

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Nos. 08-16745, 08-16849, 08-16873 (consolidated)

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

v.

**CONNECTU, INC., *et al.*,
Defendants—Appellants, Cross-Appellees.**

**CAMERON WINKLEVOSS, TYLER WINKLEVOSS AND DIVYA
NARENDRA'S INITIAL NOTICE AND STATEMENT OF THE
ISSUES PURSUANT TO LOCAL RULE 10-3
CORRESPONDING TO SECOND NOTICE OF APPEAL**

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December 29, 2008

Pursuant to Ninth Circuit Rule 10-3, and in relation to defendants-appellants Cameron Winklevoss, Tyler Winklevoss and Divya Narendra's (the "Founders") second notice of appeal filed with the district court on December 19, 2008, the Founders represent that they intend to file a transcript order form requesting the entire transcript for the proceeding taking place on October 28, 2008 (Case No. 5:07-cv-01389-JW (N.D. Cal.)). This is in addition to the transcripts previously ordered by the Founders and defendant-appellant ConnectU, Inc., in relation to the consolidated appeals currently pending before the Court (Nos. 08-16745, 08-16849, 08-16873), as described in their prior notices and statements of the issues, incorporated herein by reference.^{1, 2, 3}

Pursuant to Ninth Circuit Rule 10-3, the Founders submit the following statement of appellate issues for use by plaintiffs-appellees The Facebook, Inc. and Mark Zuckerberg (collectively, "Facebook") in determining additional transcripts to obtain for appeal. The Founders

¹ See Founders' August 21, 2008, notice of designation of reporter's transcripts and statement of issues; ConnectU, Inc.'s August 11, 2008, notice of designation of reporter's transcripts and statement of issues.

² To the extent Cameron Winklevoss, Tyler Winklevoss and Divya Narendra and their counsel have any existing rights or obligations with respect to ConnectU, Inc. (all of the stock of ConnectU, Inc. having been transferred to The Facebook, Inc. on December 15, 2008, as part of the settlement transaction which is at issue on appeal), the same Notice would hereby be given on ConnectU, Inc.'s behalf. Otherwise, no new notice is provided with respect to ConnectU, Inc.

³ Because no new appeal case number has been assigned, this notice is filed in the consolidated appeal currently pending before the Court.

reserve all rights, including but not limited to those under Ninth Circuit Rule 10-3.1(d)-(f).

The Founders anticipate that the issues presented on appeal will include all issues addressed in the parties' briefs and in the district court's orders relating to the final Judgment Enforcing Settlement Agreement (Docket No. 476) entered in the underlying action on July, 2, 2008, the August 8, 2008 Order Denying the ConnectU Founders' Motion to Intervene and Denying ConnectU's Motion to Stay Execution of Judgment (Docket No. 610), and all issues addressed in all related orders including but not limited to the June 25, 2008, Order Granting Plaintiffs' Confidential Motion to Enforce the Settlement Agreement (Docket No. 461), the June 10, 2008, Order Granting in Part Denying in Part Motions Posted as Docket Item Nos. 366, 374, and 393 (Docket No. 428), the November 3, 2008, Order Directing the Special Master to Deliver the Property Being Held in Trust to the Parties in Accordance with the Terms of their Settlement Agreement (Docket No. 653), the November 21, 2008 Amended Judgment Ordering Specific Performance of Settlement Agreement and Declaratory Judgment of Release (Docket No. 665), the December 15, 2008, Order of Dismissal (Docket No. 667), and including but not limited to the following issues:

1. Whether the district court properly enforced the handwritten

Term Sheet & Settlement Agreement (“Term Sheet”), even though, among other things, it omits material terms necessary to make a binding contract; it is ambiguous as to whether it calls for a merger or stock purchase; Facebook’s counsel swore that various merger-related documents were required to finalize the parties’ alleged agreement; and Facebook’s counsel admitted that the Term Sheet was only a tentative settlement.

2. Whether the district court properly enforced the Term Sheet, even though, among other things, it was procured through Facebook’s fraud; it is voidable under federal securities law and common law fraud principles; federal law provides that federal securities law violations cannot be waived; and state law provides that fraud in the inducement claims cannot be waived.

3. Whether the district court erred in holding that alleged release language in the Term Sheet barred a claim alleging that the Term Sheet was procured by fraud in the inducement.

4. Whether the district court erred in holding that a corporation trading its own shares in a transaction by which it acquired all the stock of another corporation and settled litigation claims was not “inside trader” and therefore not bound by laws applicable to insider trading.

5. Whether the district court properly denied discovery and an evidentiary hearing in deciding plaintiffs’ motion to enforce the Term Sheet

where there were disputed issues of fact as to the interpretation of the Term Sheet and whether it was procured by plaintiffs' fraud.

6. Whether the district court properly entered judgment against three of the ConnectU shareholders who were never served or formally joined as parties in the action pending in the district court.

7. Whether the district court erred in refusing to consider evidence of fraud that occurred in the course of mediation.

8. Whether the district court erred in creating a settlement or mediation exception to Federal Statutes barring securities fraud and to other common law and statutory prohibitions of fraud.

9. Whether the remedy ordered in the district court's July 2, 2008, Judgment is appropriate.

10. Whether the district court erred in denying the ConnectU Founders' motion to intervene.

11. Whether the district court's July 2, 2008, Judgment Enforcing Settlement Agreement was a final judgment and, if not, whether the district court's November 21, 2008, Amended Judgment and December 15, 2008, Order cures any prematurity attaching to the July 2 Judgment and/or the currently pending consolidated appeal.

12. Whether the district court had jurisdiction to enter any of its

orders from October, November, and December, 2008, after all parties had previously filed notices of appeal and after ConnectU and the Founders served and filed their opening appeal brief in early October of 2008.

Date: December 29, 2008

Respectfully submitted,

/s/ Evan A. Parke

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