

Case No. 09-15021, 09-15133

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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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,

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

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**REPLY MEMORANDUM IN SUPPORT OF APPELLEES-CROSS-  
APPELLANTS' MOTION TO CONSOLIDATE CASE NOS. 09-15021  
AND 09-15133 WITH CASE NOS. 08-16745, 08-16849, 08-16973**

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, Appellees-Cross-Appellants state that Mark Zuckerberg is an individual. No parent corporation owns 10% or more of the stock of Facebook, Inc. and there are no publicly-held corporations that own 10% or more its stock.

If this court decides to consider the instant appeal in light of ConnectU's Motion to Dismiss, filed on December 22, 2008, and its Motion to Disqualify, filed on January 20, 2009, Appellees-Cross Appellants Facebook, Inc. and Mark Zuckerberg (collectively "Facebook") respectfully move this Court for an order that consolidates this appeal and cross-appeal, Nos. 09-15021 and 09-15133, with the already consolidated appeals and cross-appeal docketed under numbers 08-16745, 08-16849, 08-16973.

Facebook does not object to Appellants, Cameron Winklevoss, Tyler Winklevoss and Divya Narendra's (collectively "ConnectU Founders") request for an additional 1,850 words to address the two new issues presented in their second notice of appeal. Facebook also does not object to the schedule proposed by the ConnectU Founders. Facebook, however, does object to the continued appeal by the ConnectU Founders for all issues associated with the enforcement proceedings and Judgment dated July 2, 2008, because they waived their right to appeal by not opposing the enforcement of the settlement in the District Court. Facebook intends to file a separate Motion to Dismiss addressing this issue. *Slaven v. American Trading Transp. Co., Inc.*, 146 F.3d 1066, 1069 (9th Cir. 1998) (dismissing appeal following entry of judgment based on a settlement agreement because appellant waived any arguments before the district court).

Accordingly, should this Court continue the Founders' appeals, Facebook respectfully reaffirms its unopposed request to consolidate the appeal and cross-appeal, Nos. 09-15021 and 09-15133, with the already consolidated appeals and cross-appeal docketed under numbers 08-16745, 08-16849, 08-16973.

Dated: February 11, 2009

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/ I. Neel Chatterjee

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 February 11, 2009, I served a true and correct copy of the following document(s):

**REPLY MEMORANDUM IN SUPPORT OF APPELLEES-CROSS-  
APPELLANTS' MOTION TO CONSOLIDATE CASE NOS. 09-15021  
AND 09-15133 WITH CASE NOS. 08-16745, 08-16849, 08-16973**

I caused such documents to be transmitted by electronic mail to the offices of the addressee(s) below and 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:

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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 February 11, 2009 at Menlo Park, California.

/s/ Karen Mudurian /s/

Karen Mudurian