

1 **UNITED STATES DISTRICT COURT**
2 **WESTERN DISTRICT OF NEW YORK**

3 PAUL D. CEGLIA,

4 Plaintiff,

5 v.

6 MARK ELLIOT ZUCKERBERG and
7 FACEBOOK, INC.,

8 Defendants.

**DECLARATION OF
JAMES A. BLANCO
IN SUPPORT OF
PLAINTIFF'S FORTHCOMING
RESPONSE TO DEFENDANTS'
MOTION TO DISMISS FOR FRAUD**

1:10-cv-00569-RJA

9
10 I, JAMES A. BLANCO submit this declaration in support of Plaintiff's forthcoming response to
11 Defendants' Motion To Dismiss for Fraud, and hereby declare under penalty of perjury and pursuant
12 to 28 U.S.C. 1746 that the following is true and correct:

13 1. I am James A. Blanco, all of the facts set forth in this declaration are of my own personal
14 knowledge and if called as a witness I could and would competently testify as to the following:

15 **Examiner's Professional Background and Work History:**

16 2. I am a Forensic Document Examiner and I maintain a full time practice in Forensic
17 Document Examinations. My business addresses are 55 New Montgomery Street, Suite 712 San
18 Francisco, California 94105, 655 North Central Avenue 17th Floor, Glendale, California 91203, and
19 1629 K Street N.W. Suite 300 Washington, DC 20006. I have been in the field of Forensic
20 Document Examinations for over twenty five years. My training, experience, and qualifications as a
21 Forensic Document Examiner are set forth in my current three-page curriculum vitae which is
22 attached and incorporated hereto as EXHIBIT 1. My training included review of such notable cases
23 as the Zodiac Killer and the Howard Hughes Will.

24 3. I formally subscribe to the Collaborative Testing Services tests, which are controlled tests
25 with known results. These are the same tests given to forensic document experts in government
26 laboratories that are accredited by ASCLD (American Society of Crime Laboratory Directors).
27 I continue to pass these ongoing tests maintaining a zero personal examiner error rate¹. In my

28 ¹ Also referred to as a "personal examiner success rate" per Chris Czyryca, Vice President of Operations of CTS.

1 government positions I also accurately passed all of the “CTS” tests administered to me.

2 4. I was formerly commissioned with the Federal Bureau of Alcohol, Tobacco and Firearms
3 working as a full time Forensic Document Examiner employee in their Western Regional Forensic
4 Science Crime Laboratory. In this position I worked cases for the numerous field offices (“Posts of
5 Duty”) in the United States and in the U.S. Protectorates and Territories of the Special Agents of
6 ATF, which also occasionally involved joint investigations involving DEA and FBI questioned
7 documents cases. I left this position on good terms for a full time Forensic Document Examiner
8 employee position with the California Department of Justice, where I examined cases for hundreds
9 of government and law enforcement agencies throughout the State of California. I left this position
10 on good terms to enter private practice as a Forensic Document Examiner and have been in full time
11 private practice now for fifteen years.

12 5. In addition to civil casework, I also maintain the exclusive contract with the California
13 Secretary of State’s Office for Forensic Document services wherein I service their Forensic
14 Document casework regarding voting-fraud cases. I also work cases for numerous other government
15 agencies both inside and outside of California, including the Montana Division of Criminal
16 Investigation, the Federal Defenders offices in Anchorage, Florida, Puerto Rico, and other agencies.

17 6. I have rendered expert opinions regarding questioned documents on over 7,000 occasions².
18 I have qualified and testified as an expert witness concerning questioned documents in excess of two
19 hundred times in both federal and superior courts in numerous States and also abroad in Mexico,
20 Singapore, and the High Court of South Africa. I have never been prevented from testifying in any
21 venue or jurisdiction. Attached hereto as EXHIBIT 50 is a listing of my testimony in previous cases
22 over the last four years.

23 **The document inspection in Buffalo New York and materials considered:**

24 7. I examined the actual original Facebook Contract document at the law offices of Harris
25 Beach in Buffalo, NY on July 15, 2011. Although the two-page questioned document examined is
26 titled the “*Work For Hire*” Contract, I will refer to it as the “*Facebook Contract*” to be consistent
27

28 ² In my previous declaration (Document 194) I stated “6,000” occasions but that was due to information I inadvertently
“cut and pasted” from an old template in the preparation of my first declaration.

1 with legal filings in the case. A copy of my scan of the original two-page Facebook Contract is
2 attached hereto as EXHIBIT 2. Also on July 15, 2011, I witnessed the document inspection by
3 defendants' experts Peter Tytell and Gus Lesnevich. On the following morning (July 16, 2011)
4 I witnessed the morning portion only of the document inspection by defendants' expert Gerald
5 LaPorte. Subsequently I have reviewed and analyzed the data I developed and have been presented
6 with other data for consideration in this matter, such as the defense expert reports and declarations
7 and DVD Videos of other days of document inspections by defendants' experts when I was not
8 present. However, I have not been provided the work product of defendants' experts except for the
9 limited items that have been attached to their declarations and reports.

10 8. My analysis has sought to determine whether or not the present two-page original Facebook
11 Contract ("Work For Hire" Contract) before the Court is legitimate. To that end I have performed
12 various analyses, reviewed much documentation in this matter, and have come to numerous
13 determinations. My *Findings and Opinion Summary* can be found on page 86 herein beginning with
14 paragraph 232.

15 9. Due to the extensive volume of information developed through my work, I have prepared the
16 following three-page Table Of Contents to assist the reader in readily locating topics of interest.

17 ***The Table of Contents begins on the next page.***

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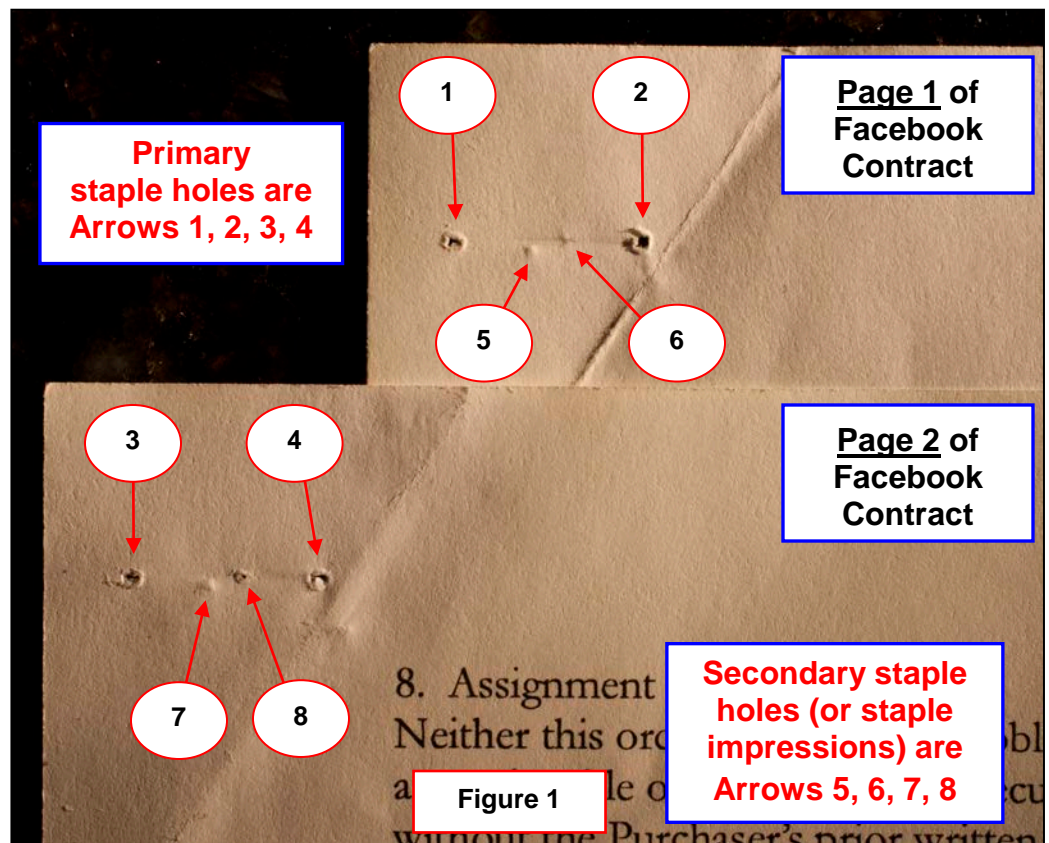
Analysis and Opinions regarding the staple holes:

10. On page 7 of my previous declaration dated October 31, 2011 (Document 194), I stated under Paragraph 21. b) that,

“I have examined the staple holes at the upper left-hand corner of both pages of the Facebook Contract and I have determined that the staple holes on both pages align demonstrating that these two pages of the Facebook Contract have only been stapled one time wherein they were actually stapled together.”

11. Contrary to the assertions of the defendants’ experts, these staple holes provide extremely compelling evidence that page 1 of the Facebook Contract was the original companion page to page 2, and was not a later substituted page. Furthermore, this staple-hole evidence, when considered together with the following points of evidence developed in this declaration, provides conclusive proof that page 1 of the Facebook Contract was the original companion page to page 2.

12. Figure 1 below is an enlargement of the staple holes from page 1 and page 2 of the Facebook Contract. In this image, page 1 of the contract is positioned behind page 2 and is identified



1 by the text box at the uppermost right side of the Figure 1 chart. I took this photograph at the
 2 document production in Buffalo NY on July 15, 2011. I used a Canon digital camera mounted to a
 3 table-top tripod. I positioned a portable light source³ somewhat low so as to graze light across the
 4 pages to better image the staple holes and staple detent impression marks. What I mean by “staple
 5 detent marks” are those small mounds on the paper which are the result of pressure from the tips of
 6 the staple legs which press on but do not penetrate the paper.

7 13. In Figure 1, note the larger outboard holes indicated by arrows 1 and 2 for page 1, and arrows
 8 3 and 4 for page 2 of the Facebook Contract. These are the “primary staple holes” where the two
 9 “legs”⁴ of the staple penetrated from the tops of the pages through to the back side of page 2 of the
 10 Facebook Contract. Once the staple passed through the rear sheet (marked by arrows 3 and 4) it was
 11 confronted with the “anvil,” which is the bottom plate of a typical stapler which has a detent in it.
 12 This bottom plate serves to bend the staple legs inward toward one another, and then may also press
 13 the leg end tips up a bit which can dig into the paper from the back due to upward pressure. This
 14 explains the two inner detent marks on page 1 indicated by arrows 5 and 6, and it also explains the
 15 two inner detent marks on page 2 indicated by arrows 7 and 8. Such holes, or stapler detent marks, I
 16 will refer to as “secondary staple holes” or “detent marks” or just “detents”. Such secondary staple
 17 holes/detent marks do not always appear on a stapled document, but it is common that they do so.

18 14. Closer inspection of the detent mark indicated by arrow 8 reveals that there is a small hole
 19 which demonstrates that page 2 was indeed behind page 1 in this two-page sequence. We know this
 20 since the upward pressure of the staple first pressed through the back side of page 2, creating an
 21 actual penetration of the paper from behind (see Figure 1 arrow 8), and afterwards the staple leg tip
 22 end points continued exerting upward pressure such that they created the more faint detent marks we
 23 observe on page 1 pointed out by arrows 5 and 6. That is to say that page 2 received most of the
 24 force of the upward pressure of the staple leg tips and thus, page 2 served as a buffer so that less
 25 force was applied by the staple leg tips to the back side of page 1.

26 15. Defendants’ experts argue (see discussion herein beginning at paragraph 18.) that the

27 ³ The brownish hues of these images are due to the type of light I used combined with the ambient light in the room.

28 ⁴ EXHIBIT 3 attached hereto shows an enlargement of a typical staple.

1 presence of staple holes is insignificant and does not offer substantive evidence that page 1 was the
2 actual original, legitimate document stapled to the original of page 2 of the Facebook Contract under
3 investigation. They also suggest that a more recently created page 1 was attached to page 2 with the
4 staple having been reinserted by hand. In so asserting, defendants' experts ignore the following:

- 5 1) The primary staple holes of page 1 are a precise match when compared to the primary
6 staple holes of page 2.
- 7 2) The primary staple holes of pages 1 and 2 are in the same relative
8 positions from the top and left margins of each page.
- 9 3) The secondary staple hole/detent marks are in the same matching positions
10 for pages 1 and 2.
- 11 4) The secondary staple hole indicated by arrow number 8 demonstrates that the
12 back page received more force from behind due to the upward pressure of the staple
13 leg tip.
- 14 5) Defendants' experts also dismiss the professional literature regarding the importance
15 of staple hole marks in determining whether or not there has been an insertion of a
16 sheet of paper: "The insertion of a sheet of paper is determined by the examination
17 of the staple holes." ⁵

18 16. Typical staple holes with their secondary holes/detent marks, are obviously made using a
19 mechanical device—a "stapler". While a person could attempt to accomplish a deception by
20 attaching a newly created page 1 to an older pre-existing page 2, creating new staple holes in the
21 new page 1 (the "forgery") would have to be accomplished by hand. Any holes created to
22 accomplish the ruse would have to match the pre-existing holes in the older page 2. This task would
23 be improbable to accomplish by hand because the following hurdles would have to be overcome:

- 24 1) The new holes for page 1 would have to be punctured by hand giving a similar look
25 to the existing holes on page 2. That is, some type of puncture device would be necessary. It is very
26 difficult to make such holes by hand that would be the same size in the new page 1 as appear on the
27

28 ⁵ Scientific Examination of Questioned Documents, Page 326—see Figure 27.7, discussion of staple hole evidence on EXHIBIT 4 attachment.

1 previous page 2. Tearing or ripping of the paper likely occurs making the holes for page 1 look
2 different than the holes for page 2.

3 2) The relative position of the holes for page 1 would have to be the same as the relative
4 position of the holes on page 2.

5 3) The distance between the holes on page 1 would have to be precisely the same as the
6 distance between the holes on page 2, such that an overlay of the two pages would reveal a precise
7 match.

8 These first three points are considered with the assumption that a person is mindful to begin
9 with that there were staple holes on page 2 that needed to somehow be matched by creating holes in
10 the newly created page 1. However, the following additional combined points add to the
11 improbability that a new substituted page 1 was re-stapled to the previously existing page 2 of the
12 Facebook Contract:

13 4) It must be presumed that a person would observe the secondary staple holes/detent
14 marks (see Figure 1 arrows 5, 6, 7, 8).

15 5) It must be presumed that a person, even if they did observe the secondary staple
16 holes/detent marks would understand what they were and that they were part of the
17 stapling procedure.

18 6) It must be presumed that a person could somehow create, by hand, matching detent
19 marks with such precision that their position on pages 1 and 2 is the same.

