

CA No. 09-17050
DC No. C 07-01389 JW

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

THE FACEBOOK, INC., ET AL.,
Plaintiffs/Appellees/Cross-Appellants,

v.

CONNECTU, INC., ET AL.,
Defendants/Appellants/Cross-Appellees.

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

**FOUNDERS' RESPONSE TO NOVEMBER 25, 2009
FILING OF CONNECTU, INC.**

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On November 25, 2009, ConnectU filed with this Court a “status report” to inform the Court that ConnectU is seeking a telephone conference in the District Court. ConnectU seeks to have a telephone conference with the District Court based on ConnectU’s allegation that Appellants Tyler Winklevoss, Cameron Winklevoss and Divya Narendra (collectively, the “Founders”), and their former counsel in this Court have failed to obey the District Court’s order disqualifying prior counsel. With one possible exception noted below, ConnectU’s report is entirely unnecessary for any purpose other than to malign the Founders before this Court. Contrary to ConnectU’s allegation, the Founders have complied with the disqualification order, which applies only to proceedings in the Northern District of California (the “District Court”) and before this Court.

ConnectU claims that the District Court’s order disqualified the law firm of Finnegan, Henderson, Farabow, Garrett & Dunner LLP in *another* action pending in the District of Massachusetts. But there is no basis for ConnectU’s allegation, which is refuted by the express language of the District Court’s disqualification order and is based on a misquotation from an order of the District Court in Massachusetts. In the event this Court is interested in the details, we have attached as exhibits to this filing a courtesy copy of the relevant District Court filings by both sides.¹

¹See Declaration of Sean M. SeLegue Exs. A, B.

Putting aside ConnectU's apparent interest in casting gratuitous aspersions on the Founders and Finnegan Henderson in this forum, ConnectU's contempt contention calls into question whether the Founders' pending appeal of the disqualification order is actually moot. The Founders had taken the position that the appeal is moot based on clear language in the disqualification order limiting the effect of that order to the District Court and the Ninth Circuit. *See* Docket Entry 7114894 (Founders' October 30, 2009, Response To October 9, 2009 Order re Jurisdiction). Since ConnectU now claims, albeit erroneously, that the disqualification order extends also to the Massachusetts action, the landscape has changed.

In the Founders' view, this Court should consider dismissing the disqualification appeal (No. 09-17050) as moot only if the Court expressly states that the District Court's disqualification order applies only to the Northern District of California proceeding and related proceedings in this Court. Such a dismissal would be an efficient disposition because it would obviate the need for briefing and argument on the disqualification issue. Interpreting that order as limited to the Northern District of California and related Ninth Circuit proceedings is entirely sensible, because the proper management of the District of Massachusetts action should be left to that

Court and, to the extent appropriate, the First Circuit.

DATED: December 4, 2009.

Respectfully,

JEROME B. FALK, JR.
SEAN M. SELEGUE
JOHN P. DUCHEMIN

HOWARD RICE NEMEROVSKI CANADY
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By /s/ Sean M. SeLeague
SEAN M. SELEGUE

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CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2009, I electronically filed the foregoing **FOUNDERS' RESPONSE TO NOVEMBER 25, 2009 FILING OF CONNECTU, INC.** and **DECLARATION OF SEAN M. SELEGUE IN SUPPORT OF FOUNDERS' RESPONSE TO NOVEMBER 25, 2009 FILING OF CONNECTU, INC.** 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.

I further certify that some of the participants in the case are not registered CM/ECF users. On December 4, 2009, I dispatched the foregoing documents described as **FOUNDERS' RESPONSE TO NOVEMBER 25, 2009 FILING OF CONNECTU, INC.** and **DECLARATION OF SEAN M. SELEGUE IN SUPPORT OF FOUNDERS' RESPONSE TO NOVEMBER 25, 2009 FILING OF CONNECTU, INC.** by placing the documents 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, A Professional Corporation, located at Three Embarcadero Center, Seventh Floor, San Francisco, California to be served by mail to the following non-CM/ECF participants:

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/s/ Sean M. SeLegue
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