

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

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

THE FACEBOOK, INC.; MARK ZUCKERBERG,
Plaintiffs-Appellees,

DIVYA NARENDRA; CAMERON WINKLEVOSS;
TYLER WINKLEVOSS,
Intervenors,

v.

PACIFIC NORTHWEST SOFTWARE, INC.;
WAYNE CHANG; WINSTON WILLIAMS,
Defendants.

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

**REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF APPELLANTS/INTERVENORS'
MOTION TO RECALL MANDATE**

JEROME B. FALK, JR.
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Intervenors Divya Narendra, Cameron
Winklevoss and Tyler Winklevoss*

Appellants and Intervenors Cameron Winklevoss, Tyler Winklevoss and Divya Narendra (the “Founders”) request that this Court take judicial notice of the following documents filed in the related case pending in the United States District Court for the District of Massachusetts: *ConnectU, Inc., et al. v. Facebook, Inc., et al.*, Case No. 07-10593 (the “Massachusetts actions”).

- The court’s September 30, 2009 Memorandum and Order staying the Massachusetts case and terminating all outstanding motions without prejudice;
- Status Report of Cameron Winklevoss, Tyler Winklevoss and Divya Narendra Concerning Material Development filed in the same case on April 20, 2011 (without exhibits).

The Court may take judicial notice of court filings and other matters of public record. *See Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998). Judicial notice is appropriate to discern the procedural status of

related actions involving the same parties. *See Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006).

DATED: May 21, 2011.

Respectfully,

JEROME B. FALK, JR.
SEAN M. SELEGUE
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NOAH S. ROSENTHAL
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By /s/ Sean M. SeLegue
SEAN M. SELEGUE

*Attorneys For Appellants and
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Winklevoss and Tyler Winklevoss*

W03 052111-180060001/PB6/1649083/F

DECLARATION OF NOAH S. ROSENTHAL

I, Noah S. Rosenthal, 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 associate at the law firm of Howard Rice Nemerovski Canady Falk & Rabkin, A Professional Corporation, counsel to Appellants and Intervenors Cameron Winklevoss, Tyler Winklevoss and Divya Narendra. I make this Declaration based upon my personal knowledge of the matters stated herein, except where otherwise indicated (thereupon testifying from information and belief). If called as a witness, I could and would testify competently to the facts stated herein.

2. Exhibit A is a true and correct copy of an order dated September 30, 2009 , filed in the United States District Court for the District of Massachusetts, in Case No. 07-10593, *ConnectU, Inc., et al. v. Facebook, Inc., et al.*, obtained from the court's PACER system.

3. Exhibit B is a true and correct copy of the Status Report of Cameron Winklevoss, Tyler Winklevoss and Divya Narendra Concerning Material Developments filed in the same case on April 20, 2011 (without exhibits).

I declare under penalty of perjury that the foregoing is true and correct. Executed this 21st day of May, 2011, in San Francisco, California.

/s/ Noah S. Rosenthal
NOAH S. ROSENTHAL

W03 052111-180060001/PB6/1649083/F

PROOF OF SERVICE

I hereby certify that I electronically filed the foregoing **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF APPELLANTS/INTERVENORS' MOTION TO RECALL** mandate with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on May 21, 2011.

Participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. On May 21, 2011, the foregoing document, described as **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF APPELLANTS/INTERVENORS' MOTION TO RECALL**, was mailed by placing the document for deposit in the United States Postal Service through the regular mail collection process at the law offices of Howard Rice Nemerovski Canady Falk & Rabkin, located at Three Embarcadero Center, Seventh Floor, San Francisco, California, to the following non-CM/ECF participants:

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