20 7) It must be presumed that a person could somehow create, by hand, matching detent
21 impressions to a similar degree of size and pressure so that the tiny “mounds” appear
22 the same in elevation and shape.

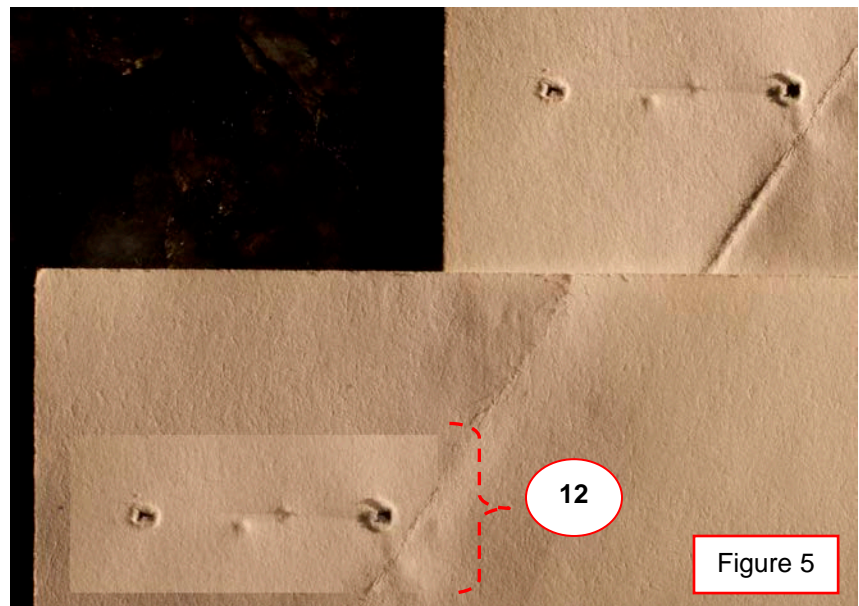
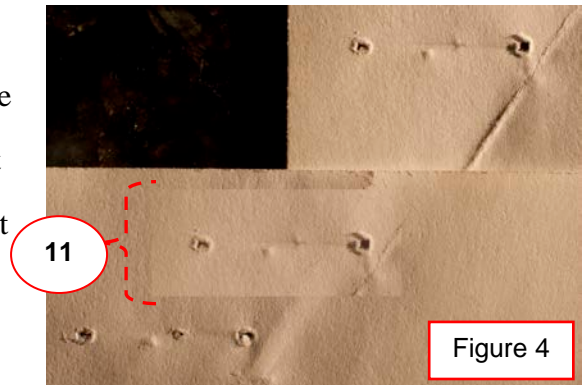
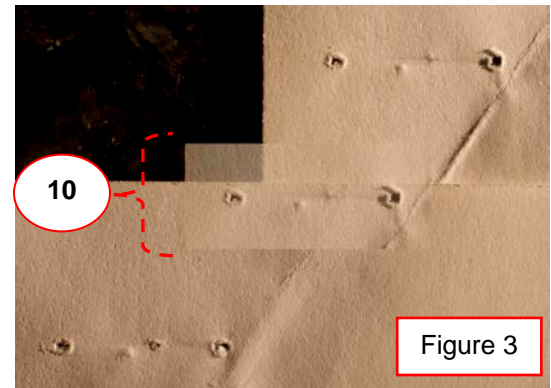
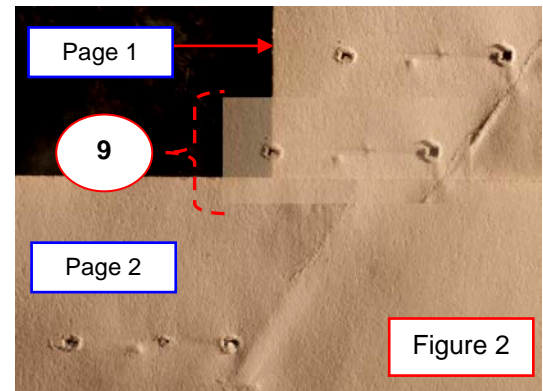
23 8) It must be presumed that a person would know to press from the back side of the
24 document rather than press from the front side to create those detent marks.

25 It is highly improbable that these eight presumed facts are all true.

26 ///

27 ///
28 [page break here to accommodate series of images on the following page]

17. Figures 2 through 5 demonstrate that the staple holes and impressions from page 2 match the staple holes and impressions of page 1. In Figures 2 through 5, each set of staple holes and impressions at the upper right of each image are from page 1 of the Facebook Contract, while the staple holes and impressions at the lower left of each Figure are from page 2 of the Facebook Contract. Observe the “ghost” image for each Figure in between the page 1 and page 2 staple holes indicated by brackets 9, 10 and 11. This ghost image (which is just an overlay) was created by tightly cropping the staple holes from page 1 and setting the opacity to 70 percent so that the page 1 staple holes could be superimposed over the page 2 staple holes to see if they match. In Figure 2 the ghost image (see bracket No. 9) is positioned up higher so that it can be observed that it is a replica image of the upper page 1 set of staple holes and impressions. In figures 3 and 4 the ghost image is positioned more toward the lower page 2 staple holes as observed by the No. 10 and 11 brackets. Then in Figure 5, one can observe the *precise* match of the page 1 staple holes over the top of the page 2 staple holes indicated by bracket No. 12. Note that the detent marks also line up.



Defendants' Experts On The Staple/Staple Holes Evidence:

18. Neither Frank J. Romano nor Gus Lesnevich in their declarations dated March 25, 2012 (Documents 327 and 329 respectively) provided evidence, analysis, or opinions regarding the staple hole/staple detent marks evidence. However, Peter Tytell, Albert H. Lyter III and Gerald LaPorte did offer some statements regarding the staple and/or staple marks evidence:

The Tytell declaration (March 25, 2012)

19. On page 11 and 12 of Tytell's declaration (Document 330) he discussed the issue of *staples*, however, he made no mention of any analysis he performed of the actual *staple holes*, or *staple detent marks* appearing in page 1 and page 2 of the original Facebook Contract pages examined on July 14-15, 2011. It is common for a Forensic Document Examiner to compare the staple holes and staple detent marks on various pages to determine the relationship of document pages to one another.⁶ However, Tytell offers no evidence of or any reference to the significance of the staple holes on pages 1 and 2 of the *original* Facebook Contract.

20. On July 15, 2011 at the document production at Harris Beach in Buffalo NY, I personally observed Tytell take well over 165 photographs of the pages under investigation. In spite of all of these photographs, Tytell, in his Document 330 declaration, offers no pictures regarding the staple holes or staple detent marks on the two original pages of the Facebook Contract. Nor does he even comment regarding the presence or the evidentiary significance of the staple holes or marks on pages 1 and 2 of the original Facebook Contract.

21. Instead, Tytell deflects the compelling evidence of the staple holes and detent marks on the original Facebook Contract documents by referring to a very inferior image of a staple in an earlier and poor quality copy of the Facebook Contract. See Fig. 15 of page 12 of Tytell declaration (Document 330) where he attached the cropped inferior image, the same version of page 1 which defense expert Gus Lesnevich referenced in his declaration as "Q1". That low quality imagery used by Tytell cannot inform us of what is clear from good quality photographs of the original pages—that the staple holes of page 1 and page 2 of the Facebook Contract match. Even the EXHIBIT A and

⁶ "FDEs (*Forensic Document Examiners*) are well aware of the importance of checking staple hole patterns, paper types, watermarks, indentations...as part of their routine casework. Any of these typical examinations may show evidence of an addition or alteration." Page 198, Scientific Examination of Questioned Documents, Second Edition: CRC Press 2006.

1 EXHIBIT B reduced-quality full page document reproductions of the Facebook Contract attached
2 to Tytell's March 25, 2012 declaration (Document 330) reveal the staple holes. Confronted with
3 such obvious evidence, it is surprising that Tytell did not offer any analysis or opinions regarding the
4 actual staple holes and/or detent marks on the original Facebook Contract pages examined.

5 **The Lyter report** (March 24, 2012; *although the year shows as "2011" on page 1 of his report*)

6 22. On page 5 of the Lyter report (Document 328) he states that he observed the staple holes in
7 the upper left corner of page 1 and page 2 of the "Work for Hire" document. Lyter further states that
8 "The second page contained additional holes in the area of the staple holes that are consistent with
9 what is called 'backbiting'". These are the interior sets of what I call the "secondary staple holes" or
10 "detent marks." While Lyter observed these secondary "holes" on the second page, he apparently did
11 not observe the matching detent marks on page 1. Nor did Lyter say whether or not any of these
12 staple holes/detent marks matched. It is standard practice for Forensic Document Examiners to
13 examine the staple holes on companion documents to see if they match or not (reference Footnote 6
14 on page 12 herein).

15 23. Lyter implies in his report that while detent marks⁷ were present on page 2, they were not
16 present on page 1. This implication by Lyter is misleading. His omission of any observations
17 regarding the staple detent marks on page 1 leads the reader to assume that this is an important
18 difference between the two pages which, if true, could lend support to defendants' experts' position
19 that page 1 was substituted. This relevant omission is an apparent attempt to mislead the trier of fact.

20 24. I disagree with Lyter's next comment that "a single set of staple holes does not mean that a
21 document was stapled only once or even necessarily together."⁸ In view of the context of the actual
22 original evidence examined, which should be what our analysis pertains to, Lyter is wrong when
23 you consider that we have four matching staple holes/detent marks, and it is highly improbable that a
24 person could reproduce such holes and marks with precision as previously discussed herein. It is
25 particularly improbable that a layperson could achieve this task. In my 25 years of experience in this
26 field I have not observed in casework, nor heard of any experimentation, nor read any scientific or
27

28 ⁷ What I call "detent marks" Lyter calls "backbiting" in his report- a term which I don't dispute.

⁸ Page 5 of March 24, 2011 report of Albert Lyter (Document 328).

1 technical literature supporting Lyter's claim that the precision present in these matching staple holes
2 in the Facebook Contract pages can be achieved by a forger of any skill level.

3 **The LaPorte report** (March 25, 2012)

4 25. In the context of stating his formal opinion, under his "Executive Summary" on page 3 of his
5 report (Document 326), LaPorte opines in paragraph 7,

6 "There is no evidence to refute *the possibility* that another page, other than page 1 of the Work for
7 Hire document, was originally stapled to page 2 and removed at a later time."

8 LaPorte is clearly wrong in view of the evidence that I have presented in this declaration. It is
9 disingenuous for him to state that there is "no evidence to refute *the possibility*" when there is clearly
10 very compelling evidence to refute his statement.

11 26. Further, it apparently escapes LaPorte's awareness as an expert that the courts deal in at least
12 a minimum of "probabilities" and not in "possibilities" and that experts should not opine concerning
13 mere "possibilities" or "could have"('s), as per the warning of the ASTM Standard E1658-08
14 (EXHIBIT 5 attached hereto) "Standard Terminology for Expressing Conclusions of Forensic
15 Document Examiners" which states:

16 "4.2 Deprecated and Discouraged Expressions: 4.2.1 Several expressions occasionally used
17 by document examiners are troublesome because they may be misinterpreted to imply bias,
18 lack of clarity, or fallaciousness and their use is deprecated..."

19 27. The first of these deprecated and discouraged terms are the words "possible/could have"
20 followed by the warning in this guide that "—these terms have no place in expert opinions on
21 handwriting..."⁹

22 While LaPorte may now want to claim that he used the term "possibility" outside of the context of
23 "handwriting", nevertheless he has chosen to apply this guide to other examinations that he has
24 performed and, in fact, footnotes his application of this guide on page 2 of his report at
25 Footnote No. 2 "The forensic document community relies on ASTM E1658-08: Standard

26 _____
27 ⁹ In regards to when the Specifications document was created and signed, LaPorte opines at paragraph 9 of his same
28 "Executive Summary"— "...it *could have* been created on April 28, 2003, but also *could have* been created on a date
prior or thereafter." Although terms such as "possibly" or "could have" may be part of a thought process along the
logical road working our way toward conclusions, the Expert in his/her formal opinion statements must leave out these
deprecated terms so as to not mislead the trier of fact.

1 Terminology for Expressing Conclusions of Forensic Document Examiners.”

2 LaPorte also uses this guide on page 23 of his report citing it again in his Footnote No. 34.

3 While LaPorte embraces the usage of the ASTM terminology at Section 4.1, he forsakes it at
4 Section 4.2.1.

5 28. LaPorte later continues his argument about the staple holes on page 20 with his rebuttal to
6 my stated opinions in my previous declaration dated October 31, 2011 (Document 194).

7 LaPorte discussed on pages 20-21 of his report the presence of primary staple holes, but apparently
8 he is not cognizant about secondary staple holes/detent marks, as his report is completely devoid of
9 any references to them. This omission of any observation regarding the staple detent marks on either
10 page 1 or page 2 of the Facebook Contract is either an attempt to mislead the court or evidence of
11 LaPorte's lack of expertise to opine in this area. In either case, it leaves the reader without important
12 evidence. LaPorte offers no imagery in support of his statements, but accuses that I “simply
13 *assume* that the two pages were actually stapled together.”¹⁰ LaPorte made his inaccurate statement
14 based upon his false assumption that I opined without a factual basis. Clearly, my basis appears and
15 is stated in this present declaration.

16 29. Regardless of whatever skill level LaPorte has as a forensic scientist, it is quite doubtful that
17 he could create matching primary staple holes along with matching secondary staple holes/detent
18 marks. But even if LaPorte as an expert could pull off such a skilled task, it is beyond reason to
19 conclude that a layperson could accomplish such a feat. Furthermore, LaPorte did not demonstrate
20 such an ability to create such matching marks after substituting a piece of paper into a two page test
21 document. Neither did he cite any literature demonstrating that *any person* has ever been able to
22 accomplish that feat.

23 30. At paragraph 7. page 25 of LaPorte’s report (Document 326), his statement is demonstrably
24 in error when he stated:

25 “There is no evidence to refute *the possibility* that another page, other than page 1 of the
26 Work for Hire document, was originally stapled to page 2 and removed at a later time”
27 (italics added). My analysis of the staple holes herein clearly shows that there is compelling evidence

28 ¹⁰ LaPorte report dated March 25, 2012 page 20 (Document 326).

1 to refute his claim.

2 31. LaPorte further reveals his lack of expertise in this type of analysis by insisting on the
3 presence of the actual staple to resolve the question as to whether or not two pages had previously
4 been stapled together (Document 326, LaPorte report page 25, 7.a.):

5 “but no staple was present for the examination so there is no way to determine if
6 the two pages were, in fact, stapled together at one time.”

7 The presence of an actual staple may have offered no answers to this riddle. However, the answer
8 lies in the actual staple holes and detent marks which are present on the original pages themselves
9 which all of the experts examined.

