

CA Nos. 08-16745, 08-16849, 08-16873, 09-15021, 09-15133 (consolidated)  
DC No. C 07-01389 JW

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

THE FACEBOOK, INC., ET AL.,  
*Plaintiffs/Appellees/Cross-Appellants,*

v.

CONNECTU, INC.,  
*Defendant/Appellee,*

and

CAMERON WINKLEVOSS, TYLER WINKLEVOSS  
and DIVYA NARENDRA,  
*Defendants/Appellants/Cross-Appellees.*

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Appeal From Judgment Of The United States District Court  
For The Northern District Of California  
(Hon. James Ware, Presiding)

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**APPELLANTS'/CROSS-APPELLEES' MOTION FOR  
EXTENSION OF TIME TO FILE REPLY BRIEF;  
DECLARATION OF JOHN P. DUCHEMIN IN SUPPORT**

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Appellees Cameron Winklevoss, Tyler  
Winklevoss and Divya Narendra*

Appellants and Cross-Appellees Cameron Winklevoss, Tyler Winklevoss, and Divya Narendra (“Appellants”) move, pursuant to Rule 26(b) of the Federal Rules of Appellate Procedure, for an extension of time to file their Reply to the Confidential Brief of Appellees and Cross-Appellants The Facebook, Inc. and Mark Zuckerberg (collectively, “Facebook”) and to the Brief of Appellee ConnectU, Inc. (collectively with Facebook, “Appellees”). Specifically, Appellants move to extend their time to file the Reply until August 5, 2010, which would be an extension of 40 days, for the reasons set out below. Facebook does not oppose this request for extension of time.

*First*, both Appellants and Facebook have filed lengthy briefs—each several thousand words over the 14,000-word limit prescribed by Federal Rule of Appellate Procedure 32(a)(7)(B)(i)—that address multiple procedural and legal issues. In addition, Appellant ConnectU, Inc. filed a brief, albeit a short one, to which Appellants must also reply. The number and complexity of these issues require more time to analyze and brief on reply than would the typical appeal. As one example, consider the numerous different points Facebook makes concerning mediation privilege. Facebook’s Br. 61-71.

*Second*, Facebook has not yet filed or served its Supplemental Excerpts of Record, to which Facebook repeatedly refers in its opposition brief. If

Appellants do not have the supplemental record, they cannot properly prepare their reply brief.

Facebook's position is that it need not file or serve the Supplemental Excerpts of Record until after its opposition brief is officially filed. Declaration of John P. Duchemin in Support of Appellants'/Cross-Appellees' Motion For Extension of Time to File Reply Brief ("Duchemin Decl.") ¶3. Facebook's brief has not yet been filed because it is overlength and Facebook's unopposed motion for leave to file the overlength brief is pending. This creates a problem, because the Court's scheduling order established the deadline for Appellants' Reply Brief as 30 days after the deadline for Facebook to file its brief. More than half of that 30-day reply period has already passed, yet Appellants' counsel have not received the Supplemental Excerpts they need to see to prepare a reply.

*Third*, consistent with the complexity of this case, Appellees had more than three months to prepare their brief in response to Appellants' Opening Brief. Appellants lodged their proposed opening brief on appeal on February 16, 2010, and, at the Court's direction, filed a shortened but substantially similar opening brief on April 26, 2010. By contrast, the Appellants' Reply is due June 26—one month after the filing of Appellees' opposition briefs.<sup>1</sup>

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<sup>1</sup>Since Facebook has moved to voluntarily dismiss its cross-appeals (Dkt. 150), and Appellants have filed a notice of non-opposition to that  
(continued . . . )



## **DECLARATION OF JOHN P. DUCHEMIN**

I, John P. Duchemin, declare as follows:

1. I am an attorney licensed to practice law in the State of California, and a member of the Bar of this Court. I am an attorney at the law firm of Howard Rice Nemerovski Canady Falk & Rabkin, A Professional Corporation (“Howard Rice”), which is counsel of record for Appellants and Cross-Appellees Cameron Winklevoss, Tyler Winklevoss and Divya Narendra (“Appellants”). I make this declaration based upon my personal knowledge of the matters stated herein, except where otherwise indicated. If called as a witness, I could and would testify competently to the facts stated herein.

