- WE NEED INQUIRY TO FIND
8 OUT -- IF THAT HOLDS UP PAYING THE LAWYERS, WE HAVE TO SAY
9 UNCLE, WE CAN'T CONTINUE IN MASSACHUSETTS, YOUR HONOR, BECAUSE
10 WHAT'S GOING TO HAPPEN IS THE PARTY WITH THE JUDGMENT IS GOING
11 TO TAKE THAT JUDGMENT AND COLLECT ON IT.

12 AND THEY POINTED OUT THERE'S A BOND THAT'S BEEN
13 POSTED, AND THEY'LL COLLECT ON THE BOND, WHICH MEANS THE
14 BONDING COMPANY WILL TRY TO COLLECT AGAINST MY CLIENTS, WHICH
15 MEANS THERE WILL BE A NEW ROUND OF LITIGATION.

16 SO PERHAPS I CAN SHORTCIRCUIT THIS DISCUSSION AND
17 TELL YOUR HONOR THAT IF YOUR HONOR'S VIEW IS THAT WE VIOLATED
18 THE RELEASE AND YOUR HONOR INTENDS TO ENJOIN US FROM PURSUING
19 THIS QUESTION IN MASSACHUSETTS, WE HAVE TO STOP THE EFFORT
20 RIGHT NOW BECAUSE WE SIMPLY CANNOT --

21 **THE COURT:** WELL, ACTUALLY, I'M NOT PREPARED TO SAY
22 YOU VIOLATED THE RELEASE, BECAUSE THAT SEEMS TO BE A QUESTION
23 OF FACT THAT WOULD REQUIRE A HEARING. I AM PREPARED TO ISSUE
24 AN ORDER TO SHOW CAUSE WHY THE WINKLEVOSS PARTIES, NARENDRA,
25 AREN'T IN CONTEMPT OF COURT BECAUSE OF THE CONTINUING

1 LITIGATION THERE WHICH WOULD ALLOW ME IN THE CONTEXT OF THAT TO
2 DECIDE WHETHER OR NOT THERE HAS BEEN A VIOLATION OF MY JUDGMENT
3 AND THE UNDERLYING DOCUMENTS, AND, IF SO, TO DETERMINE AN
4 APPROPRIATE CIVIL REMEDY. I DON'T WANT TO GO DOWN THAT ROAD.

5 THIS IS, AS I STARTED OUT, A CIRCUMSTANCE WHERE I'M
6 STILL WAITING FOR SOMEONE TO EXPLAIN TO ME WHY THE ESCROW CAN'T
7 SIMPLY CLOSE. THE PARTIES PAID THEIR RESPECTIVE CONSIDERATION.

8 LET ME HEAR FROM MR. BARRETT.

9 MR. BARRETT, IS THERE, TO YOUR MIND, ANY CONFLICTING
10 INSTRUCTIONS THAT YOU HAVE RECEIVED WITH RESPECT TO CLOSING THE
11 TRUST AND DISBURSING THE PROCEEDINGS?

12 **MR. BARRETT:** IF YOUR HONOR RECALLS THE ORDER, I
13 BELIEVE IT WAS NOVEMBER 21ST, 2008, THAT THE COURT ENTERED,
14 WHICH CREATED THE TRUST PROVIDED THAT BOIES, SCHILLER & FLEXNER
15 SHOULD HOLD THE SETTLEMENT PROCEEDINGS IN TRUST FOR, AS WE
16 CALLED THEM, THE FOUNDERS, THE WINKLEVOSSES AND MR. NARENDRA,
17 OR -- I'M NOT SURE IF IT'S "OR" -- OR AND ANY LAWFUL CLAIMANT.

18 FRANKLY, YOUR HONOR, I THINK THE REASON THAT WE'RE
19 HERE IS BECAUSE -- PERHAPS, AND I APOLOGIZE, WE SHOULD HAVE
20 BEEN MAKING A MOTION OURSELVES FOR CLARIFICATION OF THAT
21 JUDGMENT. BUT THOSE WORDS, "ANY LAWFUL CLAIMANT," WHICH THE
22 COURT HAS POINTED OUT IN THE MOTION PAPERS CERTAINLY INDICATES
23 INCLUDES THE QUINN LAW FIRM, AND PERHAPS THE OTHER LAW FIRM
24 THAT HAS THE ATTORNEYS' LIEN, WHETHER THAT PHRASE, "ANY LAWFUL
25 CLAIMANT" EXTENDS ANY FARTHER.

1 CERTAINLY BASED ON WHAT MR. CHATTERJEE HAS FILED
2 BEFORE THE COURT AND SAID IN HIS ARGUMENT THIS MORNING SUGGESTS
3 THAT FACEBOOK CONSIDERS THAT IT MAY BE A LAWFUL CLAIMANT
4 BECAUSE IT SAYS IT MAY HAVE A RIGHT TO RESCISSION OF THE
5 SETTLEMENT AGREEMENT, FOR EXAMPLE. AND THERE ALSO ARE THESE
6 OTHER PARTIES WHO ADMITTEDLY HAVE NOT APPEARED BEFORE YOUR
7 COURT -- BEFORE THE COURT, BUT WHO HAVE SUGGESTED THAT THEY MAY
8 HAVE CLAIMS TO THESE PROCEEDINGS AS WELL.

9 AND, YOUR HONOR, I JUST -- AS THE TRUSTEE, WE JUST
10 WANT TO DO WHAT THE COURT BELIEVES IS APPROPRIATE, WHAT THE
11 COURT INTENDED BY THAT "ANY LAWFUL CLAIMANT" LANGUAGE.

12 THE REASON I SAY PERHAPS WE SHOULD HAVE TECHNICALLY
13 MADE A MOTION IS, REALLY, IT'S ALMOST KIND OF AN INTERPLEADER
14 SITUATION. WE'RE HOLDING THESE ASSETS. WE WOULD LOVE NOT TO
15 BE IN THE MIDDLE OF THIS. BUT WE WANT TO BE SURE THAT IF WE
16 DISTRIBUTE THE ASSETS, THAT WE HAVE DONE SO IN ACCORDANCE WITH
17 THAT ORDER, WHICH APPEARS TO GIVE CERTAIN RIGHTS TO ANY LAWFUL
18 CLAIMANT, AND WE WERE AWARE OF THESE OTHER PARTIES THAT
19 CONCEIVABLY MIGHT BE COVERED BY THAT LANGUAGE.

20 SO, THAT'S REALLY THE SITUATION WE FIND OURSELVES IN.

21 **THE COURT:** DO YOU HAVE AN INTEREST IN THE
22 PROCEEDINGS AS WELL, OR NOT?

23 **MR. BARRETT:** I DO NOT, YOUR HONOR.

24 **THE COURT:** YOUR FIRM DOES NOT?

25 **MR. BARRETT:** OUR FIRM DOES NOT.

1 **THE COURT:** VERY WELL. ANYONE ELSE WANT TO SPEAK TO
2 THIS?

3 **MR. MASON:** GOOD MORNING, YOUR HONOR. THOMAS MASON
4 FOR FINNEGAN HENDERSON. WE'RE ONE OF THE SETS OF FORMER
5 LAWYERS WHO HAVE IMPOSED AN ATTORNEYS' LIEN AND FILED A MOTION
6 CONSISTENT WITH YOUR COURT'S NOVEMBER 1ST, 2011 ORDER SEEKING
7 DISBURSEMENT OF A PORTION OF THE CASH PROCEEDINGS BEING HELD BY
8 BOIES, SCHILLER TO FINNEGAN HENDERSON IN SATISFACTION OF THAT
9 LIEN. THE AMOUNT IS UNDER SEAL. I DON'T NEED TO MENTION IT
10 NOW.