10 32. In assessing the competing positions as to whether the original Facebook Contract examined
11 by the experts was originally stapled together or whether page 1 was a later substituted page, I have
12 considered which is the more likely scenario. It takes a great leap of faith to accept the proposition
13 that a “forger” could first understand all of the important tasks to be done (a point not even argued
14 by Defendants’ experts), and then had the skill level to accomplish those tasks with precision (an
15 additional point also not argued by defendants’ experts). It appears immanently more likely that page
16 1 of the Facebook Contract was originally stapled to page 2 of the Facebook Contract, as the
17 evidence compels.

18 **LaPorte’s Deliberate Attempt To Mislead This Court:**

19 33. On pages 18-19 of LaPorte’s March 25 2012 report (Document 326), he misleads the
20 court/trier of fact when he cites my expulsion from the voluntary professional association called the
21 AAFS¹¹, but intentionally leaves out the important resolution to this event - that the very expulsion
22 which he cites was *vacated* by a Settlement Agreement¹² as the result of my federal lawsuit against
23 AAFS for expelling me in violation of my legal rights. My claims are detailed in my First Amended
24 Federal Complaint against the AAFS.¹³ Federal Judge Susan Illston signed the Stipulation For

25 _____
26 ¹¹ American Academy of Forensic Sciences.

27 ¹² Settlement Agreement dated August 28, 2010- between James A. Blanco, Plaintiff and defendant, the American
Academy Of Forensic Sciences EXHIBIT 6.

28 ¹³ James A. Blanco, Plaintiff vs. American Academy Of Forensic Sciences (A.A.F.S), First Amended Complaint filed
August 27, 2009 Case No. C 09-02780 EMC. UNITED STATES DISTRICT COURT, FOR THE NORTHERN
DISTRICT OF CALIFORNIA - SAN FRANCISCO DIVISION.

1 Dismissal With Prejudice And Order¹⁴ which affirms that “the Parties have entered into an
2 agreement setting forth the terms and conditions of settlement.” The Settlement Agreement vacating
3 the AAFS’s expulsion order expressly stated that the vacation of the expulsion was without a finding
4 of wrongdoing or fault on my part. Black’s Law Dictionary defines “vacate” as “to nullify or cancel;
5 make void; invalidate.”

6 34. LaPorte conveniently fails to mention that the AAFS vacated my expulsion even though it
7 was widely publicized to all of the AAFS membership through a statement on their webpage
8 newsletter¹⁵ by AAFS’s President, Joe Bono, the very person who signed the Settlement Agreement
9 on behalf of the AAFS. On this same Webpage newsletter, a link was provided for any curious
10 members to download a copy of the non-confidential signed Settlement Agreement between me and
11 the AAFS. Notice by the AAFS that the matter had been resolved and the expulsion vacated also
12 went out to its membership in September 2010.¹⁶

13 35. While he “As a matter of disclosure” states that he testified against me at the ethics
14 committee hearing of the AAFS that led to my expulsion, LaPorte makes no mention of the
15 Settlement Agreement wherein that expulsion was vacated. Instead, LaPorte cites (LaPorte’s
16 declaration page 18 of Document 326) a statement in a regional magazine, the “CAC”, which had
17 absolutely no standing or involvement in, nor anything to do with the course of events surrounding
18 my relationship and conflict with the AAFS. To be clear, I have never had any membership or any
19 relationship whatsoever with the “CAC” cited by LaPorte as an apparent “authority” to support his
20 attempt to blemish my reputation even after the widely publicized notice that the expulsion was
21 vacated. At best, any comments by the “CAC” were merely “hearsay,” and I was never contacted by
22 that magazine to give any rebuttal or perspective to any statements to be presented in print about
23 me.¹⁷

24 ¹⁴ Case3:09-cv-02780-SI Document48 Filed09/08/10; EXHIBIT 7 attached hereto.

25 ¹⁵ Academy News November 2010 Vol. 40-Issue 6.

26 ¹⁶ In spite of the matter being resolved and vacated, many AAFS members who are aware of these details continue their
27 attempts to use the expulsion as a tool to impeach me in litigation matters. Federal Judge Russell jumped in to vigorously
28 defend me when this was attempted in his courtroom- see trial transcript excerpts (attached hereto as EXHIBIT 8) which
include his colorful statement, “I’m convinced that Mr. Blanco has done nothing wrong. I have dealt with some
organizations like the one he’s dealing with and, you know, frankly, they’re a bunch of old fogies who don’t know what
they’re doing.”

¹⁷ The comments printed by the “CAC” were by a Susan Morton, a supporter in league with those who conspired to

36. LaPorte's deliberate omission of any reference to the Settlement Agreement which vacated the AAFS expulsion demonstrates his obvious attempt to elevate the court's perception of himself while calling my credibility into question. These deliberate factual omissions by LaPorte concerning my credibility, along with his misleading and erroneous statements of the evidence, demonstrate LaPorte's improper attempts to ignore or make light of relevant evidence that goes against the merits of his client's case.

LaPorte contradicts his testimony regarding "Preliminary Findings"

37. On Page 19 of LaPorte's March 25, 2012 report (Document 326) he criticizes me for giving "preliminary findings":

"Reporting one's 'preliminary findings' during a judicial proceeding is highly unusual and can often mislead the trier of fact. Forensic examiners should conduct a gamut of examinations to the fullest extent possible and then render an unbiased conclusion based on full consideration of the results."

LaPorte makes this statement in spite of the fact that,

1) Defendants' experts, including LaPorte himself, gave written preliminary findings, observations, and statements about the Facebook Contract in their previous declarations that were not their final nor complete reports:

Defense expert Peter Tytell, in his previously filed declaration dated November 28, 2011 (Document 238), stated on page 2 paragraph 8, "This declaration is not a report of the results of my examinations. A report of the results of those examinations will be submitted to the Court when appropriate."

Defense expert Gus Lesnevich, in his previously filed declaration dated November 28, 2011 (Document 239), stated on page 1 paragraph 7, "This Declaration is not my full report on the results of my examinations. I plan to submit a report of those results to the Court when appropriate."

Defense expert Gerald LaPorte, in his previously filed declaration dated November 28,

blemish my professional reputation and herself a former document examiner with the San Francisco crime lab which suffered the loss of their ASCLAD Laboratory accreditation due to mismanagement and corruption. Soon after this incident it is my understanding that Morton retired from her position with the San Francisco crime laboratory.

1 2011 (Document 240), stated on page 1 paragraph 4, “This Declaration does not constitute an
2 expert report on the results of my testing and examinations. I will submit a report of those
3 results to the Court when appropriate.”

4 2) On Page 18 of his March 25, 2012 report (Document 326), LaPorte states that he testified
5 against me at the ethics hearing of the American Academy of Forensic Sciences (AAFS). Part of his
6 testimony concerned this very topic about the propriety of private practitioners giving a “preliminary
7 report”. LaPorte was asked at my ethics committee hearing about the propriety of my “preliminary
8 report” and offered no criticism of my doing so:¹⁸ (page 55 Lines 3-4 of hearing transcript):

9 “And you’re not giving any testimony or opinion about the propriety of others doing so?”
10 to which LaPorte responded, “Absolutely not.”

11 3) In fact, it was on the heels of this very line of questioning that LaPorte’s testimony was
12 terminated such that my attorney was not allowed to finish his cross-examination of LaPorte.
13 My attorney, Randall L. Wiens, who represented me at the AAFS ethics committee hearing refers to
14 this as “LaPorte’s aborted testimony.” This occurred when it was becoming clear that much of
15 LaPorte’s testimony was doing more to support my position rather than to hurt me as was apparently
16 the goal of the AAFS Ethics committee itself. LaPorte’s involvement in the violations of my rights
17 was just an additional ground for¹⁹ my federal lawsuit against the AAFS²⁰ which resulted in the
18 AAFS vacating their expulsion against me. LaPorte deliberately concealed that significant point
19 from this court in his March 25th, 2012 report (Document 326); and,

20 4) Preliminary, or “draft reports” are expressly authorized by the courts:
21 Preliminary reports are expressly permissible under California expert-witness practice. Specifically,
22 section 10.48A, page 456, of the California Expert Witness Guide (entitled “Draft Experts’ Reports”,
23 attached hereto as EXHIBIT 9) states: “Experts frequently prepare written reports while their

24 ¹⁸ AAFS Ethics Committee Hearing Transcript February 19, 2008, testimony of Gerry LaPorte.

25 ¹⁹ Paragraph 65 of Blanco’s First Amended Complaint against the AAFS. “Because plaintiff Blanco’s counsel was
26 wrongfully prevented from completing his cross examination of LaPorte about significant matters to which he testified
27 on direct examination, LaPorte’s entire testimony should have been stricken, as requested by plaintiff Blanco’s counsel.
Because the Ethics Committee’s later June 13, 2008 report was based, at least in part, on LaPorte’s testimony that was
not subject to full and complete cross-examination, plaintiff Blanco was further deprived of the fair procedure to which
he was legally entitled.”

28 ²⁰ James A. Blanco, Plaintiff vs. American Academy Of Forensic Sciences (A.A.F.S), First Amended Complaint filed
August 27, 2009 Case No. C 09-02780 EMC. UNITED STATES DISTRICT COURT, FOR THE NORTHERN
DISTRICT OF CALIFORNIA - SAN FRANCISCO DIVISION

1 thinking is still in the formative stages or before all the facts are known.”

2 Indeed, such preliminary draft reports were discoverable, until recently, under Federal Rule of Civil
3 Procedure 26(1)(2)B). Consequently, the federal courts themselves acknowledge the presence and
4 practices of such draft or “preliminary” reports by experts.

5 5) Moreover, sections 8.2 of the American Society for Testing and Materials (“ASTM”) Designations E2290-07a and E2389-05²¹ (under “Reporting Conclusions”, both designations
6 attached hereto as EXHIBIT 10) permit but do not require that an examiner include his or her
7 examinations or underlying basis in a written report,

8 “The bases and reasons for the conclusion(s), or opinion(s), should be included in the
9 examiner’s documentation and may appear in the report.”

10 LaPorte’s Scanned Imagery Is Deceiving and Misleading:

11 38. In paragraph 6 of LaPorte’s declaration (Document 240) he stated that before commencing
12 any examinations he “captured high-resolution color digital photographs and scans of both
13 documents. True and correct copies of my initial scans are attached hereto as Exhibit A.”
14 LaPorte’s Exhibit A initial scans of Page 1 and Page 2 of the Facebook Contract are the two pages of

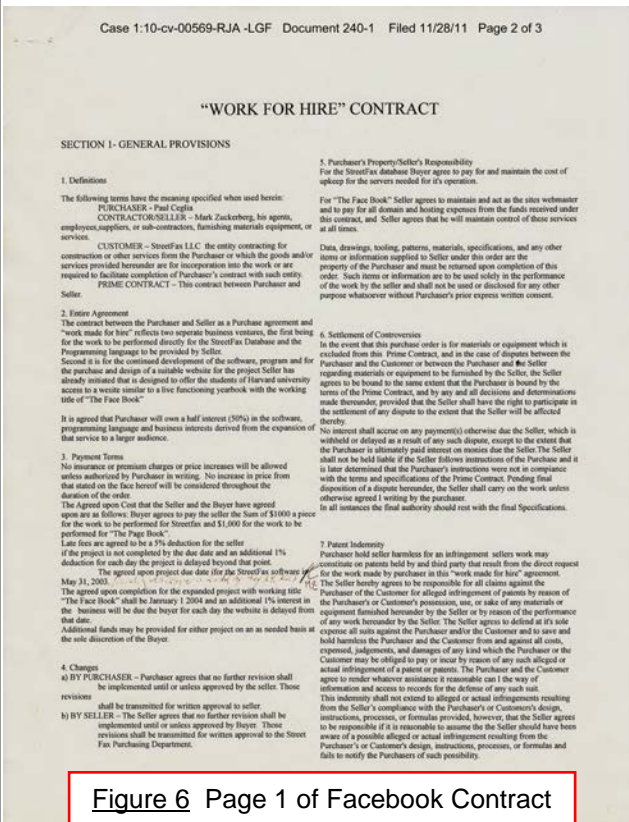


Figure 6 Page 1 of Facebook Contract

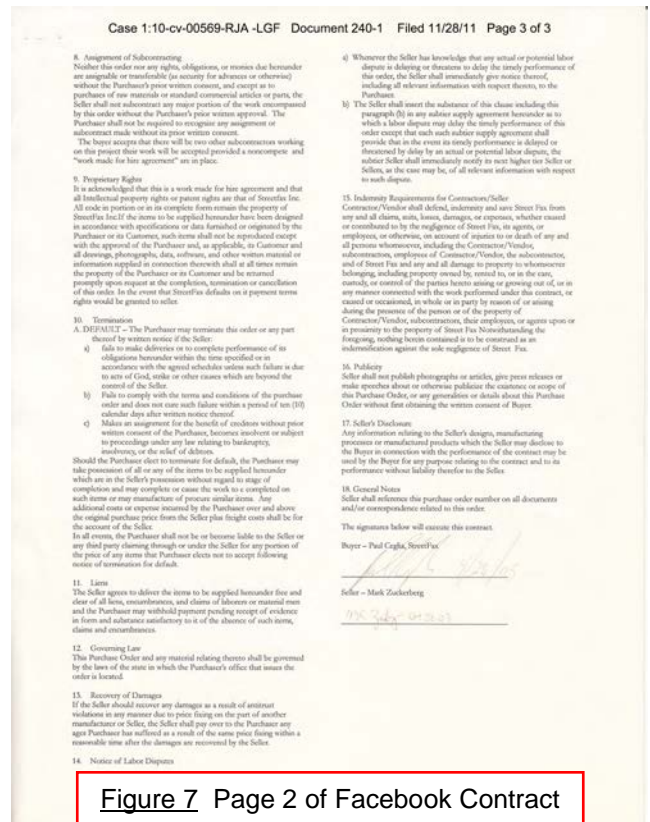


Figure 7 Page 2 of Facebook Contract

21 E2389-05 dealt with the analysis I conducted for which LaPorte testified against me at the AAFS hearing.

the Court filed Document 240-1. Figure 6 and Figure 7 are the unaltered images of LaPorte's Document 240-1 Exhibit A Court filing. Note the obvious differences in the overall color and appearance of these two images. There are no such differences in color or general overall appearance between the actual two pages of the Facebook Contract examined by the document experts.

39. The presentation of LaPorte's apparently manipulated images appear to be an attempt by LaPorte to mislead the court into believing that page 1 is different than page 2 of the Facebook Contract, since LaPorte's 240-1 imagery shows a difference in overall appearance between these two pages. At the bare minimum, LaPorte's 240-1 Exhibit A is evidence of his failure to properly collect and record evidence. In either case, his Document 240-1 imagery to his Document 240 declaration misleads the court, since his self-purported "true and correct copy[ies]" neither truly nor correctly represent the *sameness* in general appearance of the original Facebook Contract pages, as even demonstrated by defense expert Tytell's scans of the two original Facebook Contract pages. Tytell states in his first declaration (Document 238 at paragraph 25):

"True and correct copies of these initial scans are attached hereto as Exhibit B."
The sameness in general appearance of these Exhibit B scans of page 1 and page 2 of the Facebook Contract by Tytell are readily observed in Document 238-2 page 2 of 5 and page 4 of 5.

