

**Dalton, Amy**

**From:** Sean SeLegue [sselegue@howardrice.com]  
**Sent:** Thursday, January 07, 2010 1:17 PM  
**To:** Sutton, Theresa A.  
**Cc:** Cooper, Monte; Dalton, Amy; John P. Duchemin; Jerome B. Falk, Jr.  
**Subject:** RE: Facebook -- January 5 Motion to View Confidential Materials

Theresa, thank you for your offer to assist with gathering materials. We have most if not all of what we need already from counsel but in some cases cannot be sure from the docket that we have a particular document. The court has a very efficient process set up for copying so we will be fine with that, I expect.

With regard to your question about the protective order, I am not sure what you mean about "agreeing" to comply with court orders. It goes without saying that we will comply with court orders and would not knowingly violate them. It's not a matter of agreement. Having checked in with our clients, though not having heard back from all of them, I have no reason to think they have a different view.

I am mindful that much of the record here is sealed and that protective orders are in place in the two district court cases. Of course, we reserve the right to seek a change in the orders or to ask for an order unsealing documents, should we believe those courses of action to be appropriate. I did note in the record that one of the judicial officers, Magistrate Judge James if I recall correctly, expressed the view that the scope of sealing in this case has perhaps been overbroad, and that is my sense as well. We will likely need to discuss the appropriate scope of sealing in the Ninth Circuit in connection with the briefs on appeal, but it is premature to discuss that issue at this time. We will be back in touch about that.

Regards,  
 Sean

Please note my new direct dial number is 415.677.6388

**Sean SeLegue**

HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN, A Professional Corporation  
 Three Embarcadero Center, Seventh Floor, San Francisco, CA 94111-4024 415.434.1600  
 DD: 415.677.6388 F: 415.677.6262  
 sselegue@howardrice.com www.howardrice.com

Please consider the environment before printing this email



**From:** Sutton, Theresa A. [mailto:tsutton@orrick.com]  
**Sent:** Wednesday, January 06, 2010 1:08 PM  
**To:** Sean SeLegue  
**Cc:** Cooper, Monte; Dalton, Amy; John P. Duchemin  
**Subject:** Facebook -- January 5 Motion to View Confidential Materials

Sean-

I am writing with regard to your January 5, 2010, 7-11 Motion to view and copy confidential documents filed in Case Number C:07-01389 JW (the "California Action"). Though Facebook does not, at this time, anticipate opposing your motion, please confirm that you, your firm and your clients (Messrs. Winklevoss and Narendra) agree that any use or disclosure of the materials filed in the California Action is governed by the Stipulated Protective Order entered in that case, as well as the confidentiality orders (i.e., the Second Stipulated Protective Order and

Order for Discovery of Computer Memory Devices) entered in the related District of Massachusetts case (*ConnectU, Inc., et al v. Facebook, Inc., et al*, No. 1:07-cv-10593-DPW). In addition, please let us know why you believe your files may be incomplete, as we may be able to assist you in making sure you have all materials filed in the California Action.

Because Civil Local Rule 7-11 requires Facebook's filing of an opposition to your Motion by Friday, January 8, please confirm by noon tomorrow, January 7, your (and your clients') intention to abide by the Protective Orders in the California Action, as well as the Massachusetts case.

Theresa



*Theresa A. Sutton*  
*Orrick, Herrington & Sutcliffe LLP*  
*Silicon Valley Office*  
*1000 Marsh Road, Menlo Park, CA 94025*  
*650.614.7307 (Voice)*  
*650.614.7401 (Fax)*  
*tsutton@orrick.com*  
*www.orrick.com*

"EMF <orrick.com>" made the following annotations.

-----  
=====

IRS Circular 230 disclosure:  
To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication, unless expressly stated otherwise, was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matter(s) addressed herein.

=====

NOTICE TO RECIPIENT: THIS E-MAIL IS MEANT FOR ONLY THE INTENDED RECIPIENT OF THE TRANSMISSION, AND MAY BE A COMMUNICATION PRIVILEGED BY LAW. IF YOU RECEIVED THIS E-MAIL IN ERROR, ANY REVIEW, USE, DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS E-MAIL IS STRICTLY PROHIBITED. PLEASE NOTIFY US IMMEDIATELY OF THE ERROR BY RETURN E-MAIL AND PLEASE DELETE THIS MESSAGE FROM YOUR SYSTEM. THANK YOU IN ADVANCE FOR YOUR COOPERATION.

For more information about Orrick, please visit <http://www.orrick.com/>

=====  
=====

---

This message and any files or text attached to it are intended only for the recipients named above, and contain information that may be confidential or privileged. If you are not an intended recipient, you must not read, copy, use or disclose this communication. Please also notify the sender by replying to this message, and then delete all copies of it from your system. Thank you.