11 THERE'S NO DISPUTE THAT FINNEGAN HENDERSON
12 REPRESENTED THE FOUNDERS BEFORE THIS COURT. THERE'S NO DISPUTE
13 THAT FINNEGAN HENDERSON REPRESENTED THE FOUNDERS FOR YEARS IN
14 THE DISTRICT OF MASSACHUSETTS ACTION. THE RESULT OF THEIR
15 REPRESENTATION, ALONG WITH THE WORK OF OTHER COUNSEL, PRODUCED
16 A SETTLEMENT UNDER WHICH THEY'RE NOW ASSERTING THE LIEN.

17 THERE'S NO DISPUTE THAT FINNEGAN HENDERSON HAS A LIEN
18 AGAINST THESE SETTLEMENT PROCEEDS. AND AT THIS POINT THERE'S
19 NOT EVEN A DISPUTE ABOUT THE AMOUNT OF THE SETTLEMENT PROCEEDS,
20 THE AMOUNT OF THE LIEN THAT FINNEGAN HENDERSON HAS.

21 THE ONLY ISSUE IS WHETHER TO DISBURSE IT NOW. WE
22 THINK THAT, GIVEN, IN FAIRNESS AND EQUITY, FINNEGAN AND
23 HENDERSON HAS HAD TO WAIT FOR, AS I SAID, FOUR YEARS,
24 DELIVERING SERVICES STARTING IN 2004, TO TAKE THE CASH
25 PROCEEDS, A PORTION OF THE CASH PROCEEDS AND PAY THEM OUT.

1 REGARDLESS OF HOW THE COURT HANDLES THE OTHER
2 MATTERS, I THINK IT'S -- THE ATTORNEYS HAVE A SPECIAL SITUATION
3 WITH RESPECT TO A CORPUS THAT THEIR WORK SERVES TO PRODUCE.
4 OTHER THAN THE QUINN EMANUEL WHICH HAS COME IN AND IS IN A
5 SIMILAR, ALBEIT NOT IDENTICAL SITUATION, THOSE ARE THE ONLY
6 CLAIMANTS THAT ARE BEFORE THIS COURT. THEY ARE THE ONLY
7 PARTIES THAT FILED A MOTION CONSISTENT WITH THIS COURT'S ORDER
8 SAYING, PLEASE DISBURSE THE PROCEEDINGS TO US, IN ADDITION TO
9 MR. MEADE'S CLIENTS, THE FOUNDERS.

10 THERE ARE NO OTHER CLAIMANTS BEFORE THE COURT, AND I
11 THINK THE COURT NEED NOT WAIT AND SORT OF REISSUE ITS ORDER AND
12 SEE IF OTHER PEOPLE COME IN AND ASSERT CLAIMS.

13 WITH RESPECT TO THE DISTRICT OF MASSACHUSETTS FEDERAL
14 COURT PROCEEDINGS, FINNEGAN HENDERSON IS NOT REPRESENTING THE
15 FOUNDERS IN THOSE PROCEEDINGS.

16 THE SETTLEMENT AS IT STANDS TODAY, I THINK THE COURT
17 IS RIGHT, HAD IT CAME IN AND SAID, YOU KNOW, WHAT'S -- I
18 THOUGHT THE SETTLEMENT HAS BEEN IMPLEMENTED AND EXECUTED,
19 WHAT'S TO PREVENT THE ESCROW AGENT FROM SIMPLY DISBURSING THE
20 FUNDS?

21 THIS COURT WAS ASKED REPEATEDLY BY THE FOUNDERS AS
22 THE SETTLEMENT LITIGATION PROCEEDED IN THE SUMMER AND THE FALL
23 OF 2008 TO STAY EXECUTION OF THE SETTLEMENT. THE COURT REFUSED
24 TO DO THAT. THE COURT SAID THE SETTLEMENT IS VALID, IT IS
25 ENFORCEABLE, AND IT SHOULD BE IMPLEMENTED. THE FOUNDERS WENT

1 TO NINTH CIRCUIT, ASKED FOR A STAY. THEY DIDN'T GET A STAY.

2 SO AS WE SIT HERE TODAY, THE SETTLEMENT WAS -- IS
3 FULLY IN FORCE. THE ISSUE IS WHY THE TRUST DID NOT DISTRIBUTE
4 THE PROCEEDS SIMPLY OUTRIGHT TO THE FOUNDERS? THE REASON THAT
5 OCCURRED IS BECAUSE THERE WAS A DISPUTE BETWEEN QUINN EMANUEL
6 AND THE FOUNDERS OVER QUINN EMANUEL'S ATTORNEYS' LIEN AT THAT
7 POINT.

8 SO THE COURT, RATHER THAN MAKING THE SETTLEMENT
9 TENTATIVE OR NOT ENFORCING IT, THE COURT SAID, WELL, I'M --
10 SINCE YOU ALL CAN'T AGREE ON HOW TO HANDLE THESE MONIES, QUINN
11 EMANUEL AND THE FOUNDERS, I'M JUST GOING TO HAVE BOIES SCHILLER
12 HOLD IT.

13 NOW THE FOUNDERS AND QUINN EMANUEL HAVE AGREED ABOUT
14 HOW TO HANDLE THE FUNDS. FINNEGAN HENDERSON, WHICH ALWAYS HAD
15 AN ATTORNEYS' LIEN AS WELL, BUT DIDN'T -- AND HAS ALSO NOW
16 AGREED ON HOW THE FUNDS SOMEBODY HANDLED.

17 SO, YOUR HONOR, I'M HERE, I GUESS RATHER THAN WHAT
18 THE COURT SAID AT THE BEGINNING IN YOUR ADMISSION CEREMONY,
19 RATHER THAN KILL THE LAWYERS, I'M HERE TO MAKE A PLEA TO PLEASE
20 PAY THE FORMER LAWYERS WHO HAVE WORKED LONG AND HARD TO PRODUCE
21 THESE RESULTS, AND THE PARTIES, IF THEY NEED TO LITIGATE
22 FURTHER, LITIGATE FURTHER.

23 I THINK MR. MEADE PUT IT VERY WELL IN HIS -- ONE OF
24 HIS PLEADINGS WHERE HE SAID IF THE DISTRICT OF MASSACHUSETTS
25 PROCEEDINGS, IT TURNS OUT THAT THE FOUNDERS ARE UNABLE TO, FOR

1 WHATEVER REASON, RESTORE THE STATUS QUO ANTE IN THEIR EFFORT TO
2 ATTACK AND LITIGATE AGAINST THE JUDGMENT, THAT MAY BE HELD
3 AGAINST THEM.

4 SO I DON'T THINK THE DISTRICT OF MASSACHUSETTS
5 PROCEEDINGS REALLY POSES ANY IMPEDIMENT TO PAYING FINNEGAN
6 HENDERSON FOR ITS YEARS OF WORK. AND I'LL LET MR. WOLFSON
7 SPEAK FOR QUINN EMANUEL.

8 **THE COURT:** MR. WOLFSON.

9 **MR. WOLFSON:** GOOD MORNING, YOUR HONOR. MR. MASON, I
10 THINK, ADDRESSED THE ISSUE WITH LAWFUL CLAIMANTS, JUST THAT
11 FINNEGAN HENDERSON AND QUINN EMANUEL ARE THE ONLY LAWFUL
12 CLAIMANTS HERE. BOTH HAVE ATTORNEYS' LIENS. IN THE CASE OF
13 QUINN EMANUEL, WE HAVE A FINAL JUDGMENT AND CONFIRMED
14 ARBITRATION AWARD FOR OUR FEE.