The image of the actual Staple in the "Smoking Gun" STREET FAX document shoots down defendants' own theory:

40. On page 30 of Defendants' Motion to Dismiss for Fraud (Document 319 PDF page 38), there is the image of the STREET FAX document with a staple in it. This is a very poor quality image and not much can be deciphered from it other than some general features and the presence of an actual staple at the upper left-hand corner of page 1, the "STREET FAX" page. Neither the alleged original STREET FAX document, nor a decent copy is available for examination. Apparently, defendants would have us believe that this was the document stapled to page 2 of the original Facebook Contract that the document experts have examined.

41. Much of the underlying argument and innuendo seems to revolve around two choices. Either the STREET FAX page was the original page 1 or the WORK FOR HIRE CONTRACT (page one of the Facebook Contract) page was the original page 1. But the presence of the actual staple in the STREET FAX image tells us that if it was really the original, legitimate page 1, then page 2 should

1 have two sets of staple holes instead of one set of staple holes. But I have already demonstrated that
2 page 2 has only been stapled one time. Thus the evidence demonstrates that page 1 of the STREET
3 FAX agreement was never stapled to page 2 of the Facebook Contract analyzed by defendants'
4 experts in July 2011.

5 42. Indeed, when a staple holding two or more pages together is removed, and then a new
6 replacement document is substituted in for a previous document, there would typically be an extra
7 set of staple holes in the document that is "recycled" since there would be a "re-stapling." However,
8 examinations revealed there is not an extra set of staple holes in page 2 of the Facebook Contract
9 original document, only holes that match its companion page 1 original document presented for
10 inspection.

11 43. To overcome the problem of the actual evidence, defense experts (Tytell, LaPorte and
12 Lyter²²) argue that it is easy to create new staple holes in a newly-created page 1 and then attach that
13 new page 1 to the existing page (page 2 original) using the old staple holes in page 2 instead of
14 making new ones by using a stapler.

15 44. Such a process would necessarily have to be accomplished by hand if any level of precision
16 had any hope of being achieved. But attempting this process by hand would not produce remotely-
17 probable results containing all of the physical matches that have previously been detailed in
18 paragraphs 12 through 15 of this declaration. Indeed, the evidence is clear that page 1 and page 2 of
19 the original Facebook Contract examined by the experts are the two matching pages that belong
20 together and that the STREET FAX "Smoking Gun" document was not the original page attached to
21 page two of the Facebook Contract examined by the experts. Moreover, as previously noted herein,
22 no expert has claimed to be able to recreate all of the combined features of evidence sufficient to be
23 able to pass off a newly created page 1 as if it were the original companion page to page 2. Nor has
24 any defense expert pointed to any generally accepted scientific studies, surveys or experiments
25 where this has been achieved. Even if they could, such studies would not support defendants'
26 argument that a non-expert, without any sophisticated understanding of what marks to make to
27 accomplish such an insertion, could achieve the suggested re-stapling without leaving evidence of

28 ²² Document 330 Page 12; Document 326 Page 20 and Document 328 Page 5 respectively

1 their forgery.

2 **Mechanical/Machine Printing:**

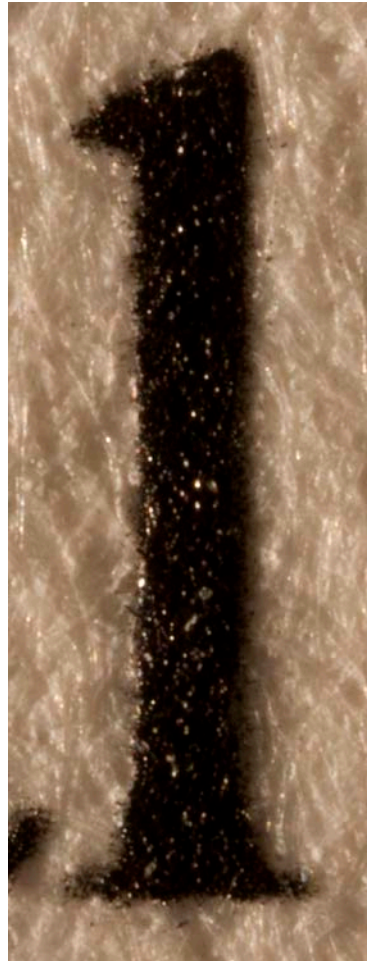
3 45. Frank Romano²³, on page 8 of his report dated March 25, 2012 (Document 327), makes the
4 following statement regarding the Facebook Contract pages:

5 “However, based on my microscopic
6 analysis, I observed that the printer did
7 not use either scaling or resolution
8 enhancement technologies. The lines that
9 make up the typed characters on page 2
10 are relatively jagged.”

11 Romano makes this statement in support
12 of his opinion that page 1 and page 2
13 “were printed with two different laser
14 printers.”

15 However, Romano provided no
16 photographic enlargements to prove his
17 claim that the “typed characters on page 2
18 are relatively jagged.”²⁴

19 Contrary to Romano’s claim, my Figure 8



20 **Figure 8**



21 **Figure 9**

22 and Figure 9 photographic enlargements are
23 produced here to demonstrate that there is no perceivable difference in “edge definition” as alleged
24 by Romano. Figure 8 is an enlargement of the letter “I” from the word “half” from page 1 of the
25 Facebook Contract. Figure 9 is an enlargement of the letter “I” from the word “Seller” from page 2
of the Facebook Contract. Note the same smooth edge detail along the right and left sides of these
two typed (laser printed) characters.

26 ²³ Review of Romano’s CV/Resume reveals that Romano lacks the industry standard qualifications to opine as a
27 Forensic Document Examiner- particularly in regard to his assertion that page 1 of the Facebook Contract was an
“amateurish forgery” (Document 327 Page 12). His opinion and report, therefore, should be considered in light of his
lack of qualifications to opine as a court-qualified expert on the matters which are the subject of his report.

28 ²⁴ Romano states on page 2 of his report (Document 327) that he used a ProScope microscope to capture pictures,
however, Romano provides no pictures to support his claim of a difference in “edge definition.”

46. The slight difference in hues between these two Figure 8 and Figure 9 images is due to the changing lighting conditions during my examination and photography of the original Facebook Contract. While I was examining the documents Tytell kept wanting to take flash photographs with the lights down in the room, but at other times the room lights would be up. The Figure 8 and Figure 9 images I took were photographs using a table top tripod and consequently, my images were subject to changing lighting conditions.

Romano on the "STREET FAX" tiff image analysis:

47. It is my understanding that defendants allege that the only true document in support of any contract between Paul Ceglia and Mark Zuckerberg was a "STREET FAX" two-page contract while although similar as to form, was an entirely different contract document than the original two-page Facebook Contract examined by the document experts. However, no original of this STREET FAX contract exists. My understanding is that the best available version of this alleged STREET FAX contract is from two tiff (computer file) images; one tiff image for page 1 and the other tiff image for page 2. It is obvious that these "STREET FAX" images (see Figure 10 below) offer very poor resolution for a forensic examination. A Forensic Document Examiner needs to see crisp detail of

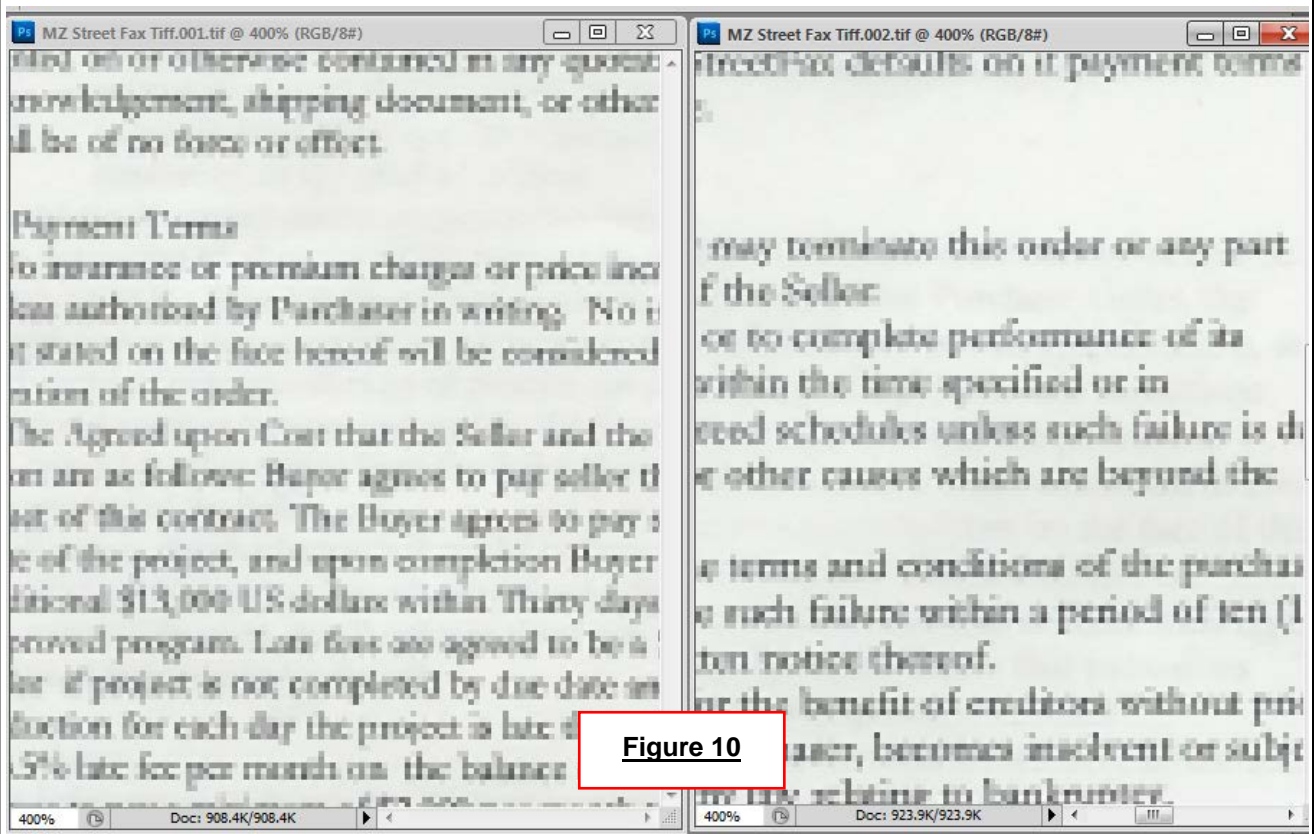


Figure 10

1 the font in order to make determinations of font identity. However, Figure 10 does not offer
2 sufficient clarity to make determinations of font identity.

3 48. On pages 8 and 9 of his March 25, 2012 report (Document 327), Romano analyzed the font
4 on page 1 and page 2 of the "STREET FAX" document (reference Romano's Figure 8 images).
5 Romano states that from his analysis he "was able to confirm that both page 1 and page 2 of the
6 'STREET FAX' document are composed in Garamond." In Figure 10 herein, I have enlarged the
7 actual tiff images which Romano used, I placed them side by side in Adobe Photoshop CS5 imaging
8 software. To even begin to get these images large enough to see the fonts, I had to enlarge them to
9 400 percent as the top and bottom tool bars of the images show. These images are of extremely poor
10 quality and resolution, they do not offer sharp detail, and are virtually useless in trying to identify a
11 font. But it even gets worse. Romano did not examine these Figure 10 images on the computer
12 monitor, rather he claims that he reprinted them out, creating additional interferences by the use of
13 yet another machine, and then he examined those printouts. I know of no properly trained Forensic
14 Document Examiner who would perform a font (typestyle) analysis on such extremely deteriorated
15 evidence. Any proffered opinion regarding classifying or identifying the typestyle in this regard
16 lacks any reasonable forensic basis and is not worthy of due consideration. Since Tytell claims
17 special knowledge in typography, I suspect that even he would disagree with the findings and
18 opinions of Romano in this regard. Indeed, Tytell offered no such findings as Romano on this point.

19 **STREET FAX "smoking gun" document column measurements don't match:**

20 49. Defendants argue that this STREET FAX document is somehow a "smoking gun" that
21 proves defendants' claims. Contrary to this claim, the STREET FAX "smoking gun" document has
22 its own inconsistencies. Another observed inconsistency is that the column measurements are
23 different between page 1 and page 2. Page 1 of the Street Fax document measures 230 pixels from
24 the left margin of the left column to the left margin of the right column. Page 2 of the Street Fax
25 document measures 208 pixels from the left margin of the left column to the left margin of the right
26 column. This represents a 10.58 percent difference in size, which indicates that the two pages did not
27 go through the same production and/ or reproductive processes as would be expected for a two-page
28 document being produced in immediate succession. This substantial difference in measurements

begs the question as to why there is such a difference between the two pages, allegedly from two original companion source documents.

Different Fonts on the Facebook Contract:

50. Defense experts have noted the presence of a different font for the mechanical printing (typing) on page 2 than appears on page 1 of the Facebook Contract. These differences in typestyle/font design are rather obvious. However, it would be improper to just conclude that page 1 was substituted on the basis of font and formatting changes alone. We have all likely seen that software can inadvertently change fonts when we cut and paste different sections of text, not only from one document to another but within the same document we are working on. In any cutting and pasting of text, formatting changes can also come along for the ride. Sometimes it is not the result of the software but the typist who cuts and pastes text from elsewhere in the preparation of a multipage document without realizing the difference of fonts, or having realized it, not bothering to make all of the fonts the same. Likewise, the typist might not observe or care that some formatting is different with the cropped page or section of text. As stated on page 198 of Scientific Examination of Questioned Documents on this point,

“Evidence that pages in a multi-page document have been created differently may or may not be evidence of tampering. There are some perfectly logical reasons why pages in a long text are formatted differently....”²⁵ and,

“Another consideration involves the use of boilerplate language. If certain long phrases (such as disclaimers) are used in the creation of, say, new contracts, it is possible that these passages are being electronically cut and pasted from an older document into the one being created. It is not unusual for the original formatting and fonts used in the boilerplate to remain intact after they have been pasted into the new document—the point being that a sudden change in the typeface or spacing characteristics of a page may not necessarily be evidence of alteration or addition.”

On page 197 of this same book, the author states that,

“In general, a forensic document examination that is conducted to determine if entire pages

²⁵ Page 198, Scientific Examination of Questioned Documents, Second Edition: CRC Press 2006.

or lines of text have been added or removed from a document is, in a word, an analysis of consistency.”

