

Case Nos. 08-16745, 08-16873, 09-15021

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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THE FACEBOOK, INC. and MARK ZUCKERBERG,

*Plaintiffs-Appellees,*

v.

CONNECTU, INC. (formerly known as CONNECTU LLC), CAMERON  
WINKLEVOSS, TYLER WINKLEVOSS, DIVYA NARENDRA,

*Defendants-Appellants.*

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

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**UNOPPOSED MOTION TO FILE LATE BRIEF**

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Appellees The Facebook, Inc. and Mark Zuckerberg (collectively, “Facebook”) respectfully request that this Court accept filing of a public redacted version of the sealed answering brief that Facebook previously filed on May 26, 2010. The present Motion is not opposed by Appellants.

By Order dated June 15, 2010 (DktEntry 152), the Court of Appeals granted Facebook permission to file under seal in its entirety Facebook’s “Confidential Brief of Appellees.” In accordance with that Order, Facebook timely filed the requisite copies of such sealed brief on June 15, 2010.<sup>1</sup>

Although not required to do so, Facebook thereafter discussed with counsel for Appellants what content in the sealed brief could be publicly disclosed in a redacted and electronically-filed copy of the pleading. Previously, Appellants via a letter to the Clerk of the Court of Appeals dated May 5, 2010 (DktEntry 141-1) themselves had submitted without prior leave their own public redacted version of Appellants’ Opening Brief. The confidential version of that brief was filed entirely under seal by Appellants on April 26, 2010.

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<sup>1</sup> Facebook on May 26, 2010, in accordance with 9th Cir. Rule 27-13, previously had filed provisional copies of the Confidential Brief of Appellees along with its Motion to Seal. This Court’s March 29, 2010 Scheduling Order (DktEntry 135) had set May 26, 2010 as the deadline for Appellees to submit their Answering Brief.

Because the Clerk had permitted Appellants to utilize that “after-the-fact” procedure for submission of their own redacted brief, Appellees presumed they too could rely upon it with respect to the timing of the filing of Facebook’s redacted Appellee brief. There is no Ninth Circuit Rule that specifically describes when, if at all, parties are to submit public, redacted copies of their timely filed sealed briefs.

As a result of the parties’ negotiations on what could constitute public content, counsel for Appellants confirmed on August 2, 2010 that Appellants would not oppose Facebook’s filing a redacted copy of its Brief of Appellees. The proposed content of such brief is reflected in the pleading submitted in conjunction with Facebook’s separately filed “Motion for Leave To File a Public Redacted Version of the Brief Appellees Previously Filed Under Seal” (DktEntry 162-1).

However, Facebook now has learned that Court of Appeals treats the filing of copies of redacted briefs as being “late,” even when the original sealed brief is timely filed in accordance with the deadlines set by the Court of Appeals.

Accordingly, because Facebook understands that its separately submitted redacted brief is treated as being filed “late” by the Court of Appeals, Facebook hereby requests that the Court of Appeals grant this motion, and accept for late filing the “Brief of Appellees [Public, Redacted Version].” As noted, the sealed version of such brief previously was timely filed in accordance with this Court’s June 15,

2010 Order. Further, Appellants do not oppose this Motion, and it will permit public disclosure for most of the content of the brief currently under seal.

Dated: August 10, 2010

ORRICK, HERRINGTON & SUTCLIFFE LLP

*/s/ Theresa A. Sutton*

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Theresa A. Sutton  
Attorneys for Appellees

**CERTIFICATE OF SERVICE**

I hereby certify that on August 10, 2010, I electronically filed the forgoing:  
**UNOPPOSED MOTION TO FILE A LATE BRIEF** 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 and paper copies will be mailed to those indicated as non registered participants on August 10, 2010.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: August 10, 2010.

Respectfully submitted,

*/s/ Theresa A. Sutton*

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Theresa A. Sutton