15 THE WINKLEVOSSES AND MR. NARENDRA AGREED TO THE
16 AMOUNT OF OUR ATTORNEYS' LIEN, AND IT HAS BEEN ENFORCED. SO
17 WITH RESPECT TO WHETHER THERE ARE ANY OTHER LAWFUL CLAIMANTS,
18 ACCORDING TO YOUR HONOR'S OWN DEFINITION FROM YEARS AGO, WE
19 SUBMIT THERE ARE NONE.

20 I'D LIKE TO ADDRESS, THOUGH, THE ISSUE OF THE RULE
21 60(B) MOTION. BACK WHEN YOUR HONOR FIRST ENTERED AN ORDER TO
22 SHOW CAUSE TO SPECIFICALLY ENFORCE THE SETTLEMENT AGREEMENT IN
23 2008, FACEBOOK RESPONDED TO THAT BY SAYING THAT IT BELIEVED THE
24 SETTLEMENT, DESPITE THE EXISTENCE OF THE NINTH CIRCUIT APPEAL
25 SHOULD NEVERTHELESS BE SPECIFICALLY ENFORCED, SPECIFICALLY

1 PERFORMED, AND THAT THE PARTIES SHOULD EXCHANGE CONSIDERATION.

2 YOUR HONOR ENTERED THAT ORDER. FACEBOOK NOW OWNS ALL
3 OF THE SHARES OF CONNECTU, INC. AND EFFECTIVELY CONTROLS
4 CONNECTU, INC. WHAT I DID NOT SEE IN THEIR PAPERS IS ANY
5 INDICATION THAT THEY WOULD WANT TO RETURN THOSE SHARES TO AN
6 ESCROW SITUATION OR ANY INDICATION THAT THEY WOULD LIKE TO GIVE
7 BACK THE CONSIDERATION THAT THEY HAVE NOW RECEIVED.

8 NOW THAT IT'S TWO YEARS LATER OR -- EXCUSE ME --
9 THREE YEARS LATER, THEY HAVE A DIFFERENT SITUATION WHERE
10 THEY'RE ARGUING, WELL, DESPITE THE SAME TYPE OF ARGUMENT WITH
11 RESPECT TO THE NINTH CIRCUIT APPEAL THAT IT MIGHT UNDO THE
12 SETTLEMENT, THIS RULE 60(B) MOTION MIGHT IN SOME HYPOTHETICAL
13 SCENARIO UNDO THE SETTLEMENT, SO NOW THE SETTLEMENT PROCEEDS
14 SHOULD NOT BE DISTRIBUTED.

15 WE FAIL TO SEE THE CONSISTENCY IN THOSE ARGUMENTS.
16 FRANKLY, QUINN EMANUEL FACED SIMILAR ARGUMENTS FROM THE FORMER
17 CLIENTS IN BOTH OUR ARBITRATION AGAINST THEM AND IN OUR MOTION
18 TO CONFIRM THE ARBITRATION AWARD IN NEW YORK STATE COURT. BOTH
19 TIMES THEY FAILED, OR -- WELL, IN THE ARBITRATION IT WAS
20 SEVERAL TIMES THEY FAILED. DESPITE THOSE ARGUMENTS, QUINN
21 EMANUEL NEVERTHELESS RECEIVED ITS FINAL JUDGMENT. IT HOLDS A
22 FINAL JUDGMENT NOW.

23 AND IT'S UNCLEAR TO US WHY EXACTLY FACEBOOK'S
24 ARGUMENTS NOW WITH RESPECT TO THE RULE 60(B) MOTION, ESPECIALLY
25 CONSIDERING THE PROCEDURAL HURDLES, SHOULD NEVERTHELESS RULE

1 THE DAY WHEN THOSE SAME TYPES OF ARGUMENTS WERE DEFEATED
2 PREVIOUSLY.

3 WE AGREE THAT REALLY THE ESCROW ACCOUNT SHOULD JUST
4 BE DISTRIBUTED TO THE LAWYERS. WE, LIKE FINNEGAN HENDERSON,
5 WOULD LIKE TO LEAVE THIS LITIGATION BEHIND AND MOVE ON WITH OUR
6 LIVES.

7 **THE COURT:** LET ME GIVE YOU MY TAKE ON THIS. ANYONE
8 ALSO WANT TO SPEAK TO THIS MATTER?

9 **MR. CHATTERJEE:** YOUR HONOR, IF I COULD JUST RESPOND
10 TO TWO ISSUES?

11 **THE COURT:** BRIEFLY.

12 **MR. CHATTERJEE:** THE FIRST ISSUE I WANT TO ADDRESS IS
13 RELATED TO YOUR VERY FIRST QUESTION ABOUT BOIES, SCHILLER &
14 FLEXNER ESSENTIALLY AS THE ESCROW AGENT RELEASING THE FUNDS.

15 YOU JUST HEARD A LOT OF ARGUMENT FROM FINNEGAN
16 HENDERSON AND QUINN EMANUEL WHY THEY THINK THEY'RE ENTITLED TO
17 MONEY FROM THE ESCROW. IF YOU LOOK AT THE CASES THAT THE
18 PARTIES CITED, THE BROWN CASE, THE WALTER CASE, SEVERAL OTHERS,
19 ALL OF THEM SAY THAT THE LAW FIRMS CAN FILE NOTICE OF A LIEN,
20 BUT THAT IS NOT THE LIEN ITSELF.

21 THEY ARE NOT INTERVENORS IN THIS CASE. THEY ARE NOT
22 ALLOWED TO FILE A COMPLAINT IN INTERVENTION. THAT IS NOT AN
23 ISSUE FOR THIS COURT TO DECIDE, AND THERE'S NO JURISDICTION FOR
24 THIS COURT TO DECIDE THAT.

25 I THINK YOUR HONOR'S INITIAL QUESTION OF SHOULDN'T IT

1 BE LEFT TO THE ESCROW AGENT TO DECIDE IS PROBABLY THE RIGHT
2 ONE. IT MIGHT BE BETTER FOR THE COURT TO DECIDE AS FAR AS
3 WHEREVER THEIR DISPUTES MAY LIE.

4 BUT THERE IS ONE FUNDAMENTAL ISSUE BETWEEN THE PEOPLE
5 WHO ARE PARTIES TO THIS LITIGATION, FACEBOOK AND MARK
6 ZUCKERBERG, THE WINKLEVOSS BROTHERS AND NARENDRA; THAT IS,
7 SHOULD THE ESCROW BE RELEASED WHILE THERE IS A COLLATERAL
8 ATTACK GOING ON ON THIS COURT'S JUDGMENT.

9 AND I THINK YOUR HONOR HIT THE NAIL ON THE HEAD.
10 THEY ARE ATTACKING THE DISMISSAL THAT YOUR HONOR ORDERED. THEY
11 ARE ATTACKING THE RELEASE THAT YOUR HONOR GRANTED US WHEN YOU
12 ENFORCED THE JUDGMENT ON NOVEMBER 21ST, 2008, AND WE ARE STILL
13 EMBROILED IN THE LITIGATION THAT WE NEGOTIATED A PEACE TREATY
14 ON THREE YEARS AND -- I SAID 28 DAYS BEFORE, I MEANT EIGHT
15 DAYS -- THREE YEARS AND EIGHT DAYS AGO.