Consequently, the Forensic Document Examiner is to weigh what features are consistent about the document with those features that are inconsistent. The expert must look at consistency, or the lack thereof, in such features as staple holes and staple hole impressions, paper characteristics, writing pen inks, computer printer toner, latent handwriting impressions, determining authorship of the signature, initials and hand printing, and also font and formatting issues. No one feature typically solves the riddle but the results of all analysis must be weighed and considered in the formulation of the ultimate opinion.

The “two different physical documents” theory by defense expert Gus Lesnevich:

51. On page 2 of his March 25, 2012 report (Document 329), Gus Lesnevich lists four versions of page 1 of the Facebook Contract which he refers to as Exhibit Q1, Exhibit Q2, Exhibit Q3 and Exhibit Q4. Lesnevich has attached full page copies of these documents as Exhibit C to his Document 329 report.

I have performed detailed analysis of these different documents and have determined that they are just four different copies of the same document page, only scanned/copied and reprinted by various different machine processes.

52. Lesnevich’s entire report revolves around his unusual theory that there are two original versions of the page 1 Facebook Contract. It is “unusual” because no other defense expert shares the same theory, nor has this theory, as stated by Lesnevich, ever been advanced in casework before. Lesnevich states his opinion on page 30 of his report²⁶,

(Excerpt from Lesnevich’s Paragraph No. 2.)

“...the Questioned Documents are images of at least two different physical documents.”

(Excerpt from Lesnevich’s summary paragraph following 3.D [page 31 of 46])

“Therefore, Ceglia has proffered at least two different physical documents as the Work for Hire document. In particular, Ceglia produced a Work for Hire document to Defendants’ experts in July 2011 that was different than the document he attached to his Complaint.”

²⁶ Document 329.

1 53. Lesnevich argues that one of those physical documents (now unavailable/missing according
2 to this theory) is represented by the images which he has designated as Exhibit Q1 and Exhibit Q2,
3 while the other physical (original) document is represented by Exhibit Q3 and Exhibit Q4. To be
4 clear, Exhibit Q4 was a scan of page 1 of the original Facebook Contract (taken by Tytell), and
5 Exhibit Q3 is a scan of the same original document taken by Valery Aginsky on January 13, 2011.

6 54. Lesnevich's unconventional theory²⁷ here should not be confused with a "duplicate
7 original" situation where a contract is printed out twice and the parties sign their original signatures
8 to the different original documents. Even in this situation, the signatures would not be direct matches
9 to one another, and with such "duplicate original" signatures it is typically obvious that although the
10 signatures are by a same person, there are features that serve to distinguish them from one another
11 due to typical everyday "writer variation." But Lesnevich's theory is different.

12 55. Lesnevich theorizes that the hand printed interlineation was written in live ink on two
13 different printouts of page 1 and that these two separately executed *live ink* writings can be
14 distinguished from one another (according to the Lesnevich theory) by the "differences" that he
15 points out in the imagery of his report. Defendants' counsel then uses this "finding" by Lesnevich in
16 support of their motion against Plaintiff, notwithstanding the lack of a reasonable explanation as to
17 why a person would create two different documents where no terms have been changed. That is, all
18 of the typewritten/ mechanically printed information is exactly the same, and all of the hand printed
19 interlineation information is exactly the same. So where is the fraud?

20 56. To demonstrate his opinions, Lesnevich has prepared numerous charts comparing features of
21 the handwritten interlineation of Exhibit Q1 and Exhibit Q2 to features of the handwritten
22 interlineation on Exhibit Q3 and Exhibit Q4. He opines that these differences which he observes
23 gives rise to his opinion that there were two different physical document versions.

24 57. Given the distortion of the various copy versions (Q1, Q2 and Q3), it is not surprising that an
25 examiner could point out slight apparent visual differences between the Q4 original and the three
26 different copied versions. But that does not prove that such differences represent *two different*
27

28 ²⁷ It should be noted that Lesnevich's analysis and conclusion were based upon an examination approach to a
"document problem" not supported in the general scientific community.

1 *physical documents* since anytime a document is scanned, different scanner settings can be used
2 which account for differences. Whenever a scanned document is printed out, it can appear different
3 than printouts on different printing devices, even if the same digital file is being printed. I can open
4 up any PDF (or any other image file) and print it to a laser printer or to a color printer. Magnification
5 of those different print outs will reveal some differences even though it is the same exact document
6 being sent to different machines. However, any observed differences do not cause me to conclude
7 that the printouts represent two different physical documents.

8 58. To show the differences in image quality, I have attached EXHIBIT 11 (a three-page graphic
9 chart) hereto where I have cropped out the interlineation from the different versions of the
10 documents. I have used Lesnevich's identification scheme referring to the four different versions of
11 page 1 of the Facebook Contract by the designations Q1, Q2, Q3 and Q4 (full page copies of these
12 four images are attached as Exhibit C to Lesnevich Document 329).

13 59. On the EXHIBIT 11.1, I have cropped and positioned the interlineation from Q1 at the very
14 top of the page²⁸. Note that I did not re-print or rescan this document but instead, I cropped it
15 directly from the original tiff file so as to prevent any external influences that might add changes to
16 the document. Likewise, I cropped from best available digital files of the Q2, Q3 and Q4 documents
17 and positioned them on this same EXHIBIT 11.1 page. The Q4 document I used on this Exhibit 11.1
18 page was from my own scanned image of the original instead of using Tytell's scanned image of the
19 same original (which was the one used by Lesnevich). I adjusted my scan of the Q4 image only
20 using lighting and contrast settings to better see it.²⁹

21 60. The Q1 image is of much better quality than the Q2 image but neither one of them are as
22 good as Q3 or Q4. While the Q3 image is of decent resolution, it does not offer the clarity observed
23 in my Q4 image. The point here is that there are differences between all of these images because
24 they all went through different imaging scanners and Q1, Q2, and Q3 were each printed by different
25 output processes. EXHIBIT 11.2 and EXHIBIT 11.3, hereto, offer enlargements of the initials from
26 the interlineation and the date "May" from the different versions. These images perhaps better

27
28 ²⁸ This exhibit is best viewed on the computer screen without printing it out, or at least as a color printout.

²⁹ My imaging adjustments are what accounts for the sepia tones of "Q4" on my EXHIBIT 11.1 chart.

1 demonstrate the differences in output by machine processing technologies.

2 61. To further demonstrate differences in print output, EXHIBIT 12.1 and EXHIBIT 12.2
3 attached hereto, are additional illustrative charts which I prepared demonstrating that just by
4 changing the scanner settings, the print quality changes substantially. For this demonstration I used
5 only the “Q1” image, that is, I used the tiff file sent by Ceglia to Argentieri on June 27, 2010. I
6 cropped the interlineation from the Q1 image tiff file and placed it unchanged at the top of the
7 EXHIBIT 12.1 chart page just under the text box labeled “Crop of original tiff file (which shows file
8 properties of 200 ppi)”.... Using that same Q1 image tiff file, I printed out the full page containing it
9 on a sheet of normal bond paper without making any adjustments to the print output. I then scanned
10 that same page three times—once at 300 ppi, once at 150 ppi and a third time as 75 ppi³⁰. On the
11 next exhibit page, EXHIBIT 12.2, I show how the print resolution/quality deteriorates as you reduce
12 the scanning resolution. The upper left image (Q1) is a direct crop of the original tiff file. Although a
13 poor quality to begin with, it is better than the other images scanned at 300 ppi, 150 ppi, and 75 ppi
14 respectively. In the earliest generation (best) version of all of these images (upper left of EXHIBIT
15 12.2), there is some separation between the top of the letter “M” and the bottom of the letter “C”.
16 But in the 300 ppi image the top of the “M” touches the bottom of the “C” and in the lower two
17 inferior images the letters blend together even more. If I could point out 20 differences between
18 these variant versions of this same document, that would not provide evidence that any of them
19 represent “...different physical documents” from the others. Consequently, it is irrelevant even if
20 Lesnevich could point out fifty so called “differences” between the various versions of the
21 interlineation, since such cited differences do not support Lesnevich’s conclusion that there were
22 “two different physical documents.”

23 62. While Lesnevich points out “differences” in spacing between the “M” and the “C” on page
24 20 of his report, such changes are typical in copying, scanning or faxing and just generally speaking
25 in all kinds of document reproduction processes and do not provide support for Lesnevich’s
26 conclusion that there were *two different physical documents*.

27
28 ³⁰ “PPI” (or “ppi”) refers to “pixels per inch” and is the proper term for scanning technology rather than “DPI” for “dots per inch” which has been the customary term used for output onto paper using computer printer devices.

63. Since we do not know the details of how documents Q1, Q2 or Q3 were scanned, printed, copied, re-printed, or how many times they cycled through whatever other processes and steps they went through, it is not reasonable to compare these documents to one another, or to the Q4 document, and expect them to be precisely the same. Changes between them are expected and observed differences are not surprising.

64. But in spite of the different processes the Facebook Contract pages went through, they match very well when placed over the top of each other. EXHIBIT 13, attached hereto, is a two-page chart demonstrating that the supposed “two different physical document” versions of the Facebook Contract are really just from the same source original document rather than from “two different physical documents”. For this chart I have used Q1 which, according to Lesnevich represents one of the two physical documents he speaks of, and then I used Q3 which according to Lesnevich, is a different physical document than Q1. Note on my EXHIBIT 13.1 page that I have positioned a crop of the Q1 interlineation in the upper part of the page and I have positioned a crop of the Q3 interlineation below. In this color chart, the entire Q1 crop has been rendered in red to best see the comparison while I left Q3 in black (it will be important for the reader to review a color reproduction of this chart or on the computer monitor would be best). On EXHIBIT 13.2 is a progression overlay showing how the Q1 and Q3 versions of the document move into position from Step 1, to Step 2 and finally with the matching overlay at Step 3. Note that in Step 3, Q1 fits right over the top of Q3.

65. Consequently, it challenges the imagination to consider that a person would hand print a second duplicate original document with such precision that these two pages would match so well. Of course a perfect match is not expected since the different versions of the document have taken different paths through different processes.

Normal Everyday Factors that can account for such “differences” observed by Lesnevich:

66. When any original document is copied in any way, the subsequent copies will typically introduce changes in the following generations of documents. Those changes can be obvious or discrete. EXHIBIT 14 is a chart I prepared that demonstrates how normal copy processes can introduce changes into the following generations of copied documents. I typed a test sample of part of the text from the interlineation area of page 1 of the Facebook Contract. I then printed that text out

1 onto normal bond paper and then scanned it. I imported that scan into the top of the EXHIBIT 14
2 chart. The call-out (enlarged area) at the top of the EXHIBIT 14 page is from the section of text
3 revealing the words "project." Note how this enlarged text of the upper call-out is clear and crisp in
4 visual definition. It is clear because it is an image of a first generation printout.

5 67. In contrast to the upper image on EXHIBIT 14 is the lower image sequence on EXHIBIT 14
6 where the very same test sample was printed, copied, scanned and then printed again; after which
7 that final print was scanned and the image was imported into the lower section of EXHIBIT 14.
8 Notice that after several cycles of scanning/copying and reprinting, the image quality is now
9 deteriorated as observed by the enlarged call-out at the lower section of EXHIBIT 14. The edge
10 definition of the characters is muddy and not crisp or sharp as observed by the upper call-out of the
11 first generation scan.

12 68. Of special interest are the observed changes imputed to the actual typed characters, perhaps
13 the most obvious of which is the lower case typed "p" which is straight and crisp in the upper call-
14 out as observed by dashed arrow number 1, but the lower multigenerational image shows that the
15 letter "p" now slants left of center as indicated by arrow number 2. We know from these test samples
16 that the lower letter "p" (arrow 2) is a copy from its source document observed in the upper call-out
17 letter "p" (arrow number 1). However, the change in back slant in the lower image does not mean
18 that the lower image of EXHIBIT 14 is from a "second physical document". They are both copies
19 from the same exact source original.

20 69. The small arrows elsewhere on the lower image of EXHIBIT 14 just point out other features
21 of the typewritten characters, such as the base of the "r" and the lower portion of the "j", that reveal
22 perceived differences in the shapes of characters of the multi-copied rendition when compared to the
23 typewritten characters of the earlier and cleaner source document above. However, none of the
24 perceived differences between these two versions mean that the lower image represents a "second
25 physical document," since we know, in this controlled test sample, that both of these images are
26 from the same exact source original document.

27 ///

28

1 70. The professional literature warns that copying processes introduce changes into document
2 reproduction processes. In the book titled, Scientific Examination of Questioned Documents,³¹ it
3 states on page 224,

4 “What limitations do copies impose? If the reproduction process is high contrast it may
5 delete faint lines such as pen drags and tick marks. Line quality may be harder to interpret as
6 the third dimension of pen pressure...The copying process may mask the presence of tiny
7 hesitations points or it may introduce artifacts that look like hesitation points.”

8 and in the next paragraph on page 224,

9 “Obviously, a third generation reproduction will lack the detail and accuracy that is seen in
10 an earlier iteration.”

11 71. In addition to the professional literature in the field, the technical literature, with respect to
12 printers and copy machines, also inform as to many reasons why documents that are printed out from
13 a same source file, may appear different from one another. EXHIBIT 45, hereto, is one such
14 technical article, regarding HP laser printers, that discusses “common print defects”, some of which
15 are “skew,” “faulty registration,” “toner specks,” “image skew,” “distorted image,” “misshapen
16 characters.” This article provides examples of these and other print defects that are common to laser
17 printers. As a reminder, the two pages of the Facebook Contract were printed by laser printer
18 technology (also referred to as “xerographic,” which means “*dry toner*”, and also referred to as
19 “photo-electric” technology) which is essentially a point agreed upon by all experts, both defense
20 and plaintiff.

21 72. Additionally, EXHIBIT 46 hereto is an attachment regarding additional laser printer
22 problems that occur. This article discusses such printer defect problems such as “background” which
23 are “Areas that are supposed to stay blank are getting small amounts of toner deposited on them.”
24 The service article goes on to explain how to correct this particular problem. Then, the same article
25 discusses “random marks,” and other print defect problems. The article goes on to discuss other
26 problems such as “blurred or fuzzy print,” and explains, “This can be caused by a damaged gear
27 train or by paper slippage in the feed roll or transfer roll.” Another common problem that occurs is
28 “residual image,” which is described in this article as “the ‘walking’ of a leftover image down the

³¹ Scientific Examination of Questioned Documents Second Ed. Taylor & Francis.

page – is probably the result of failed erase lamps not discharging the photoconductor, or a failed cleaner inside the print cartridge. It can also be caused by a failed fuser hot roll retaining toner and redepositing on the page. Check that the erase lamp voltage at engine board is +24 VDC and that the cable has continuity.”

