

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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

Plaintiffs,

v.

FACEBOOK, INC., MARK  
ZUCKERBERG, EDUARDO SAVERIN,  
DUSTIN MOSKOVITZ, ANDREW  
McCULLUM, AND THEFACEBOOK LLC,

Defendants.

CIVIL ACTION NO. 1:07-cv-10593-DPW  
(CONSOLIDATED WITH CIVIL ACTION  
NO. 1:04-cv-11923-DPW)

**CAMERON WINKLEVOSS, TYLER WINKLEVOSS AND DIVYA NARENDRA'S  
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
MOTION FOR SCHEDULING ORDER**

As they discussed in recent Status Reports and their Motion for Access to Pleading and Discovery Files (Dkt No.339), the Founders<sup>1</sup> intend to move under *Anderson v. Cryovac, Inc.*, 862 F.2d 910, 928-930 (1st Cir. 1988) for discovery on the issue whether the Facebook Defendants intentionally or inadvertently suppressed evidence. Then, depending on the results of that inquiry, the Founders may seek appropriate relief under Fed.R.Civ.Proc. 60(b) and/or this Court's inherent powers.

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<sup>1</sup> Cameron Winklevoss, Tyler Winklevoss and Divya Narendra are collectively referred to as "the Founders."

The Founders' new counsel is now preparing the motion for discovery, but cannot complete it until it receives access to the requested pleadings and discovery.<sup>2</sup> See *Hickman v. Taylor*, 329 U.S. 495, 511 (1947) (“Proper preparation of a client’s case demands that [the lawyer] assemble information, sift what he[/she] considers to be the relevant from the irrelevant facts, prepare his[/her] legal theories and plan his strategy without undue and needless interference. That is the historical and the necessary way in which lawyers work in our system of jurisprudence to promote justice and to protect their clients’ interests”).

Once new counsel receives the discovery and pleadings files (assuming the Founders’ motion for access to those files is granted), they will need some time to review them before filing the motion for discovery. In particular, new counsel needs to make sure that the instant messages that appeared in the online press and *The New Yorker* in 2010 and reportedly<sup>3</sup> reviewed by Facebook and its attorneys in January 2006, were not in fact produced in discovery. Accordingly, the Founders request that the Court order the Founders to file any motion for post-judgment discovery within 45 days of the date on which new counsel receives the complete pleadings and discovery files from prior counsel. The schedule governing any discovery ordered and any further motions can be set after the Court rules on the motion for discovery.

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<sup>2</sup> Current counsel for the Founders requested the Founders’ litigation file from their prior counsel, Finnegan Henderson. Facebook and the other Parties objected, and Finnegan informed counsel for the Founders that it would not release the file until the Court ruled on Facebook’s objections. Accordingly, the Founders filed a Motion for Access to Pleadings and Discovery Files on July 1, 2011 (Dkt No. 339). The opposition is due to be filed on July 15, 2011.

<sup>3</sup> *The New Yorker* reported that “a small group of lawyers and Facebook executives reviewed the messages, in a two-hour meeting in January, 2006.” Dkt. 334-3, p. 5. Ascertaining the truth of this report and investigating the facts surrounding this meeting (who was there, what documents were reviewed, and who made the decision not to produce them) will be a primary focus of the requested discovery.

The requested Scheduling Order will promote the fair and efficient resolution of post judgment proceedings. *See Bangor v. Citizens Communications Co.*, 532 F.3d 70, 99 (1<sup>st</sup> Cir. 2008) (“A district court enjoys inherent power to ‘control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants’”) (citing, *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)).

For the reasons stated, the Founders respectfully request that the Court enter a Scheduling Order requiring the Founders to file their motion for discovery under Rule 60(b) within 45 days of the date on which new counsel receives the complete pleadings and discovery files from prior counsel.

Dated: July 15, 2011

Respectfully submitted,

CAMERON WINKLEVOSS, TYLER WINKLEVOSS and  
DIVYA NARENDRA,

By their attorneys,

/s/ Michael Schrag

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CERTIFICATE OF SERVICE

I, Michael Schrag, hereby certify that this document 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 nonregistered participants on or before July 15, 2011.

/s/ Michael Schrag

Michael Schrag