16 IT IS THE RIGHT DECISION TO ISSUE AN ORDER TO SHOW
17 CAUSE. AND I ALSO ASK THAT YOUR HONOR ORDER THE WINKLEVOSS
18 BROTHERS AND NARENDRA TO WITHDRAW THE MOTIONS THEY FILED IN
19 MASSACHUSETTS, BECAUSE THOSE ARE A COLLATERAL ATTACK ON THIS
20 COURT'S JUDGMENT.

21 THE FINAL ISSUE I WANTED TO RAISE JUST VERY BRIEFLY
22 IS MR. SCHRAG MADE A NUMBER OF ARGUMENTS ABOUT SO-CALLED
23 DISCOVERY MISCONDUCT, BEING SURPRISED, AND THE LIKE. I'LL
24 SUGGEST TO YOUR HONOR YOU LOOK AT DOCUMENT NUMBER 729. THAT IS
25 A SERIES OF DOCUMENTS THAT WERE SUBMITTED TO THIS COURT

1 ASSOCIATED WITH THE QUINN EMANUEL DISPUTE WITH THE WINKLEVOSS
2 BROTHERS AND NARENDRA.

3 THOSE DOCUMENTS DESCRIBE IN GREAT DETAIL HOW THE
4 WINKLEVOSS BROTHERS KNEW A LOT. THEY HAD SOMEONE THAT THEY
5 REFERRED TO AS DEEP THROAT PROVIDING THEM WITH INFORMATION THAT
6 NO ONE THOUGHT THAT THEY SHOULD HAVE. IN FACT, IT WAS A
7 VIOLATION OF A PROTECTIVE ORDER.

8 PRIOR TO ENFORCEMENT OF THE SETTLEMENT AGREEMENT THEY
9 LODGED ANOTHER COLLATERAL ATTACK.

10 **THE COURT:** I DON'T WANT TO GO THERE AT THIS POINT.
11 IT SEEMS TO ME THAT -- HAVE A SEAT.

12 **MR. CHATTERJEE:** THANK YOU, YOUR HONOR.

13 **THE COURT:** HERE'S WHAT I HAVE IN MIND: I PUT THE
14 TRUSTEE IN A POSITION OF NEEDING TO BE PROTECTED. I DIDN'T
15 WANT THERE TO BE A LITIGATION AGAINST THE TRUSTEE FOR DOING
16 ANYTHING THAT GREW OUT OF THIS COURT'S ORDER, AND SO I REALLY
17 APPRECIATE THE PREDICAMENT OF BEING -- HOLDING THE FUNDS AND
18 WANTING TO HAVE A COURT ORDER PRIOR TO DISBURSAL. SO I WILL,
19 IN AID OF MY JURISDICTION, ASSIST THE TRUSTEE IN THAT REGARD
20 AND WILL MAKE AN ORDER OF DISBURSAL.

21 WHAT I INSTRUCT THE TRUSTEE TO DO IS TO PROVIDE TO ME
22 AND THE PARTIES, BASED UPON WHAT HAS OCCURRED UP TO NOW, A
23 PROPOSED ORDER OF DISBURSAL SAYING WHERE THE FUNDS WOULD GO,
24 AND BECAUSE IT IS A SENSITIVE NATURE, FILE THAT UNDER SEAL WITH
25 THE COURT.

1 AT THE SAME TIME, IT DOES OCCUR TO ME THAT PART OF
2 THE -- PART OF THE COURT'S CONCERN IS TO HAVE THE WINKLEVOSS
3 BROTHERS AND NARENDRA ENGAGED IN CONDUCT WHICH IS POTENTIALLY
4 IN VIOLATION OF THE JUDGMENT OF THE COURT AND INCORPORATED BY
5 REFERENCES IS THE RELEASE THAT WAS GIVEN.

6 NOW, ORDINARILY, MY ATTITUDE IS THOSE ARE
7 POST-JUDGMENT KIND OF PROCEEDINGS AND CAN BE THE SUBJECT OF A
8 LAWSUIT FOR BREACH OF CONTRACT. THE RELEASE IS A CONTRACT, AND
9 A NEW LAWSUIT COULD BE BROUGHT CLAIMING DAMAGES FOR THAT, AND
10 THAT'S WHY I ASKED THE QUESTION, WHAT IF SOME SUBSEQUENT
11 LITIGATION IS BROUGHT IN VIOLATION OF THE RELEASE. IT HAPPENS.
12 SO THAT ORDINARILY CAN BE HANDLED BY A DAMAGES ACTION.

13 BUT BECAUSE OF THE PROCEDURAL POSTURE OF THE CASE
14 WHERE THIS COURT IS SORT OF -- THE CASE ISN'T QUITE OVER YET,
15 I'M GOING TO CONSIDER THAT I HAVE THAT MATTER BEFORE ME. I
16 DON'T HAVE A REQUEST, BUT IT DOES SEEM TO ME THAT UNDER THESE
17 CIRCUMSTANCES I WILL ORDER THE WINKLEVOSS BROTHERS AND NARENDRA
18 TO SHOW CAUSE WHY THE COURT SHOULD NOT IMPOSE SANCTIONS FOR
19 THEIR CONTINUING LITIGATION IN THE MASSACHUSETTS COURT.

20 NOW, THAT DOESN'T MEAN THEY CAN'T GIVE ME AN
21 EXPLANATION AND I SAY, FINE, YOU MAY GO AHEAD, SUBJECT TO SOME
22 COLLATERAL PROCEEDING. BUT IT DOES ALSO RAISE THE POSSIBILITY
23 THAT I WILL FIND THAT IT IS IN DIRECT VIOLATION, ORDER THAT
24 THEY CEASE, AND UPON PAIN OF NOT CEASING, IMPOSE SOME KIND OF A
25 SANCTION, WHICH COULD INCLUDE THE VERY REWARD THAT THEY

1 RECEIVED IN THE COURSE OF THE SETTLEMENT, FORFEITURE OF THAT.

2 I ONLY SAY THAT BECAUSE THAT, TO ME, SEEMS TO ME TO
3 BE -- TO GET THEIR ATTENTION AS THE MOST FORCEFUL THING THAT
4 THE COURT COULD DO UNDER THESE CIRCUMSTANCES, AND I WANT THEM
5 TO UNDERSTAND THE SERIOUSNESS THAT THE COURT TAKES OF THIS
6 MATTER.

7 AGAIN, IT COULD BE THAT THEY WILL CONVINC ME THAT
8 THEY ARE ABLE TO PROCEED, BUT I NEED TO HAVE THAT FORMALLY
9 BEFORE ME, AND IN THE RESPONSE TO THE SHOW CAUSE ORDER TO
10 EXPLAIN TO ME WHY THEIR CONDUCT IS NOT IN CONTRAVENTION OF THE
11 RELEASE AND NOT A VIOLATION OF THE COURT'S JUDGMENT.

12 I WANT TO BRING THOSE TWO THINGS TOGETHER. IN OTHER
13 WORDS, IT SEEMS TO ME THAT IN FAIRLY SHORT ORDER I SHOULD BE
14 ABLE TO HAVE THEIR RESPONSE TO THAT ORDER, AND IF I'M
15 CONVINCED, IT COULD BE THAT I WILL ORDER THE TRUSTEE TO
16 DISBURSE TO THE LAW FIRMS AND HOLD SOME OTHER PART PENDING
17 THESE PROCEEDINGS, MAKE A FULL DISBURSAL OF THE WHOLE THING.
18 IF YOU TELL ME THERE ARE RIGHTS TO APPEAL, AS YOU HAVE, I WON'T
19 HAVE ANYTHING TO SAY ABOUT THAT; YOU CAN HAVE YOUR RIGHTS TO
20 APPEAL.