73. Yet another laser printer technical article is attached hereto as EXHIBIT 47. The purpose of this article is “Diagnosing Print-Quality Problems.” This article discusses such printer malfunctions/problems as “Dark Spots or Marks,” which contribute to such differences as observed by Lesnevich. Another defect noted in this article are “Unfused or Partially Fused Image” which results in a “printed image” which “is not fully fused to the paper and easily rubs off.”

74. Obviously, there are many printer defect problems that can contribute to making a same document, printed by different machines, appear different. Such innocent printer defect problems occur in the vast majority, if not all machines, and should not give rise to an assertion that there are “two different physical documents” as alleged by Lesnevich’s unfounded theory.

Lesnevich used inferior evidence when the best evidence was available to him:

75. Lesnevich used inferior evidence, which he generated, when better evidence was available to him. Lesnevich could have used the best evidence for Q1 by simply cropping the interlineation section from the actual tiff image sent by Ceglia to Argentieri on June 27, 2010.

But instead he used an image at least two steps removed from the tiff image he designated as Q1. Figure 11 is a direct crop from the Q1 tiff image— Note that it is a black and white image, however, the images which appears on Lesnevich’s charts for Q1 are color images. That means that Lesnevich (or someone) printed out the Q1 tiff image using a color printer, then scanned that image in color, then used that image for his cropped Q1 interlineation imagery which is repeated on his charts for his report.



Figure 11

76. The evidence that Lesnevich’s Q1 imagery was printed out in color is due to the presence of the faint yellow dots that appear in the white areas on the pages. The typical primary colors used for modern color printers are cyan (blue), magenta (red) and yellow, mixed with black ink or toner.

The Figure 12 and Figure 13 images below are images which I cropped directly from Lesnevich's report.³² I enhanced the color saturation turning the faint yellow dots into orange-reddish dots which can be more readily seen. Any competent forensic document examiner would understand from these Figure 12 and Figure 13 images that they are color images.

77. I prepared these Figure 12 and Figure 13 images using these steps to prove that Lesnevich was working with a more deteriorated image rather than the better earlier generation Q1 image. That is, Lesnevich used for his report less reliable versions of the Q1 document image, rather than the best available Q1 image itself - an image that was available to Lesnevich, but which he set aside in place of poorer quality imagery which he apparently created himself. Indeed, Lesnevich analyzed an inferior image to what was already a poor quality copy.



Figure 12

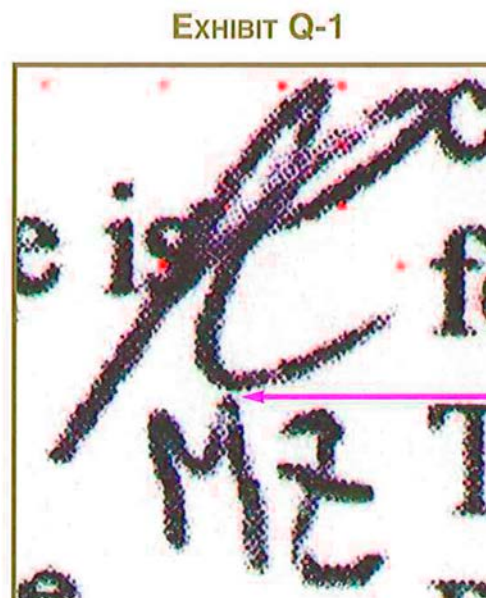


Figure 13

78. Consequently, the best data, the tiff image (which was already at least two steps removed from the original), was obviously printed out using a color printer, or made on a color copier, then rescanned in color, and then that image was re-cropped from the resulting scanned image and inserted into Lesnevich's report. Thus, the cropped images of Q1 appearing in Lesnevich's report are

³² Figure 12 is from the Lesnevich report (Document 329) page 13, and Figure 13 is from the same Lesnevich report page 21 (the Figure 12 & 13 arrows were by Lesnevich).

1 about five steps removed from the original document. With this revelation, there should be no
2 surprise that slight “differences” could be observed in a detailed analysis of this data.

3 79. By using this procedure, Lesnevich worked from evidence that was further distorted to begin
4 with, which he then used to formulate his erroneous opinions.

5 **Mr. Lesnevich’s citations of the ASTM standards in support of his**
6 **“two different physical documents” theory are misleading:**

7 80. Lesnevich makes many references to the ASTM standards in his report. Indeed, on
8 page 1 of his report, under his section titled “I. QUALIFICATIONS,” as the very last sentence in
9 this section, Lesnevich states, “I have followed the ASTM International standards as they relate to
10 this case in all respects.”

11 However, in ASTM Designation: E1658-08 (EXHIBIT 5 hereto) on opinion rendering, Section 4.1
12 Recommended Terms: the expert is “prohibited from using the word ‘fact’”. But Lesnevich violates
13 this standard on page 3 of his report (Document 329) under-

14 “V. RESULTS OF EXAMINATION,” where he states his ultimate opinion regarding his
15 findings that,

16 “These dissimilarities ...evidence **the fact** that the differences between the handwriting in the
17 questioned documents were generated at the time of the document’s creation, not at the time
18 of reproduction”

19 It is clear that Lesnevich does not follow the ASTM standards in all respects as stated in his report,
20 since to stay in compliance with the standard he should not have represented his opinion as “fact”.

21 81. A review of the professional literature in the field and further review of the ASTM Standards
22 pertaining to such analysis as performed by Lesnevich revealed that there are absolutely no
23 references to any “two different physical documents” theory, nor are there any recommendations to
24 perform the examinations conducted by Lesnevich in support of his theory. Nor have I ever heard of
25 any Forensic Document Expert using the claimed scientific techniques used by Lesnevich in his
26 cited report in support of his “two different physical documents” theory.

27 82. Lesnevich cites several ASTM Standards in support of his examination processes and
28 resulting opinions in his report (Document 329). However, his reference to the ASTM Standards is

1 misleading. At the top of page 3 of Lesnevich's report, he erroneously states:

2 "Each of these methods is non-destructive and outlined by ASTM International *as the most*
3 *appropriate method of conducting this type of examination*. See ASTM International
standards E 2331-04, 2290-07a." (italics and bold added).

4 These two referenced standards (ASTM Standards E 2331-04 & E2290-07a) are attached hereto as
5 EXHIBIT 15.

6 83. However, although his context here is how he viewed the data, ie. his "series of visual
7 examinations" (bottom of page 3 of Lesnevich report), the way he states it above seems to sanctify
8 his process of doing the analysis of the supposed *two different physical documents*. Indeed, none of
9 Lesnevich's citations to any ASTM Standard or authority offers support for his "two different
10 physical documents" theory or his examination methods in support of his opinion regarding his
11 novel theory. Review of the professional literature and of the ASTM Standards reveal that there are
12 no such recommendations, discussions or even references to any "two different physical documents"
13 theory.

14 84. Consequently, Lesnevich's methodology, as applied in this case to his novel "two different
15 physical documents" theory, has not gained general acceptance in the relevant scientific community
16 of Forensic Document Examiners. That is to say, to my knowledge, there are no peer reviewed
17 studies, professional presentations or other scientific or technical literature that support Lesnevich's
18 "two different physical documents" based upon the analysis that he performed.

19 85. It is telling that none of the other defense experts have made any statements or even a single
20 comment in support of Lesnevich's "two different physical documents" theory. It would be very
21 useful to discover if Tytell, Romano, LaPorte or Lyter actually support Lesnevich's theory. It is
22 important for plaintiff's experts to discover if the defendants' experts actually disagree with
23 Lesnevich's theory and why they disagree, or in the alternative, why they might agree with Mr.
24 Lesnevich's theory.

25 ///

26 ///

27 ///

28 ///

Analysis of the “Mark Zuckerberg” signature on Page 2 of The Facebook Contract:

86. I have been advised by Plaintiff’s counsel Mr. Boland, that Defendants’ counsel claims that Mr. Zuckerberg has denied signing the two page Facebook Contract evaluated by Defendants’ experts, a copy of which is attached hereto as EXHIBIT 2. Mr. Boland requested that I examine the “Mark Zuckerberg” signature appearing on page 2 of the Facebook Contract and render my opinion as to the authorship of that signature.

87. I requested from counsel and received samples of Mark Zuckerberg’s known specimen signatures from other documents that were made available either from production requests, or from documents received from court filed records. I have examined the “Mark Zuckerberg” signature from page 2 of the Facebook Contract³³ and I compared it to numerous known signature samples by Mr. Zuckerberg. Comparisons were made of line quality, letter forms and of letter proportions to determine similarities and/or differences between the questioned and the known signatures. Copies of these documents were made and notes were taken during the examination processes. ASTM Standard E-2290-07a (EXHIBIT 10 herein) was used as a guide in the examination processes. This guide is titled, “Standard Guide for Examination of Handwritten Items” and was developed by one of the scientific working group committees of the American Society for Testing and Materials (ASTM) which has established standard protocols for most of the forensic sciences disciplines.

88. The original questioned “Mark Zuckerberg” signature was examined using magnification to determine that it was an original inked signature. That is, it was written on the paper in “live ink” and was not the result of a machine printer process. Pen track depressions were observed in the paper fibers. Due to these observed physical characteristics, no argument can be advanced that this questioned signature was the result of a *cut-and-paste* forgery transposition where an authentic signature model was copied onto this document from some other source document.

89. Another significant finding was that this “Mark Zuckerberg” signature was written rapidly revealing free flowing and spontaneous rhythm. Examinations did not reveal evidence that rose to demonstrate tremor, patching or misinterpretation of letter construction to argue that this questioned

³³ Also called “the questioned signature” for the purposes of this analysis.

signature had been the result of a *traced* or *simulated* forgery method.

90. Numerous known specimen signatures were used in the analysis. These known specimens (“control signatures”) provided for a meaningful signature group which sufficiently revealed the writing variations of Mark Zuckerberg, the writer of the known specimen signatures (EXHIBIT 16). Further, several of these specimen signatures were dated close in time to the questioned signature.

91. All of the known specimen signatures of Mark Zuckerberg were inter-compared with one another (cross-compared) and it was determined that they were all within the writing range of one and a same writer. Although several of the known signatures offered poor legibility, still, they were useful in making certain determinations of letter forms and letter proportions. As the result of the cross-comparisons, the known signatures fell into three groups— the more formal, fully visually articulated version of the signature, which can be observed on the EXHIBIT 17.4 chart; the “mid-range” signatures³⁴ which are the hybrid signatures that are of a more abbreviated nature (see EXHIBIT 17.1 chart K1.1, K1.2 and K1.3), and then the third group which are the even more, or “highly stylized” signatures that are very abbreviated in nature. James V.P. Conway explains this practice by “most writer” in his book Evidential Documents³⁵,

“Most writers have at least three classes of signatures: the formal, complete, correct signature for an important document such as a will; the informal, cursory signature for routine documents and personal correspondence; and the careless scribble for the mail carrier, delivery boy, and perchance the autograph collector.”

92. Subsequently I compared the handwriting features of the questioned “Mark Zuckerberg” signature with each of the known specimen signatures. On the basis of my examinations of all of the above-referenced documents, an abundance of fundamental handwriting similarities were observed in the comparison of the questioned “Mark Zuckerberg” signature to the known specimen signatures.

93. As the result of my forensic handwriting analysis, I determined that the “Mark Zuckerberg” signature appearing on page two of the original Facebook Contract was indeed written by Mark Zuckerberg. The following paragraphs detail out my analysis and then my formal opinion statement.

³⁴ “Mid-range” is just a term I use here to assist in classifying the three versions of the known signatures.

³⁵ Page 13, Evidential Documents by James V.P. Conway (Third Printing) 1959, by Charles C Thomas Publisher. This book has served as a primer in the field, a starting book where each new student begins his/her training.

94. The documents bearing known specimen signature samples by Mark Zuckerberg are from legal and other court filed records. These known signature samples were used for comparison to the questioned “Mark Zuckerberg” signature appearing on page 2 of the Facebook Contract. The documents bearing the known specimen signature samples attributed to Mark Zuckerberg are attached collectively hereto as EXHIBIT 16.

95. The attached EXHIBIT 17 comparison chart (comprised of six pages) demonstrates some of the handwriting similarities between the questioned “Mark Zuckerberg” signature on the Facebook Contract and the known specimen signatures attributed to Mark Zuckerberg. The questioned “Mark Zuckerberg” signature from page 2 of the Facebook Contract was cropped from its full page document and positioned at the top of the EXHIBIT 17.1 chart panel page. Similarly, three of the known signatures were cropped from their full page documents and positioned below the questioned signature on EXHIBIT 17.1, with the remaining known signature samples positioned on the EXHIBIT 17.2 through EXHIBIT 17.6 chart panel pages.³⁶ On EXHIBIT 17.1, note the golden cast of the paper and the brownish hues of the signature itself. This is due to my contrast and brightness adjustments in an effort to bring out the image of the signature which is faint as observed from the EXHIBIT 2 scans of the document pages that I took at the document production in Buffalo New York on July 15, 2011.

96. The numbered arrows on these chart pages point out observed similarities in handwriting features between the questioned “Mark Zuckerberg” signature and the known specimen signature samples by Mark Zuckerberg. For each of the numbered arrows pointing to handwriting features of the questioned signature at the top of EXHIBIT 17.1, there are corresponding numbered arrows pointing out similar features among the known specimen signatures on the EXHIBIT 17.1 through EXHIBIT 17.6 chart panel pages. For example,

97. *The “given” name—*

Arrow number 1 of the questioned signature points to the small beginning stroke of the letter “M.” This subtle stroke can also be observed in the bottom signature on EXHIBIT 17.3, as pointed out by arrow number 1 (K1.13 signature). Another example can be observed at the top of EXHIBIT 17.4

³⁶ Not all of the resource known signatures were placed on the chart pages.

1 (signature K1.14).

2 Arrow number 2 points to the full loop beginning construction at the left side of the “M” in the
3 questioned signature. This feature can be observed among the known signatures by finding arrows
4 number 2 among the known signatures.

5 Arrow number 3 indicates the rounded arch of the questioned signature which connects the
6 beginning loop to the first staff of the “M”. This handwriting feature is repeated among the known
7 signatures as is observed by the number 3 arrows among the known signatures.

8 Arrow number 4 indicates the straight left staff of the questioned “M” and note further its elongated
9 length. These are other handwriting characteristic that have counterparts as can be seen by the
10 number 4 arrows among the known specimen signatures on the EXHIBIT 17.1 through EXHIBIT
11 17.2 chart panel pages.

12 Arrow number 5 on the questioned signature represents the similar convex arch in the letter “M” to
13 the known signatures. Note further the relationship of the next hump to its right marked by

14 Arrow number 7, which is more angular than rounded. This combination of a rounded arch followed
15 by a pointed “hump” at the tops of the letter “M” in the questioned signature, can be observed
16 among many of the known signatures as pointed out by arrows number 5 and 7 of the known
17 specimen signatures.

