

Corporate & Financial Weekly Digest

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Ninth Circuit Upholds Facebook Settlement

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The U.S. Court of Appeals for the Ninth Circuit upheld a lower court's approval of a settlement agreement entered into by The Facebook, Inc. and individual litigants, Cameron and Tyler Winklevoss and Divya Narendra (the Winklevosses), who claimed that the idea for the popular social networking site had been stolen from them. The Winklevosses and their own social networking site sued Facebook and its founder Mark Zuckerberg in Massachusetts and Facebook countersued in California. The California court eventually dismissed the Winklevosses for lack of personal jurisdiction and the parties were ordered to mediate.

During the course of the mediation, the parties signed a handwritten, one-and-a-third page term sheet and settlement agreement. However, after the agreement was signed, a dispute arose during negotiations over the final details, and Facebook moved for an order enforcing the handwritten settlement agreement. The lower court found the agreement enforceable and the Winklevosses appealed. Facebook also sought an order from the lower court requiring the Winklevosses to sign more than 130 pages of documents to effect the settlement, including a stock purchase agreement and other papers, which the court refused to grant.

The Winklevosses argued that the handwritten agreement was unenforceable because it lacked material terms, such as those in the 130 pages of deal documents the parties were negotiating after the agreement was signed. The Ninth Circuit disagreed, distinguishing between material terms that are necessary, "without which there can be no contract," and terms that are "important" and that affect "the value of the bargain." A contract that omits the latter type of terms is "enforceable under California law, so long as the terms it does include are sufficiently definite for a court to determine whether a breach has occurred, order specific performance or award damages." Under this test, the handwritten settlement agreement easily passed muster, as it provided that Facebook would acquire the Winklevosses' site, the Winklevosses would get a cash payment and an interest in Facebook, and that both sides would cease litigation.

Moreover, the handwritten settlement agreement also specified that material terms would be determined later by Facebook "consistent with a stock and cash for stock acquisition." The court read this provision to mean that the parties intended to be bound by the handwritten agreement even though certain material aspects would be finalized later. The Ninth Circuit also rejected the Winklevosses' claim for rescission of the settlement agreement based on purported securities

laws violations, finding that they had released all such claims when they signed the settlement agreement. (*The Facebook, Inc. v. Pacific Northwest Software, Inc.*, Nos. 08-16745; 08-16873, 09-15021, 2011 WL 1346951 (9th Cir. Apr. 11, 2011))

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