21 I AM SOMEWHAT CONCERNED ABOUT THE PARTIAL
22 DISTRIBUTION, ONLY BECAUSE IT SEEMS TO ME THAT WHAT THE LAW
23 FIRMS ARE CLAIMING ARE A DERIVATIVE OF THE WINKLEVOSSES'
24 REWARD. IF THEY DON'T RECEIVE ANYTHING BECAUSE THEY FORFEITED
25 EVERYTHING, THERE'S NOTHING FOR THE LAW FIRMS TO RECEIVE.

1 AGAIN, I DON'T SAY THAT BECAUSE I THINK THAT'S WHAT
2 IS LIKELY TO HAPPEN, BUT IT DOES SEEM TO ME THEIR CLAIM IS
3 DERIVATIVE OF THE WINKLEVOSSES' REWARD, AS OPPOSED TO
4 INDEPENDENT -- THEY HAVE A LIEN AGAINST WHATEVER THE
5 WINKLEVOSSES RECEIVE. IF THEY DON'T RECEIVE ANYTHING, THE LIEN
6 IS WORTHLESS.

7 BUT I DO RESPECT THE FACT THAT THERE HAVE BEEN THESE
8 COLLATERAL PROCEEDINGS TO REDUCE THOSE CLAIMS TO JUDGMENT, AND
9 I'M HOPEFUL THAT ALL OF THIS CAN BE ACTUALLY RESOLVED BY THE
10 PARTIES BETWEEN NOW AND WHATEVER PROCEEDING I SET UP FOR THESE
11 PURPOSES.

12 I DO TAKE THE FACEBOOK REQUEST TO ALSO INCLUDE WHY
13 THEY SHOULD NOT BE ORDERED TO DISMISS THE MASSACHUSETTS
14 PROCEEDING AND TO NOT FILE SIMILAR KINDS OF PROCEEDINGS, BUT I
15 DON'T WANT TO GO IN EXCESS OF MY ENFORCING MY JUDGMENT.

16 AS I SAID, I DO CONTEMPLATE THAT THE PARTIES, AFTER A
17 PERIOD OF TIME, CAN FILE AGAINST ONE ANOTHER AND MAKE CLAIMS
18 THEY ARE NOT COVERED BY THE RELEASE, BUT THIS ONE I'M NOT SURE
19 I UNDERSTAND HOW THAT CASE CAN PROCEED IN THE FACE OF THE
20 RELEASE THAT HAS BEEN GIVEN IN THIS CASE AND THE COURT'S
21 JUDGMENT.

22 SO THE QUESTION THAT REMAINS IS HOW MUCH TIME DO YOU
23 ALL WANT TO PUT THIS TOGETHER?

24 LET ME START WITH THE EASIER ONE. MR. BARRETT, HOW
25 LONG WOULD IT TAKE FOR YOU TO TENDER TO THE COURT YOUR PROPOSED

1 ORDER OF DISBURSEMENT?

2 **MR. BARRETT:** WE COULD CERTAINLY DO IT BY THE END OF
3 THE WEEK, YOUR HONOR. I THINK THE -- WHAT WE WILL -- I THINK
4 THE AMOUNTS THAT THE LAW FIRMS ARE SEEKING ARE CLEAR. I THINK
5 THERE WILL BE A FINAL PARAGRAPH WHICH PROVIDES FOR THE
6 DISTRIBUTION TO THE FOUNDERS, WHICH I TAKE FROM YOUR HONOR'S
7 OTHER COMMENTS, THE COURT WILL MAKE A DECISION ON WHETHER WE'RE
8 DIRECTED TO DO THAT OR NOT, BUT WE CAN CERTAINLY GIVE YOU THE
9 NUMBERS THAT WE BELIEVE WOULD BE APPROPRIATE IF THE COURT SO
10 ORDERS.

11 **THE COURT:** ALL RIGHT. HOW LONG WOULD IT TAKE THE
12 WINKLEVOSS AND NARENDRA PARTIES TO GIVE ME A RESPONSE TO MY
13 CONTEMPLATED ORDER TO SHOW CAUSE?

14 **MR. MEADE:** WELL, YOUR HONOR, QUITE FRANKLY, I THINK
15 THAT YOUR HONOR WILL SEE A CHANGE IN POSITION IN TERMS OF
16 MASSACHUSETTS. I INDICATED TO YOUR HONOR THAT WE HAVE NOT SEEN
17 ANY AUTHORITY THAT SAYS THE RELEASE -- A RELEASE OF THE NATURE
18 IN THIS CASE WOULD BAR THE 60(B) ACTION. I'VE HEARD YOUR HONOR
19 LOUD AND CLEAR THAT YOUR HONOR'S CONCERNED ABOUT THAT, AND I
20 GUESS I HAVE THE FOLLOWING QUESTION:

21 IF TOMORROW MY CLIENTS SAY, WELL, THERE'S A BELIEF
22 THAT THE RELEASE BARS US FROM RAISING THIS MATTER IN THE
23 MASSACHUSETTS COURT, IF THEY SAY, WELL, WE RESPECT THAT, WE
24 HADN'T ANTICIPATED THAT, WHICH IS TRUE, BUT WE RESPECT IT AND,
25 THEREFORE, WE ARE GOING TO WITHDRAW PROCEEDINGS IN

1 MASSACHUSETTS; IN FACT, ALL PROCEEDINGS BASED ON THIS, QUITE
2 FRANKLY, UNANTICIPATED ISSUE, WHETHER THAT CHANGES YOUR HONOR'S
3 VIEW AS TO WHETHER AN OSC IS NECESSARY.

4 **THE COURT:** WELL, IT COULD. I ONLY SUGGEST IT
5 BECAUSE IT WOULD PROCEDURALLY PUT ME IN THE RIGHT POSITION,
6 GIVEN THE FACEBOOK POSITION HERE THAT IT CONSIDERS THAT THERE
7 WOULD BE A VIOLATION OF THE COURT'S JUDGMENT AND THE RELEASE TO
8 RELEASE THE FUNDS AND TO ALLOW THAT LITIGATION TO BE EXISTENT
9 WHILE THE RELEASE TAKES PLACE.

10 IF THAT IS WITHDRAWN, THAT WOULD AT LEAST PRESENT
11 CHANGED CIRCUMSTANCES WHERE IN MY FUTURE PROCEEDING, WHERE I'M
12 ABOUT TO DISBURSE AND I'M TOLD THAT THERE IS NO OTHER
13 IMPEDIMENT -- AND SO IF YOU WANT A PERIOD OF TIME BEFORE THE --
14 WHERE I STAY MY ISSUANCE OF THE ORDER TO SHOW CAUSE SO YOU CAN
15 CONFER WITH YOUR CLIENTS AND DECIDE WHETHER OR NOT YOU'LL
16 VOLUNTARILY TERMINATE THE MASSACHUSETTS PROCEEDINGS, I'M
17 WILLING TO CONSIDER THAT.

18 **MR. MEADE:** YOUR HONOR, THE REASON WHY I RAISE IT IS
19 I WOULDN'T WANT A DECISION TO WITHDRAW IT THIS AFTERNOON OR
20 TOMORROW MORNING INTERPRETED AS A CONCESSION THAT WE
21 INTENTIONALLY VIOLATED THE JUDGMENT OF THIS COURT.