18 Arrow number 6 of the questioned signature points to the angle high above the writing base line in
19 the letters “M” which serves to connect the two “humps” of the questioned signature. This “v”
20 shape angle and its relative position is similar to the corresponding constructions among many of the
21 known signatures as indicated by arrows number 6 among the known signatures.

22 Arrow number 8 of the questioned signature indicates the close proximity of the right staff of the
23 “M” to the staff of the letter “R.” This close proximity of the “M” and “R” staffs can be observed
24 among the known signatures.

25 Note: I consider this second letter of the given name to be an “R” rather than a “K”, although I
26 cannot state which it is with certainty. Such signatures as this questioned “Mark Zuckerberg”
27 signature are called “symbolic” or “stylized” signatures where a few motions imply an entire part of
28 a name. For example, in this first name the “a” and “k” are missing (or some might argue that the
“a” and “r” are missing if they consider that the second character is a “k”). Additionally, in the
surname, the “cker” and “er” are missing. But this should be no surprise as many people stylize at
least portions of their names in this way.

1 Arrow number 9 of the questioned signature indicates the more closed elliptical loop for the top of
2 the “R” which feature can be observed among the known signatures on EXHIBIT 17.3 and
3 EXHIBIT 17.4.

4 Arrows number 10 of the questioned and the known specimen signatures show the similar angles
5 created by the second and third movements of the letters “R.”

6 Arrows number 11 indicated the same relative length, and, or direction of the strokes that terminate
7 the given name in both the questioned and the known signatures.

8 98. *The “surname”—*

9 Arrows number 12 of the questioned and known surnames point out the similar talon strokes.

10 Arrow number 13 of the questioned signature shows the large upper curve, which form and size is
11 similar in the known signatures where indicated by arrows number 13 among the known specimen
12 signatures.

13 Arrow number 14 of the questioned signature points to the middle retrace that results in a point to
14 the left which is similar to the middle point observed in the number “3”. This point is similar among
15 the known signatures as indicated by arrows number 14 among the known signatures.

16 Arrow number 15 of the questioned signature points to the lower lenticular loop of the questioned
17 surname. This handwriting feature can also be observed among the known signatures by arrows
18 number 15 where indicated.

19 Arrow number 16 of the questioned signature shows the rising connection stroke from the “Z” to the
20 letter “u” which bares similar features when compared to the known signatures.

21 Arrow number 17 of the questioned signature has two arrows which indicate that the left top of the
22 letter “u” is higher than the right top of the letter “u”. This proportional difference within this same
23 letter is repeated in the known signatures where indicated by arrows number 17 among those known
24 specimen signatures.

25 Arrows number 18 of the questioned and the known signatures point out the similar shape of the
26 “bucket” of the letters “u”.

27 Arrow number 19 of the questioned signature references to the form of the bulb of the letter “b”,
28 which feature bares similarity, where indicated, among the known signatures.

Arrows number 20 point to the peaked strokes at the right sides of the letters “b” which are similar in both the questioned and the known signatures.

Arrow number 21 of the questioned signature points to the connection stroke between the “b” and the letter “g”. Note in the area indicated by arrow number 21 that there is no definition of an upper loop of the “g” but rather, just the connection that stylizes past an expression of an upper loop and into the lower descender for the “g”. This is similar among the known signatures where indicated by arrows number 21 of the known signatures.

Arrow number 22 of the questioned signature points to the larger descender loop for the letter “g”. This handwriting feature is similar to the known signatures where indicated by arrows number 22 among the known signatures.

Arrow number 23 of the questioned signature points to the terminal stroke for the signature which ends in a similar arc and similar flourish as in the known specimen signatures.

Arrows number 24 indicate the similar baseline-adherence between the questioned signature and the known signatures. That is, the questioned signature floats above the baseline as indicated by arrow number 24. Similarly, the known specimen signatures are mostly positioned above the baseline.

In addition to all of these similar handwriting features, other similarities were also observed between the questioned and known signatures.

99. Given all of these observed similarities, the handwriting features present in the questioned “Mark Zuckerberg” signature did represent the natural, normal and genuine handwriting characteristics of Mark Zuckerberg as demonstrated by his EXHIBIT 16 known specimen signatures. Consequently, Mark Zuckerberg (of the EXHIBIT 16 signature specimens) *is identified* as the writer of the “Mark Zuckerberg” signature appearing on the original Facebook Contract (a copy of which is attached hereto as EXHIBIT 2). An “*identification*” is a term of art in Forensic Document Examination opinion rendering and represents the highest degree of confidence expressed by document examiners in handwriting comparisons. That is, the examiner has no reservations whatever, and the examiner is certain, based on evidence contained in the handwriting, that the writer of the known material actually wrote the writing in question (**ASTM—American Society for Testing and Materials** Designation: E 1658 – 08 Standard Terminology for Expressing Conclusions

of Forensic Document Examiners, 4. Terminology 4.1 Recommended Terms: “identification (definite conclusion of identity)”).³⁷

General Comments Regarding Handwriting Comparisons:

Similarities rather than exactness—

100. It should be noted that when comparing the same handwritten characters written by the same person, one will observe *similarities* in the writing features rather than *exactness*. People do not repeat their normal, everyday writing with the mechanical precision of a computer printer, typewriter, or of a rubber stamp. As stated by David Ellen in his treatise on page 19—

(see EXHIBIT 18, The Scientific Examination of Documents, Methods and Techniques)

“Like other writings a signature is subject to variation. No one can reproduce a signature exactly, like a printing process, and there are commonly wide variations found in the output of one person.”

Further, Ordway Hilton states on page 159 of his book—

(also see EXHIBIT 18, Scientific Examination Of Questioned Documents)—

“No two samples of writing prepared by anyone are identical in every detail, since variation is an integral part of natural writing. The amount and kind of variation differs among writers and in its way forms an important element in the identification.”

101. Therefore, although distinctive handwriting features by a same person will look “similar” to one another, these similarities will not be so close as to appear exactly the same. These “differences” executed by a same writer are more appropriately called “*variations*” or “*writing variations*.”

This principle can be observed by any person writing two or more of their own signatures, one right after the other. Even a casual comparison of these signatures will reveal perceived differences.

Although there is no doubt that the same person wrote the sample signatures in immediate succession, the “differences” observed in the same characters are referred to as “*writing variations*” and such variations demonstrate the inability of human writers to repeat their handwritings with mechanical precision or exactness.

102. Consequently, in the examinations and analysis of signatures, initials and other handwritings to determine authorship, the examiner must weigh the evidence to determine whether handwritings exhibit actual differences to indicate a different writer, or whether perceived differences are really just variant forms within a person’s own “writing repertoire.”

³⁷ Copy of ASTM E1658-08 attached hereto as EXHIBIT 5.

1 **Analysis of the “MZ” initials on Page 1 of the Facebook Contract:**

2 103. I was also asked to examine the “MZ” initials appearing to the right side of the hand printed
3 interlineation on page 1 of the Facebook Contract. I will refer to these “MZ” initials as the
4 “questioned initials.” I compared these questioned initials to numerous samples of “MZ” initials and
5 other writings by Mark Zuckerberg on other court filed documents. Copies of the documents bearing
6 known specimen initials attributed to Mark Zuckerberg are attached collectively hereto as
7 EXHIBIT 19.

8 104. I prepared a graphic comparison chart in support of my findings. This chart demonstrates the
9 similarities between the questioned “MZ” initials and the known specimen initials by Mark
10 Zuckerberg. The attached EXHIBIT 20 comparison chart (comprised of two chart pages)
11 demonstrates some of the handwriting similarities between the questioned “MZ” initials and the
12 known specimen initials by Mark Zuckerberg.

13 105. The questioned “MZ” initials were cropped from my high resolution scan of page 1 of the
14 original full page Facebook Contract document and positioned at the top of the EXHIBIT 20.1 chart
15 panel page. Similarly, six sets of known initials by Mark Zuckerberg were cropped from their full
16 page documents and positioned below the questioned initials on EXHIBIT 20.1, with six additional
17 known sets of initials cropped and positioned onto the EXHIBIT 20.2 chart panel page.³⁸ The
18 numbered arrows on these chart pages point out observed similarities in handwriting features
19 between the questioned and the known initials. For each of the numbered arrows pointing to
20 handwriting features of the questioned initials at the top of EXHIBIT 20.1, there are corresponding
21 numbered arrows pointing out similar handwriting features among the known specimen initials.

22 106. For example,

23 Arrow number 1 points to the top left peak of the “M” of the questioned initials. This point is similar
24 in form to the upper left peaks of the “M”s of the known specimen initials by Mark Zuckerberg as
25 indicated by arrows number 1 among the known initials.

26 Arrows number 2 indicate the straight staffs of the letters “M” in both the questioned and the known
27 sets of initials.

28 ³⁸ Not all of the resource known initials were placed on the chart pages.

1 The number 3 dashed step-down line under the questioned “M” shows that the right staff of the “M”
2 ends in a lower position than the left staff of the “M”. Although this relationship is not the same in
3 all of the known specimens, it is marked on the charts for four examples demonstrating that such
4 features are part of the writing repertoire of Mark Zuckerberg.

5 Arrow number 4 of the questioned initials, represents the concave or downward curving stroke
6 between the two peaks of the letters “M.” This writing feature is similar in many of the known
7 specimens as indicated by arrows number 4 of the sample writings by Mark Zuckerberg.

8 Arrows number 5 indicates the similarity in form of the upper right part of the “M”s in both the
9 questioned and the known specimen initials.

10 Arrows number 6 show the relatively elongated straight termination strokes of the letters “M.”

11 Arrow number 7 of the questioned initials, shows the shorter beginning stroke of the letter “Z”.

12 Although a little more of that stroke goes off to the left than what is visible (the ink to the left of the
13 arrow is virtually gone), it is still a relatively short stroke which has company among the known
14 specimens as indicated by arrows number 7 among those known specimens. Both shorter and more
15 extended strokes in this area are observed among the writing variation of Mark Zuckerberg.

16 Arrows number 8 points to the curved pen direction of the upper portion of the letter “Z.” This
17 feature is similar in several of the known specimens.

18 Arrow number 9 refers to the mid-elongated stroke of the letter “Z” in the questioned initials. This
19 pen movement is similar in the known exemplars as indicated by arrows number 9 of the known sets
20 of initials.

21 Arrows number 10 point to the lower curves strokes which are similar in the questioned and known
22 initials.

23 Arrow number 11 show the similar termination for the letters “Z”.

24 107. Given all of these observed handwriting similarities, the handwriting features present in the
25 questioned “MZ” initials did represent the natural, normal and genuine handwriting characteristics of
26 Mark Zuckerberg as demonstrated by his EXHIBIT 19 known specimen initials. Consequently,
27 Mark Zuckerberg (author of the EXHIBIT 19 specimen initials and other writings) *is identified* as
28 the writer of the “MZ” initials appearing next to the interlineation on page 1 of the original Facebook

Contract (reference copy attached hereto as EXHIBIT 2). An *identification* is a term of art in Forensic Document Examination opinion rendering and represents the highest degree of confidence expressed by document examiners in handwriting comparisons. That is, the examiner has no reservations whatever, and the examiner is certain, based on evidence contained in the handwriting, that the author of the known material actually wrote the writing in question (ASTM—American Society for Testing and Materials Designation: E 1658–08 Standard Terminology for Expressing Conclusions of Forensic Document Examiners, **4. Terminology** 4.1 Recommended Terms: “identification (definite conclusion of identity)” . See EXHIBIT 5 hereto).

Comparison of Mark Zuckerberg’s known specimen hand printing to the interlineation on Page 1 of the Facebook Contract:

108. I was also provided with known specimen hand printing by Mark Zuckerberg and I was asked to compare that hand printing with the questioned hand printed interlineation on page 1 of the Facebook Contract. Copies of the hand printing by Mark Zuckerberg that I used in this analysis are attached hereto as EXHIBIT 21. On the basis of my examinations and analysis I noted numerous fundamental handwriting differences in these comparisons.

109. Given all of the observed handwriting differences I determined that Mark Zuckerberg did not write the hand printed interlineation on page 1 of the Facebook Contract—this is an “elimination.” An “*elimination*” is another term of art in Forensic Document Examination opinion rendering and means that the examiner is certain, based on evidence contained in the handwriting, that the writer of the known material *did not write* the entry in question (ASTM—American Society for Testing and Materials Designation: E 1658–08 Standard Terminology for Expressing Conclusions of Forensic Document Examiner).

Comparison of Paul Ceglia’s known specimen hand printing to the Facebook Contract interlineation on page 1:

110. Through counsel, I requested from Paul Ceglia hand printing samples to compare his writings to the interlineation on page 1 of the Facebook Contract. Copies of those writings I requested and received for analysis are attached hereto as EXHIBIT 22. Upon review of these handwriting

1 samples by Paul Ceglia I noted that they were executed in a natural, spontaneous manner and
2 consequently did not cause me to suspect that they had been contrived or otherwise distorted.

3 111. I then compared the provided known writings of Paul Ceglia to the interlineation on page 1
4 of the Facebook Contract and determined through my analysis that the hand printed interlineation
5 was written by Paul Ceglia—this is an “*identification*.”³⁹

6 **Comparison of Paul Ceglia’s known specimen writings to the “MZ”**
7 **initials on page 1 of the Facebook Contract:**

8 112. Similarly, I requested from counsel samples of Paul Ceglia writing “MZ” initials for me to
9 compare to the “MZ” initials on the Facebook Contract. Copies of those requested sample “MZ”
10 initials by Paul Ceglia are attached hereto as EXHIBIT 23. Upon review of these handwriting
11 samples by Paul Ceglia I noted that they were executed in a natural, spontaneous manner and
12 consequently did not cause me to suspect that they had been contrived or otherwise distorted.

13 113. I then compared these known writing samples of Paul Ceglia to the “MZ” initials next to the
14 interlineation on page 1 of the Facebook Contract. I determined through my analysis that Paul
15 Ceglia *did not write* the “MZ” hand printed initials—this is an “*elimination*.”⁴⁰ An “*elimination*” is
16 another term of art used by Forensic Document Examiners in opinion rendering. This is the highest
17 degree of confidence expressed *away from* the known writer. That is, by using this expression,
18 the document examiner denotes no doubt in his/her opinion that the questioned and known writings
19 were not written by the same individual.

20 114. The attached EXHIBIT 24 single page comparison chart demonstrates the basis for my
21 finding that Paul Ceglia did not write the “MZ” initials. EXHIBIT 24 demonstrates some of the
22 handwriting differences between the questioned “MZ” initials on the Facebook Contract and the
23 sample initials written by Paul Ceglia. The questioned “MZ” initials appear at the top of the
24 EXHIBIT 24 chart page. Six sets of “MZ” initials written by Paul Ceglia have been positioned
25 below the questioned “MZ” initials.

26
27 ³⁹ ASTM—American Society for Testing and Materials Designation: E 1658–08 Standard Terminology for Expressing
Conclusions of Forensic Document Examiners. See EXHIBIT 5 hereto.

