

Case No. 09-15021

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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,

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

**APPELLEES-CROSS-APPELLANTS THE FACEBOOK, INC. AND MARK
ZUCKERBERG'S COUNTER-DESIGNATION OF TRANSCRIPTS AND
IDENTIFICATION OF ISSUES AND DESIGNATION OF TRANSCRIPT
FOR CROSS-APPEAL PURSUANT TO LOCAL RULE 10-3.1(a), (b)**

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A. Counter-Designation of Transcript

Appellees-Cross-Appellants give notice that there is an additional transcript relevant to the appeal filed by Appellants:

Hearing Transcript dated June 02, 2008 (Case No.1:07-cv-10593 (DPW), for ConnectU's Emergency Motion for Expedited Hearing and In Camera Examination of Documents and of the Expert Parmet, In Regard to the September 13, 2007 Order.

This transcript reflects a hearing held by the District Court of Massachusetts in a related case pending between the parties to this appeal. It contains materials bearing on the issues that Appellants intend to raise on this appeal. It was submitted as an exhibit in the proceedings from which the appeal is taken.

B. Designation of Transcript and Notice of Unavailability

Appellees-Cross-Appellants identify the issue to be raised on their cross-appeal filed January 8, 2009, as follows: The district court erred when it granted Cameron Winklevoss, Tyler Winklevoss and Divya Narendra's Motion to Dismiss by order dated November 30, 2007.

The transcripts relevant to the cross-appeal are the transcript of the hearing dated October 10, 2007, the transcript of the hearing dated July 11, 2007, and the transcripts of the hearing dated January 16, 2008.

The transcript for the hearing dated October 10, 2007, is not available due to courthouse equipment malfunction. Appellees-Cross-Appellants hereby give notice pursuant to Federal Rule of Appellate Procedure 10(c) that the following materials are relevant to that hearing:

1. Defendants Cameron Winklevoss, Tyler Winklevoss and Divya Narendra's Motion to Dismiss for Lack of Personal Jurisdiction Pursuant to Fed. R. Civ. P. 12(b)(2), or in the Alternative Motion to Strike Moving Defendants Names from the Second Amended Complaint filed by Tyler Winklevoss, Divya Narendra, Cameron Winklevoss on September 5, 2007 (Docket No. 136);
2. Declaration of Scott R. Mosko in Support of Defendants Cameron Winklevoss, Tyler Winklevoss and Divya Narendra's Motion to Dismiss for Lack of Personal Jurisdiction Pursuant to Fed. R. Civ. P. 12(b)(2), or in the Alternative Motion to Strike Moving Defendants' Names from the Second Amended Complaint filed by Tyler Winklevoss, Divya Narendra, Cameron Winklevoss, with exhibits, on September 5, 2007 (Docket No. 137);
3. Plaintiffs' Opposition to Defendants' Motion to Dismiss filed by Mark Zuckerberg and The Facebook, Inc. on September 19, 2007 (Docket No. 157);
4. Declaration of Theresa A. Sutton in Support of Plaintiff's Opposition to Defendants' Motion to Dismiss, with exhibits, on September 19, 2007 (Docket No. 158);

5. Defendants Cameron Winklevoss, Tyler Winklevoss and Divya Narendra's Reply to Plaintiffs' Opposition to Defendants' Motion to Dismiss For Lack of Personal Jurisdiction filed by Tyler Winklevoss, Divya Narendra, Cameron Winklevoss on September 26, 2007 (Docket No. 167);
6. Declaration of Scott R. Mosko in Support of Defendants Cameron Winklevoss, Tyler Winklevoss and Divya Narendra's Reply to Plaintiffs' Opposition to Defendants' Motion to Dismiss For Lack of Personal Jurisdiction filed by Tyler Winklevoss, Divya Narendra, Cameron Winklevoss, with exhibits, on September 26, 2007 (Docket No. 168);
7. Supplemental Declaration of Theresa A. Sutton in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss filed by Mark Zuckerberg and The Facebook, Inc., with exhibits, on October 2, 2007 (Docket No. 197);
8. Facebook's Opposition to Motion to Dismiss of Pacific Northwest Software and Winston Williams (Docket No. 90)
9. Declaration of Monte M.F. in Support of Plaintiff's Opposition to Pacific Northwest Software and Winston Williams' Motion to Dismiss (Docket No. 92);
10. Order by Judge Richard Seeborg Granting Motion to Dismiss Claims Against Defendants Cameron Winklevoss, Tyler Winklevoss, and Divya Narendra, dated November 30, 2007 (Docket No. 232).

Dated: January 8, 2009

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/ I. Neel Chatterjee /s/

I. Neel Chatterjee
Attorneys for Plaintiffs-Appellees
THE FACEBOOK, INC., AND
MARK ZUCKERBERG

CERTIFICATE OF SERVICE

I am more than eighteen years old and not a party to this action. My business address is Orrick, Herrington & Sutcliffe LLP, 1000 Marsh Road, Menlo Park, California 94025.

On January 8, 2009, I served a true and correct copy of the following document(s):

**Appellees-Cross-Appellants The Facebook, Inc. and Mark Zuckerberg's
Counter-Designation of Transcripts and Identification of Issues and
Designation of Transcript for Cross-Appeal Pursuant to Local Rule 10-
3.1(a),(b).**

By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Menlo Park, California addressed as set forth below:

**ATTORNEYS FOR DEFENDANTS CONNECTU INC. (PRIOR TO DECEMBER 15, 2008),
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I am readily familiar with my firm's practice for collection and processing correspondence for mailing in the United States Postal Service, to wit, that correspondence be deposited with the United States Postal Service this same day in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 8, 2009 at Menlo Park, California.

/s/ I. Neel Chatterjee /s/

I. Neel Chatterjee