22 I THINK THAT, YOU KNOW, IF WE GOT TO BRIEFING ON THAT
23 SUBJECT, I THINK WHAT WE WOULD FIND IS IT'S A GRAY AREA. I,
24 QUITE FRANKLY, HAD NOT ANTICIPATED A CONTENTION THAT RAISING
25 THE MATTER THAT WE DID IN MASSACHUSETTS WAS A VIOLATION OF THE

1 RELEASE, SO WE'RE IN A BIT OF A DISADVANTAGE HERE.

2 I HEAR YOUR HONOR LOUD AND CLEAR. I THINK IT WILL
3 PRODUCE A FAIRLY SIGNIFICANT CHANGE. I KNOW WHAT MY
4 RECOMMENDATIONS WILL BE, YOUR HONOR. BUT I HAVE TO BE CAREFUL
5 THAT I DON'T DO THAT AND THEN THAT'S A CONCESSION THAT WE DID
6 SOMETHING THAT'S OFFENSIVE TO YOUR HONOR'S JUDGMENT. I THINK
7 IT'S AN OPEN QUESTION.

8 BUT THE BIGGER POINT IS I DON'T THINK IT'S SOMETHING
9 WE WANT TO FIGHT ABOUT. I NEED DIRECTIONS FROM MY CLIENTS. SO
10 WHAT I WOULD PROPOSE, YOUR HONOR, IS THAT THE OSC NOT ISSUE
11 UNTIL THE CLOSE OF BUSINESS TOMORROW, AND I THINK IT'S
12 CERTAINLY POSSIBLE, PERHAPS LIKELY, YOUR HONOR, THAT A LOT OF
13 THESE ISSUES THAT WE WOULD HAVE TO FLUSH OUT CAN BE WITHDRAWN,
14 AND SO THAT THE ONLY QUESTION THAT REMAINS IS THE MECHANICS OF
15 THE DISTRIBUTION. I CAN'T SAY THAT -- YOU KNOW, THESE ARE
16 STRATEGIC DECISIONS THAT THE CLIENT HAS TO MAKE. I THINK THEY
17 CAN BE MADE IN SHORT ORDER.

18 **THE COURT:** LET ME SUGGEST A DATE THEN, BECAUSE I
19 THINK EVEN AN ORDER TO SHOW CAUSE CARRIES WITH IT A STIGMA, AND
20 SO I WILL GIVE YOU THE TIME TO SPEAK WITH YOUR CLIENTS BEFORE
21 MAKING MY JUDGMENT.

22 SO THE FIRST THING I'LL DO IS SET A HEARING FURTHER
23 TO THESE MOTIONS, AND THEN I CAN ALWAYS INCLUDE THE LANGUAGE AS
24 TO OTHER PROCEDURAL THINGS WITH THAT.

25 IF I HAVE THE TRUSTEE'S REPORT BY THE END OF THE

1 WEEK, PROBABLY -- I KNOW THAT THE INTEREST ALONE IS RUNNING
2 LIKE THE MCDONALD'S HOW MANY HAMBURGERS ARE SERVED. SO I'M
3 SOMEWHAT CONCERNED ABOUT TOO MUCH DELAY. I COULD HAVE US BACK
4 NEXT MONDAY -- DO I HAVE A CALENDAR NEXT MONDAY?

5 **THE CLERK:** YES, YOU DO.

6 **THE COURT:** I CAN HAVE US BACK NEXT MONDAY, OR I CAN
7 DROP DOWN TO ANOTHER WEEK FROM THAT. IT DEPENDS HOW LONG IT
8 WILL TAKE YOU ALL TO SORT YOURSELVES OUT.

9 **MR. MASON:** SPEAKING FOR FINNEGAN HENDERSON, THE
10 SOONER THE BETTER, YOUR HONOR, EVEN THOUGH I THINK THE HARDER
11 WORK IS ON MR. MEADE'S SIDE.

12 **THE COURT:** I UNDERSTAND THAT, BUT I'LL KNOW IN TWO
13 DAYS WHETHER OR NOT THAT PROCEEDING WILL BE ONE WHERE I HAVE TO
14 GO THROUGH SOME EVIDENTIARY PROCESS, AND I'VE GOT THE TIME TO
15 DO THAT. SINCE I MOVED TO SAN FRANCISCO, I HAVEN'T HAD BUT ONE
16 TRIAL, SO I'M A LITTLE LONELY UP HERE.

17 **MR. MEADE:** YOUR HONOR, WE WILL TELL YOU OUR INTENDED
18 COURSE OF ACTION IN A STATUS REPORT TO BE FILED AT THE CLOSE OF
19 BUSINESS TOMORROW. IF THE DECISION IS THAT PROCEEDINGS IN
20 MASSACHUSETTS ARE WITHDRAWN, WE CAN CERTAINLY FILE THAT
21 TOMORROW. I DON'T SEE ANY PROBLEM WITH THAT.

22 THE QUESTION OF HOW YOU DO THE DISTRIBUTION HAS
23 ACTUALLY BEEN FULLY BRIEFED. I THINK THAT YOUR HONOR PROBABLY
24 HAS EVERYTHING IN THESE PLEADINGS IT NEEDS. THERE IS A LITTLE
25 BIT OF DISAGREEMENT ON A FEW MATTERS.

1 **THE COURT:** WELL, I DON'T NEED TO HAVE YOU HERE. IN
2 OTHER WORDS, I'LL CALL THE MATTER ON WHATEVER CALENDAR WE AGREE
3 TO. IF THERE'S NO ONE HERE WHO HAS ANY CONTEST AND YOU ALL
4 LOOKED AT WHAT THE TRUSTEE PROPOSES AS TO WHERE THE MONEY GOES,
5 I'LL JUST SIGN THE ORDER.

6 BUT IF THERE ARE PEOPLE HERE THAT WANT TO TALK TO ME
7 ABOUT ANYTHING LEFT, DEPENDING ON WHAT YOU DO IN THE NEXT
8 COUPLE OF DAYS, THEN I'LL HAVE A HEARING. ANY OBJECTIONS?

9 **MR. MEADE:** WELL, THE PROBLEM IS THE NAME OF THE
10 STOCK -- THE CERTIFICATES ARE BOIES, SCHILLER IN TRUST FOR MY
11 THREE CLIENTS AND HOWARD WINKLEVOSS. THE BIG ISSUE IS THAT
12 STOCK NEEDS TO RESIDE IN THE APPROPRIATE ENTITY.

13 IN OUR MOVING PAPERS WE INDICATED THE APPROPRIATE
14 ENTITIES. THERE IS SOME DISPUTE. MR. NARENDRA AND THE
15 WINKLEVOSS BROTHERS WOULD LIKE THE STOCK TO BE HELD BY LLCS SET
16 UP FOR ESTATE PLANNING PURPOSES. THERE'S BEEN A DISAGREEMENT
17 ABOUT THAT.

18 THE NUMBERS -- THE MATH HAS ALL BEEN CALCULATED. THE
19 ONLY REMAINING ISSUE IS WHETHER MY CLIENTS CAN DESIGNATE AN
20 ENTITY TO RECEIVE THE STOCK. I DON'T THINK IT DOES ANY
21 VIOLENCE TO THE AGREEMENT THAT THE PARTIES BARGAINED FOR.

22 **THE COURT:** WHAT'S THE OBJECTION?

23 **MR. CHATTERJEE:** YOUR HONOR, WE SETTLED THE CASE WITH
24 THE WINKLEVOSS BROTHERS AND NARENDRA, AND THOSE ARE THE PEOPLE
25 WHO ARE SUPPOSED TO GET THE STOCK.

1 THE BIG ISSUE WITH THE LLCs, FOR EXAMPLE, IS THAT
2 MEMBERSHIP IN THE LLC CAN CHANGE AT ANY MOMENT IN TIME. THERE
3 CAN BE DIFFERENT PEOPLE THAT ARE DIFFERENT OWNERS OF IT.

