

Case Nos. 08-16745, 08-16849, 08-16873

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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THE FACEBOOK, INC., et al.,  
Plaintiffs-Appellees-Cross-Appellants,

v.

CONNECTU, INC. (formerly known as CONNECTU LLC), CAMERON  
WINKLEVOSS, TYLER WINKLEVOSS, DIVYA NARENDRA,  
Defendants-Appellants-Cross-Appellees,

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Appeal from the United States District Court Northern District of California,  
Case No. CV 07-01389-JW, The Honorable James Ware

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**NOTIFICATION AND MOTION TO SEAL  
EXHIBIT 1 TO THE DECLARATION OF THERESA A. SUTTON IN  
SUPPORT OF FACEBOOK'S OPPOSITION TO APPELLANTS/  
CROSS-APPELLEES' MOTION TO FILE OVER-LENGTH  
OPENING BRIEF AND TO WITHDRAW OPPOSITION TO  
FACEBOOK'S MOTION TO DISMISS**

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*Attorneys for Appellees/Cross-Appellants Facebook, Inc. and Mark Zuckerberg*

Pursuant to Ninth Circuit Rule 27-13, Appellees The Facebook, Inc. and Mark Zuckerberg (Collectively “Facebook”) respectfully submit this motion asking the Court to file under seal Exhibit No. 1 to the Declaration of Theresa A. Sutton in Support of Facebook’s Opposition to Appellants/Cross-Appellees’ Motion to File Over-Length Opening Brief and to Withdraw Opposition to Facebook’s Motion to Dismiss.

Facebook’s Exhibit No. 1 to the Declaration of Theresa A. Sutton in Support of Facebook’s Opposition to Appellants/Cross-Appellees’ Motion to File Over-Length Opening Brief and to Withdraw Opposition to Facebook’s Motion to Dismiss incorporate information directly from documents filed under seal in this proceeding and proceedings below and refer to or incorporate by reference the terms of the settlement between the parties and other documents considered to be confidential by the parties. In the District Court’s July 2, 2008 Order, the Court found that “the terms of the parties’ settlement and the related negotiations at their mediation fall within the category of information ‘traditionally kept secret,’ and are not subject to public disclosure.” The Court’s July 2, 2008 Order is attached hereto as Exhibit A. Consistent with this finding, Facebook wish to maintain the confidentiality of the financial terms of the settlement, as well as communications made during mediation and statements made in various filings that could lead to the disclosure of said confidential information. To that end, the parties entered

into, and the California Superior Court issued, a Stipulated Protective Order on January 23, 2006, which prohibits either party from filing in the public record any documents that have been designated as “Confidential” or “Highly Confidential” pursuant to the Protective Order, attached hereto as Ex. B. Likewise, the parties entered into a separate “Second Stipulated Protective Order” in *ConnectU LLC v. Zuckerberg*, Case No. 1:04-cv-11923 (D. Mass.), which has governed filings in related actions among the parties in the District of Massachusetts, attached hereto as Ex. C.

For all the foregoing reasons, Facebook respectfully request that Exhibit No. 1 to the Declaration of Theresa A. Sutton in Support of Facebook’s Opposition to Appellants/Cross-Appellees’ Motion to File Over-Length Opening Brief and to Withdraw Opposition to Facebook’s Motion to Dismiss to be filed under seal.

Dated: February 24, 2010

ORRICK, HERRINGTON & SUTCLIFFE LLP

*/s/ I. Neel Chatterjee /s/*

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I. Neel Chatterjee

Attorneys for Appellees-Cross-Appellants  
THE FACEBOOK, INC., AND  
MARK ZUCKERBERG

## **CERTIFICATE OF SERVICE**

I hereby certify that on February 24, 2010, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

*s/ I. Neel Chatterjee /s/*

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I. Neel Chatterjee