2. Theresa Sutton, counsel for Appellees told me today that Appellees do not oppose extending until August 5, 2010, Appellants’ deadline to file their reply brief. I contacted counsel for ConnectU late this afternoon today to determine ConnectU’s position. I will inform the Court promptly upon hearing from ConnectU’s counsel.

3. Appellees’ proposed opposition brief contains repeated references to Supplemental Excerpts of Record, but Appellants’ counsel have not received copies of those Supplemental Excerpts. To my knowledge, Facebook’s Supplemental Excerpts have also not been lodged with the Court. On June 10 and 11, 2010, I asked Ms. Sutton about the Supplemental Excerpts of Record. Ms. Sutton told me that Facebook’s position was that it

did not need to file the Supplemental Excerpts until Facebook's brief was officially filed by the Court, and therefore Facebook would wait until that time to file its supplemental excerpts. In the late afternoon today, I left a message for Ms. Sutton asking that Facebook serve a copy of the Supplemental Excerpts on us now so that we may begin studying the citations to the Supplemental Excerpts set forth in Facebook's brief.

4. I was responsible for gathering scheduling information relevant to the accompanying Motion For Extension of Time to File Reply Brief from the Howard Rice attorneys responsible for the Reply Brief's preparation. Jerome B. Falk, Jr. is lead counsel for Appellants. He told me that he is scheduled to conduct two oral arguments in major appeals on July 12 and 13, 2010. The first of these oral arguments is in *F.B.T. Productions, LLC v. Aftermath Records*, consolidated case No. 09-55817. It will be heard before a panel of this Court on July 12, 2010. *F.B.T. Productions* involves an appeal of a \$2.5 million attorneys' fee award following a seven-day jury trial on complicated intellectual property issues.

5. The second oral argument is in *Uzyel Irrevocable Trust Nos. 1 and 2 v. Kadisha*, case No. B196045. It will be heard by the California Court of Appeal, Second Appellate District, on July 13, 2010. This case involves many issues of first impression concerning California trust law and the California Probate Code addressed in six separate appellate briefs. The record consists of more than 80,000 pages of reporter's transcript and 42

volumes of lower-court filings covering trial-court litigation that lasted more than six years. Mr. Falk believes that he cannot prepare adequately for these two oral arguments and also devote the time necessary to contribute to the Reply Brief in this matter.

6. Attorney Sean SeLegue, a director of Howard Rice, is the principal drafter of the Appellants' reply brief in the present case. He told me that he is currently handling several other matters, including defending an action against a longtime client that was filed shortly after Appellees served their briefs in this matter on May 26, 2010.

7. Attorney Noah Rosenthal is responsible for researching, analyzing and drafting portions of the reply brief in the present case. He told me that he is preparing for and then conducting an arbitration currently scheduled to begin on June 15. Mr. Rosenthal is also involved in a major confidential matter to be completed on or about June 30. After that, Mr. Rosenthal will be on vacation from June 30 until July 6.

8. I am also responsible for researching, analyzing and drafting portions of the reply brief in the present case. I am helping Mr. Falk prepare for the Kadisha appeal until June 22, at which point I will start an overseas vacation lasting through July 7.

I declare under penalty of perjury under the laws of the United States of



## **CERTIFICATE OF SERVICE**

I hereby certify that on June 14, 2010, I electronically filed the foregoing **APPELLANTS'/CROSS-APPELLEES' UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE REPLY BRIEF; DECLARATION OF JOHN P. DUCHEMIN IN SUPPORT** by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. On June 14, 2010, I caused the foregoing document described as **APPELLANTS'/CROSS-APPELLEES' UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE REPLY BRIEF; DECLARATION OF JOHN P. DUCHEMIN IN SUPPORT** to be dispatched through the regular mail collection process at the law offices of Howard Rice Nemerovski Canady Falk & Rabkin, A Professional Corporation, located at Three Embarcadero Center, Seventh Floor, San Francisco, California, for deposit in the United States Postal Service to the following non-CM/ECF participants:

**Mark A. Byrne  
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*/s/ John P. Duchemin*  
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John P. Duchemin