4 WE HAVE A SUBSTANTIAL CONCERN -- AGAIN, THAT DOCKET
5 NUMBER, 729 THAT I REFERRED TO -- THERE ARE A NUMBER OF TAX
6 GAMES THAT THE WINKLEVOSS BROTHERS AND NARENDRA ARE ENGAGING
7 IN. THE STATEMENT FROM MR. SCHRAG INDICATES IT'S FOR ESTATE
8 PLANNING PURPOSES. THEY SAID IT'S FOR SOME SORT OF TAX
9 PLANNING PURPOSES.

10 THAT IS NOT WHAT THE AGREEMENT SAYS. THE AGREEMENT
11 SAYS THE INDIVIDUALS GET THE STOCK. IF THEY WANT TO TRANSFER
12 IT AFTERWARDS, THAT'S THEIR PREROGATIVE. BUT IN COMING OUT OF
13 THE ESCROW, IT SHOULD GO TO THE PEOPLE THAT THE AGREEMENT
14 INDICATES.

15 **THE COURT:** THAT IS THE KIND OF THING THAT MAY BE
16 BEYOND MY JURISDICTION, BECAUSE I WOULD ENFORCE THE SETTLEMENT
17 AND THE AGREEMENT AS IT STANDS. AND IT DOES SEEM TO ME THAT
18 YOU CAN, IN A SINGLE TRANSACTION OR IN A TWO-STEP TRANSACTION,
19 ACCOMMODATE BOTH INTERESTS.

20 IF THERE'S A DISPUTE ABOUT THAT AND I AM CONVINCED
21 IT'S THE KIND OF THING I CAN WEIGH IN ON, I'M HAPPY TO DO IT.
22 SO YOU CAN TENDER THAT UP TO ME AS WELL FOR THIS PROCEEDING
23 THAT WE'RE TALKING ABOUT.

24 AS I HEAR IT, I TEND TO AGREE WITH MR. CHATTERJEE
25 THAT IT WOULD BE MORE IN KEEPING WITH THE RELEASE TO HAVE

1 THE -- AND THE JUDGMENT TO HAVE THE STOCK IN THE NAMES OF THE
2 PARTIES WHO WERE SIGNATORIES TO THE RELEASE AND THEY CAN
3 CONTRIBUTE IT IMMEDIATELY, IF THEY WISH, TO WHATEVER ENTITY
4 THEY WISH SO AS THEY -- THE ENTITY IS SEPARATE FROM THEM, AND
5 IF THEY WERE TO COME TO COURT AT SOME POINT AND SAY, I NEVER
6 GOT WHAT I AGREED TO, IT WOULD BE TRUE BECAUSE THERE'S NO
7 TRANSFER. SO YOU CAN SET IT UP IN A WAY THAT I'M SURE, SMART
8 LAWYERS AS YOU ARE, WILL SATISFY THAT CONCERN.

9 **MR. MEADE:** THE ONLY THING I'LL SAY, YOUR HONOR, AND
10 I THINK THIS AFFECTS THE TIMELINE, IF THERE'S AN AGREEMENT THAT
11 THE STOCK CAN BE RELEASED TO MY CLIENTS, THAT THEY CAN THEN
12 TRANSFER IT TO THE APPROPRIATE ENTITY WITHOUT ANY INTERFERENCE,
13 BECAUSE THERE ARE CERTAIN STEPS RELATING TO, YOU KNOW, FACEBOOK
14 REPORTING THE APPROPRIATE OWNER OF RECORD.

15 AS LONG AS -- IF THERE'S AN ASSURANCE HERE IT CAN GO
16 TO MY CLIENTS AND THERE WON'T BE AN INTERFERENCE WITH THEM
17 TRANSFERRING IT AS APPROPRIATE, I DON'T THINK THERE'S ANYTHING
18 WE NEED TO FIGHT ABOUT ON A LATER DAY.

19 I THINK THAT, QUITE FRANKLY, MY PROPOSED ORDER, WITH
20 SOME MODIFICATIONS, WILL SATISFY WHAT YOUR HONOR EXPECTS
21 MR. BARRETT TO PROVIDE, AND WE CAN DO IT IN A MATTER OF DAYS.

22 **MR. CHATTERJEE:** SO, YOUR HONOR, I THINK WE HAVE TO
23 UNPACK ALL OF THESE ISSUES.

24 IF THEY ARE GOING TO WITHDRAW WHAT THEY'RE DOING IN
25 MASSACHUSETTS AND WE'RE GOING TO HAVE THE CONTEMPT ISSUES

1 RESOLVE, AND THEY WANT TO DO THE DISTRIBUTION, WE CAN DEAL WITH
2 ALL OF THAT TOGETHER.

3 MY BIGGEST CONCERN AT THE MOMENT IS IF YOUR HONOR IS
4 GOING TO PROCEED WITH THE CONTEMPT PROCEEDING AND THEY DON'T --
5 AND THEY WANT TO STILL HAVE THE STOCK AND TRANSFER IT TO SOME
6 OTHER KIND OF SHELL ENTITIES, AGAIN THAT'S GIVING THEM THE
7 BENEFIT OF THE CONSIDERATION IN THE SAME WAY THAT YOU'RE
8 WORRIED ABOUT THE CONSIDERATION GOING TO FINNEGAN HENDERSON OR
9 QUINN EMANUEL. IT IS OUT OF THE WINKLEVOSS BROTHERS AND
10 NARENDRA'S HANDS. IT'S NOW AN OPERATING COMPANY THAT THEY
11 HAVE.

12 SO I THINK THE BOTTOM LINE IS WE HAVE TO WORK ALL OF
13 THAT OUT TOGETHER. FIRST STEP IS FOR THEM TO DECIDE WHAT THEY
14 ARE GOING TO DO WITH RESPECT TO THE ORDER TO SHOW CAUSE.

15 **THE COURT:** WELL, I'M SUGGESTING THAT. IN OTHER
16 WORDS, THE TRUSTEE IS GOING TO PUT TOGETHER A DOCUMENT, ADVICE
17 AND CONSENT FROM BOTH SIDES, AS TO THE LANGUAGE OF THE
18 TRANSFER, CLOSING THE ESCROW, AS IT WERE, AND WHERE THE FUNDS
19 GO. AND THAT CAN INCLUDE AN INTERMEDIATE STEP WHERE IT GOES TO
20 ONE PARTY, THEY SIGN OFF OF IT, IT GOES TO ANOTHER.

21 I WANT RECEIPTS SIGNED OF SOME SORT SO THE PARTIES
22 ARE NOT ABLE TO CLAIM THEY DID NOT RECEIVE THE CONSIDERATION
23 THEY BARGAINED FOR.

24 IF THEY WANT TO REQUEST THAT IT BE TRANSFERRED
25 FURTHER, I'M SURE WE CAN ACCOMMODATE ALL OF THAT IN THIS SINGLE

1 PROCEEDING. I HAVEN'T HEARD ANYTHING THAT CONVINCES ME THAT
2 THIS CAN'T BE DONE NEXT MONDAY. OR WHAT I'M ASKING IS: DO YOU
3 NEED ANOTHER WEEK BEYOND THAT BECAUSE OF THESE COMPLICATIONS?

4 **MR. MEADE:** NO, YOUR HONOR. WE WILL MAKE OUR
5 ELECTION BY THE CLOSE OF BUSINESS TOMORROW. I THINK YOUR HONOR
6 CAN HAVE AN ORDER IN HAND AS TO PROPOSED DISTRIBUTION ON
7 WEDNESDAY MORNING. AND I THINK IF THERE'S A DISPUTE, WE CAN
8 COME BACK ON MONDAY. AND, QUITE FRANKLY, BASED ON THIS
9 DISCUSSION, IT SOUNDS LIKE WE'RE IN AGREEMENT AND WE WON'T HAVE
10 TO COME BACK ON MONDAY.

