

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

CONNECTU, INC., CAMERON  
WINKLEVOSS, TYLER WINKLEVOSS,  
AND DIVYA NARENDRA,

Plaintiff,

v.

FACEBOOK, INC., MARK ZUCKERBERG,  
EDUARDO SAVERIN, DUSTIN  
MOSKOVITZ, ANDREW MCCOLLUM,  
and FACEBOOK, LLC,

Defendants.

Civil Action No. 1:07-CV-10593-DPW

Related Action No. 1:04-CV-11923 (DPW)

**DEFENDANTS' MOTION IN ACCORDANCE WITH COURT ORDER (DKT. NO. 275)  
REASSERTING PREVIOUS MOTIONS TO DISMISS (DKT. NOS. 232, 233 AND 243)**

This motion seeks to reassert two motions to dismiss previously denied without prejudice by this Court pending appellate review of a decision of a sister court located in the Northern District of California. As the decision of the Northern District of California has been affirmed, the two motions to dismiss should now be granted, and this case should be dismissed with prejudice.

These motions to dismiss were originally submitted pursuant to a decision in the Northern District of California enforcing a settlement agreement covering these proceedings. Specifically, the motions to dismiss sought dismissal of this action with prejudice pursuant to an Amended Judgment from the Northern District of California enforcing the terms of the settlement agreement. Declaration of Monte M.F. Cooper in Support of Motion in Accordance With Court Order Reasserting Previous Motions to Dismiss (“Cooper Decl.”) Ex. 1, at 2. At the time the previously filed motions to dismiss were filed, Plaintiffs advised the Court that they intended to appeal.

During the pendency of the appeal, this Court entered two Orders in which it “direct[ed] the Clerk to stay these cases and terminate all outstanding motions without prejudice to the motion of any party to reassert them no later than 30 days after the issuance of any mandate of the [Ninth Circuit] concerning the judgment entered by the United States District Court for the Northern District of California in Civil Action No. 07-01389-JW.” *See* Dkt. No. 274, at 2-3. *See also* Dkt. No. 275.

On May 16, 2011, the Ninth Circuit affirmed the decision of the Northern District of California and found that the District Court properly enforced the Settlement Agreement. Cooper Decl. Exs. 2-3 (June 24, 2011 Mandate & May 16, 2011 Amended Opinion). As the Ninth Circuit emphasized:

The Winklevosses are not the first parties bested by a competitor who then seek to gain through litigation what they were unable to achieve in the marketplace. And the courts might have obliged, had the Winklevosses not settled their dispute and signed a release of all claims against Facebook. With the help of a team of lawyers and a financial advisor, they made a deal that appears quite favorable in light of recent market activity. *See* Geoffrey A. Fowler & Liz Rappaport, *Facebook Deal Raises \$1 Billion*, Wall St. J., Jan 22, 2011, at B4 (reporting that investors valued Facebook at \$50 billion – 3.33 times the value the Winklevosses claim they thought Facebook’s shares were worth at the mediation). For whatever reason, they now want to back out. Like the district court, we see no reason for allowing them to do so. At some point, litigation must come to an end. That point has now been reached.

Cooper Decl. Ex. 3, slip op. at 6292 (emphasis added). Subsequently, on June 24, 2011, the Ninth Circuit entered its mandate in *The Facebook, Inc. v. Cameron Winklevoss, et al.*, Consolidated Appeals Nos. 08-16745, 08-16873 & 09-15021 (9th Cir. June 24, 2011). Cooper Decl. Ex. 2.

In light of the Ninth Circuit’s decision affirming the Northern District of California, this Court should grant the motions to dismiss, and issue Orders dismissing these proceedings with prejudice and entering a judgment of dismissal with prejudice as to all Plaintiffs and Defendants.

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Dated: July 7, 2011

/s/ Monte M.F. Cooper /s/

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**CERTIFICATE OF SERVICE**

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on July 7, 2011.

Dated: July 7, 2011

Respectfully submitted,

*/s/ Monte M.F. Cooper /s/*

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Monte M.F. Cooper