

FILED

UNITED STATES COURT OF APPEALS

DEC 12 2008

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

THE FACEBOOK, INC.; et al.,

Plaintiffs - Appellees/Cross-Appellants,

Nos. 08-16745
08-16849
08-16873

CNET NETWORKS, INC.

D.C. No. 5:07-cv-01389-JW
Northern District of California,
San Jose

Intervenor,

v.

ORDER

CONNECTU, INC., formerly known as
ConnectU, LLC, et al.,

Defendants - Appellants/Cross-Appellees,

and

PACIFIC NORTHWEST SOFTWARE,
INC.; et al.,

Defendants.

Before: CANBY, LEAVY and KLEINFELD, Circuit Judges.

Appellants/Cross-Appellees' unopposed motion to file under seal their "emergency motion to stay and alternative petition for writ of mandamus" and exhibits and reply in support of that motion is granted. *See* 9th Cir. R. 27-13; *see*

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also Gator.Com Corp. v. L.L. Bean, Inc., 398 F.3d 1125, 1128 n.2 (9th Cir. 2005) (en banc) (citing Ninth Circuit Rule 27-13). Appellees/Cross-Appellants' unopposed motion to file under seal their opposition to the emergency motion and exhibits in support of that opposition is granted. *See id.*

Appellants/Cross-Appellees' "emergency motion to stay and alternative petition for writ of mandamus" is denied. *See Golden Gate Rest. Ass'n v. City & County of San Francisco*, 512 F.3d 1112, 1115-16 (9th Cir. 2008); *Bauman v. United States Dist. Court*, 557 F.2d 650 (9th Cir. 1977).

Appellees/Cross-Appellants' motion to dismiss is denied without prejudice to renewing the arguments in the second cross-appeal brief. *See Nat'l Indus. v. Republic Nat'l Life Ins. Co.*, 677 F.2d 1258, 1262 (9th Cir. 1982) (stating that merits panel may consider appellate jurisdiction despite earlier denial of motion to dismiss).

The second cross-appeal brief is due 30 days after the filing date of this order; the third cross-appeal brief is due 30 days after the filing date of the second cross-appeal brief; and the optional reply cross-appeal brief is due 14 days after service of the third cross-appeal brief.