11 **MR. CHATTERJEE:** SO, YOUR HONOR, THE ONE ISSUE WITH
12 RESPECT TO THE ORDER TO SHOW CAUSE IS WE WOULD LIKE TO NOTIFY
13 THE MASSACHUSETTS COURT IN SOME WAY THAT THESE PROCEEDINGS ARE
14 GOING ON, BECAUSE WHAT WE DON'T WANT TO DO IS RUN INTO A
15 SITUATION WHERE WE HAVE A LOT OF COLLATERAL FOOD FIGHTS BECAUSE
16 THE MASSACHUSETTS COURT DECIDES TO DO SOMETHING.

17 **THE COURT:** WHO IS THE "WE"?

18 **MR. CHATTERJEE:** THIS IS FACEBOOK AND ZUCKERBERG.

19 **THE COURT:** I THINK YOU MIGHT EXACERBATE THE
20 CIRCUMSTANCE IF YOU START TAKING A POSITION IN A CASE WHERE IT
21 COULD BE WITHDRAWN, BECAUSE SOMETIMES COURTS LIKE TO HEAR
22 FURTHER IF -- BECAUSE PEOPLE WHO VOLUNTARILY FILE THINGS CAN
23 VOLUNTARILY WITHDRAW. OFTEN COURTS, ONCE THEY HEAR FROM AN
24 ADVERSARY, WILL WANT TO WAIT. SO YOU ACT AT YOUR PERIL,
25 PERHAPS, BY DOING THAT.

1 **MR. CHATTERJEE:** FAIR POINT, YOUR HONOR.

2 **THE COURT:** SO I WON'T DO ANYTHING TO INTERFERE WITH
3 WHATEVER YOU DO, BUT IT DOES SEEM TO ME IT'S UNNECESSARY FOR
4 YOU TO TAKE ANY ACTION IF IN THE NEXT COUPLE OF DAYS THE WHOLE
5 THING IS WITHDRAWN, WHICH IS WHAT I UNDERSTOOD TO BE YOUR ONLY
6 CONCERN.

7 AS I SAY, LATER ON DOWN THE ROAD, YOU MAY END UP
8 HAVING TO FILE SOMETHING, BUT I'M ONLY CONCERNED WITH WHAT IS
9 EXISTENT AT THE TIME OF THE CLOSE OF THIS TRUST.

10 ONE OF MY ASTUTE LAW CLERKS WANTED ME TO MAKE SURE
11 YOU ARE BEING PAID AS A TRUSTEE AND ANYTHING YOU DO IN THE
12 COURSE OF THIS TAKES INTO CONSIDERATION, SO THAT WHEN THE MONEY
13 IS GONE, THE MONEY IS GONE AND THERE'S NO FURTHER BILLS OF ANY
14 KIND.

15 **MR. BARRETT:** YOUR HONOR, WE ARE SERVING AS TRUSTEE
16 AT THE MOMENT PRO BONO.

17 **THE COURT:** IS THAT MY ORDER?

18 **MR. BARRETT:** YOUR HONOR, YOUR ORDER DIDN'T PROVIDE
19 FOR IT. AT THE TIME YOUR HONOR ISSUED THE ORDER, YOU MAY
20 RECALL, OUR FIRM WAS REPRESENTING THE FOUNDERS, AND AS WELL AS,
21 I GUESS, CONNECTU. SUBSEQUENTLY, THE COURT ENTERED AN ORDER
22 SAYING THAT BECAUSE THE CONNECTU STOCK HAD GONE OVER TO THE
23 FACEBOOK SIDE, WE COULD NO LONGER REPRESENT THE FOUNDERS.

24 **THE COURT:** I RECALL THAT.

25 **MR. BARRETT:** AND, ACCORDINGLY, WE HAVE NOT

1 REPRESENTED THE FOUNDERS OR ANY PARTY IN THIS LITIGATION SINCE
2 THAT TIME, AND, THEREFORE, I DON'T HAVE A MECHANISM TO GET PAID
3 FOR OUR SERVICES AS TRUSTEE EITHER.

4 **THE COURT:** WELL, I DIDN'T WANT TO IMPOSE UPON YOU OR
5 YOUR FIRM. SO IF YOU BELIEVE THAT COURT APPEARANCES OR OTHER
6 CLAIMS NEED TO BE COMPENSATED, YOU SHOULD INCLUDE THAT IN YOUR
7 CONVERSATION WITH THE PARTIES, BECAUSE IT'S NOT PART OF MY
8 ORDER THAT YOU SERVED EXTRAORDINARILY. IT WAS ONLY A
9 CONVENIENCE. IF IT'S GONE BEYOND CONVENIENCE, FEEL FREE TO
10 INCLUDE THAT IN THE CLAIM.

11 **MR. BARRETT:** THANK YOU, YOUR HONOR.

12 IN THAT REGARD, COULD I JUST MAKE AN ADMINISTRATIVE
13 REQUEST, THAT IN THE EVENT -- I GUESS WE ALL HOPE IT'S NOT
14 NECESSARY -- THERE IS A HEARING ON THIS NEXT MONDAY, THAT THE
15 TRUSTEE COULD APPEAR AT THAT HEARING BY TELEPHONE RATHER THAN
16 IN PERSON?

17 **THE COURT:** YES, YES. AS LONG AS I HAVE YOU AS THE
18 PERSON, SINCE I WANT TO TAKE ADVANTAGE OF THIS, AND I WANTED TO
19 MAKE SURE WE WERE CONFIRMED -- WHAT IS THAT DATE?

20 **THE CLERK:** IT IS THE 5TH, DECEMBER 5.

21 **THE COURT:** DECEMBER 5TH AT 9:00 O'CLOCK, FURTHER
22 PROCEEDINGS.

23 ANYTHING ELSE?

24 **MR. BARRETT:** THANK YOU, YOUR HONOR.

25 **THE COURT:** ANYTHING ELSE? VERY WELL. MEET AND

1 CONFER. AS TO THE -- SINCE THIS NOTICE HAVING TO DO WITH THE
2 POSITION, I WANT THAT AS A -- SORT OF A PLEADING. IN OTHER
3 WORDS, YOU NEED FILE SOMETHING ON THE DOCKET SAYING, WITH
4 RESPECT TO THE MASSACHUSETTS ACTIONS, THOSE ARE VOLUNTARILY
5 DISMISSED SO THAT THERE'S SOME JUDICIAL RECORD OF THIS, AS
6 OPPOSED TO SIMPLY CALLING ME UP, UNLESS THE PARTIES STIPULATE
7 OTHERWISE. ALL RIGHT?

8 **MR. MEADE:** THANK YOU, YOUR HONOR.

9 **MR. MASON:** THANK YOU, YOUR HONOR.

10 (PROCEEDINGS ADJOURNED.)

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CERTIFICATE OF REPORTER

I, JOAN MARIE COLUMBINI, OFFICIAL REPORTER FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN C 07-1389 JW, FACEBOOK, INC. V. CONNECTU, INC., ET AL., WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY ME AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.

JOAN MARIE COLUMBINI, CSR 5435, RPR

THURSDAY, DECEMBER 1, 2011

**JOAN MARIE COLUMBINI, CSR, RPR
OFFICIAL COURT REPORTER, U.S. DISTRICT COURT
415-255-6842**