28 ⁴⁰ See under “elimination” ASTM—American Society for Testing and Materials Designation: E 1658–08 Standard
Terminology for Expressing Conclusions of Forensic Document Examiners. See EXHIBIT 5 hereto.

1 115. The numbered arrows on these chart pages point out observed differences in handwriting
2 features between Paul Ceglia's writings and the questioned "MZ" initials. For each of the numbered
3 arrows pointing to handwriting features of the questioned initials at the top of EXHIBIT 24, there are
4 corresponding numbered arrows pointing out differences in the handwriting features by Paul Ceglia.

5 116. For example,

6 Arrow number 1 points to the letter "M" of the questioned initials. This questioned "M" is back
7 slanted while the "M"s by Paul Ceglia are forward slanted. Additionally, it is clear that the beginning
8 strokes of the "M"s by Ceglia start with the downward motion as indicated by the close proximity of
9 the arrowheads of arrows number 1 among the known initials.

10 Arrow number 2 points to the concave top of the questioned letter "M" whereas there is more of a
11 "v" shape in the location of the Ceglia samples between the two staffs of the "M"s.

12 Arrow number 3 indicates that the bottommost position of the stroke that connects the two staffs is
13 usually higher proportionally than in the known initials made by Paul Ceglia. A further difference is
14 that the Ceglia "M"s are pointed downward rather than curved as in the questioned "M".

15 Arrows number 4 reveal that the "M"s by Ceglia are more rounded at their tops rather than pointed
16 as observed in the corresponding location in questioned initial "M".

17 Arrows number 5 show the different pen direction in the formation of the letters "Z" when
18 comparing this area of the "Z" between the questioned and known initials.

19 Arrows number 6 points to the cross-bar of the letter "Z" in the questioned initial. No such cross-
20 bars are present in the known specimen initial "Z"s by Paul Ceglia as indicated by arrows number 6
21 among the known initials by Ceglia.

22 Arrow number 7 points to the lower stroke of the letter "Z" of the questioned initial which favors an
23 arc to the left as it proceeds down, whereas the corresponding parts of the "Z"s by Ceglia favor arcs
24 to the right instead.

25 Arrow number 8 points to a more rounded feature in the questioned initial "Z" that is different than
26 the more angular lower constructions of the "Z"s by Paul Ceglia.

27 Arrow number 9 indicates the termination of the "Z" stroke of the questioned initial which is
28 different than the known specimen initials by Paul Ceglia which proceed more to the right along a

1 more straight path.

2 117. These differences in handwriting characteristics demonstrate that Paul Ceglia *did not write*
3 the “MZ” initials next to the interlineation on the Facebook Contract.

4 **Comparison of Paul Ceglia’s known specimen writings to the**
5 **“Mark Zuckerberg” signature on page 2 of the Facebook Contract:**

6 118. I also requested from counsel and received samples of Paul Ceglia writing the “Mark
7 Zuckerberg” signature so that I could compare Paul Ceglia’s writing to the “Mark Zuckerberg”
8 signature on page 2 of the Facebook Contract. These numerous “request signature samples” by Paul
9 Ceglia are attached hereto as EXHIBIT 25. Upon review of these handwriting samples by Paul
10 Ceglia I noted that they were also executed in a natural, spontaneous manner and consequently did
11 not cause me to suspect that they had been contrived or otherwise distorted.

12 119. I then compared these known writing samples of Paul Ceglia to the “Mark Zuckerberg”
13 signature on page 2 of the Facebook Contract and determined through my analysis that Paul Ceglia
14 *did not write* the “Mark Zuckerberg” signature—this is an “*elimination*.”⁴¹ An “*elimination*” is
15 another term of art used by Forensic Document Examiners in opinion rendering. This is the highest
16 degree of confidence expressed *away from* the known writer. That is, by using this expression,
17 the document examiner denotes no doubt in his/her opinion that the questioned and known writings
18 were not written by the same individual.

19 120. The attached EXHIBIT 26 comparison chart demonstrates the basis for my finding that Paul
20 Ceglia did not write the “Mark Zuckerberg” signature on the Facebook Contract. EXHIBIT 26
21 (comprised of two pages) demonstrates some of the handwriting differences between the questioned
22 “Mark Zuckerberg” signature and the known signature samples by Paul Ceglia. The questioned
23 “Mark Zuckerberg” signature is presented at the top of the EXHIBIT 26.1 chart panel page.
24 Similarly, three of the known signature samples by Paul Ceglia have been positioned below the
25 questioned signature with additional samples by Paul Ceglia on the following EXHIBIT 26.2 chart
26 panel page.

27 121. On EXHIBIT 26.1, note the golden cast of the paper and the brownish hues of the signature

28 ⁴¹ See under “elimination” ASTM—American Society for Testing and Materials Designation: E 1658–08 Standard Terminology for Expressing Conclusions of Forensic Document Examiners. See EXHIBIT 5 hereto.

1 itself. This is due to my contrast and brightness adjustments in an effort to bring out the image of the
2 signature which is faint as observed from the EXHIBIT 2 scans of the document pages that I took at
3 the document production in Buffalo NY on July 15, 2011.

4 122. The numbered arrows on these chart pages point out observed differences in handwriting
5 features between Paul Ceglia's writings and the questioned "Mark Zuckerberg" signature. For each
6 of the numbered arrows pointing to handwriting features of the questioned signature at the top of
7 EXHIBIT 26.1, there are corresponding numbered arrows pointing out differences in the
8 handwriting features by Paul Ceglia as observed among his known specimen signature samples on
9 the EXHIBIT 26.1 and EXHIBIT 26.2 chart panel pages. For example,

10 123. *The "given" name—*

11 Arrow number 1 on EXHIBIT 26.1 points to the beginning construction of the questioned "Mark
12 Zuckerberg" signature. This loop is smaller than the loops that begin the "M" constructions observed
13 in the known signatures by Paul Ceglia.

14 Arrow number 2 points to the rounded top left hump of the questioned signature. By looking at
15 arrows number 2 among the known specimen signatures one can clearly see that Paul Ceglia makes
16 angular upper strokes in this area rather than rounded ones when he writes the letters "M".

17 Arrow number 3 of the questioned signature points to the bottom point of the stroke which connects
18 the two structures of the letter "M". The position of the underside part of this "v" shape is very high
19 compared to the corresponding feature marked by the number 3 arrows among the known writing
20 samples by Paul Ceglia.

21 Arrows number 4 and 6 point to the upper curved humps of the "M" which, in the known signatures,
22 are more angular as indicated by arrows 4 and 6 among the known signatures.

23 Arrow number 5 of the questioned signature points to the drooping connection stroke between the
24 "M" and what appears to be a "k". However, in the known signature samples by Paul Ceglia, there is
25 a connection to the letter "a" with a minimal droop which at times is even more angular or abrupt in
26 appearance.

1 Arrows number 7 between the questioned and known signatures mean to point out that while Paul
2 Ceglia visually articulates his signatures (that is, he spells out all of the letters of “Mark” and all of
3 the letters of “Zuckerberg”), the questioned signature is abbreviated in nature.

4 124. *The “surname”*—

5 Arrow number 8 points to the upper “Z” construction in the questioned signature that is very
6 different in form when compared to the corresponding “Z”s of the known signatures as observed by
7 the number 8 arrows among the known specimen signatures by Ceglia.

8 Arrow number 9 shows the point in the middle of the letter “Z” of the questioned signature. This left
9 point is akin to the middle part of a number “3”. By perusing all of the known specimen signatures
10 one can determine that no such point exists in any of the known signatures by Paul Ceglia.

11 Arrow number 10 points to the letter “u” in the questioned signature which is different in form and
12 internal proportion that the known specimen signatures. That is, the right peak of the “u” is lower
13 than the left peak of the “u.” Such a difference in internal character proportion is not present in the
14 known signatures by Ceglia.

15 Arrow number 11 points to the staff construction of the letter “b” of the questioned signature which
16 is upright rather than slanted and which bears a tight loop rather than more open loops of the known
17 signatures as indicated by arrows number 11 among the known signatures.

18 Arrow number 12 points to a connection stroke leading to the “g” descender character. Arrows 12
19 among the known signatures show that no such lateral stroke is present among the known specimens.

20 Arrows number 13 show that the descender loops are different in form between the questioned and
21 the known signatures.

22 Arrows 14 (the dashed arrows) indicate that while the questioned “Mark Zuckerberg” signature at
23 the top of EXHIBIT 26.1 is mostly vertical, all of the known specimen signatures by Paul Ceglia are
24 written with a forward slant.

25 125. These differences in handwriting characteristics demonstrate that Paul Ceglia *did not write*
26 the “Mark Zuckerberg” signature on page 2 of the Facebook Contract.

27 126. An objection could be advanced that the reason why Paul Ceglia’s writing samples don’t
28 match the questioned “Mark Zuckerberg” signature is because Paul Ceglia wrote the questioned

1 “Mark Zuckerberg” signature, not in his normal writing style, but attempted to reproduce the
2 likeness of a true signature by Mark Zuckerberg. In this theory, the “forger” would have to use a
3 model of a true signature by Mark Zuckerberg since it is apparent that the questioned signature looks
4 so close to Mark Zuckerberg’s true signatures. However, two points argue against this position:

5 1) First, *simulated forgeries*⁴² give themselves away by a lack of spontaneity as
6 evidenced by slow writing speed (rhythm), the presence of tremor, indecisive pen
7 movements and patching strokes. As stated by James V.P. Conway in his book Evidential
8 Documents, (basic primer for every trainee in the field),
9 “Simulated signatures are freehand drawings in imitation of a model signature”, and,
10 “A studied simulation from a master model signature usually embodies a slow drawing
11 movement, unnatural starts and stops, a lack of rhythm, and uncertainty of letter
12 conformations. Touch-up strokes and patchings are common also because the forger by
simulation, like the artist, is his own severest critic. He is rarely content with his efforts
without adding a few ‘improving’ and ‘correcting’ touches.”

13 But these are not the features observed in the questioned “Mark Zuckerberg” signature on
14 page 2 of the Facebook Contract. This questioned signature exhibits spontaneous pen
15 movement and lacks the other tell-tale signs of a simulated forgery.

16 2) The presence of the handwriting similarities which have already been presented
17 herein show that it was Mark Zuckerberg who wrote the questioned signature on page 2 of
18 the Facebook Contract, not Paul Ceglia.

19 127. Forensic Document Examiners often discuss “the universe of the document.” That is to say,
20 experts in this field consider the context of the document under investigation. Given that there are
21 two parties to this two-page contract, we have a very limited “universe” as to the creation of this
22 contract. Given that the writings on the Facebook Contract were arguably by either Paul Ceglia or
23 Mark Zuckerberg, the obvious question is, “does the questioned ‘Mark Zuckerberg’ signature look
24 more like it was signed by Mark Zuckerberg, or does it look like it was signed by Paul Ceglia? The
25 evidence is clear on this point—it was Mark Zuckerberg who signed the “Mark Zuckerberg”
26 signature on page 2 of the Facebook Contract. This same line of argument and logic should also be
27 applied to the questioned “MZ” initials on page 1 of the Facebook Contract.

28 ⁴² Page 23 Evidential Documents, Third Printing by James V.P. Conway.

1 **Latent Handwriting Impression Evidence:**

2 128. Typical *latent handwriting examination tests* are performed to determine whether or not any
3 documents under investigation were written on while over the top of other documents also under
4 investigation. Signatures and other handwritings or hand printing on documents can leave invisible
5 indentations on the documents underneath them. The purpose of this examination is to glean
6 information that may shed light on the source, relationships or sequence of the documents under
7 investigation.

8 129. The typical machine used to process document pages suspected of having such invisible
9 writing impressions on them is called an “ElectroStatic Detection Apparatus” otherwise just referred
10 to as an “ESDA”. This is the name given to the product marketed by Foster + Freeman Ltd. While
11 there are other manufacturers of such machines, I used the ESDA for processing the documents in
12 this case.

13 130. The procedure begins by placing the document page to be processed in some kind of
14 humidity chamber to humidify it. The document is then placed on the machine’s Document Platen
15 which is designed to allow suction to draw through it to help hold the document tight to the
16 Document Platen. Next, imaging film (much like Saran Wrap) is placed over the document to protect
17 it. In the next step, a hand-held corona wand is used to create a static-charge over the imaging film.
18 Finally, a toner type of imaging developer is cascaded over the top of the imaging film to process
19 (make visible) writing impressions. To record those results, a transparent fixing film is affixed over
20 the imaging film which is then removed from over the top of the document being processed.

21 131. On July 15th, 2011 at the document inspection at the law offices of Harris Beach in Buffalo,
22 NY, I used my ESDA machine to process page 1 and page 2 of the Facebook Contract. As a result of
23 this processing my ESDA machine developed an image from page 2 of the handwritten interlineation
24 from page 1 of the Facebook Contract. Although the image produced was very faint, detailed
25 scrutiny of that page 2 ESDA image revealed that page 1 was indeed over the top of page 2 when the
26 hand printed interlineation was written on page 1.

27 132. I prepared the attached EXHIBIT 27 graphic chart to demonstrate my findings. At the top of
28 EXHIBIT 27 is a cropped scan which I took of the visible hand printed interlineation from page 1.

1 I rendered this image in *black and white* and increased the contrast for better comparison to the
2 cropped image of the ESDA process which I positioned under the visible interlineation. That lower
3 image is from page 2, the result of the pressure of the hand printed interlineation from page 1.
4 I developed the lower image using my ESDA machine. Visual comparisons of these images are best
5 made by viewing the color EXHIBIT 27 chart rather than a black and white printout.

6 133. The dashed red arrows on EXHIBIT 27 point from portions of the hand printed characters
7 from the page 1 hand printed interlineation to portions of the hand printed characters below in the
8 “ESDA lift” image. Although the ESDA image is faint, with some visual study, the observer can see
9 portions of the handwritten interlineation from page 1 (defense expert LaPorte virtually
10 acknowledges the presence of the page 1 interlineation in page 2- see discussion beginning at
11 paragraph 140 herein).

12 134. Defendant’s experts who went to the trouble of processing the Facebook Contract for latent
13 handwriting impressions, when they found them, they either did not mention their results in their
14 reports and declarations or they minimized the significance of this evidence.

15
16 **Lesnevich on the Latent handwriting impression evidence:**

17 135. I personally observed defendants’ expert Gus Lesnevich and his assistant processing the
18 Facebook Contract for several hours on July 15, 2011 at the document production at Harris Beach in
19 Buffalo New York. It is surprising that while Lesnevich makes a passing reference in his first
20 declaration that he had processed the Facebook Contract document using ESDA (Document
21 239 ¶13): “During my inspection, I processed both pages of the questioned “WORK FOR HIRE” for
22 the presence of indentations using the Electrostatic Detection Apparatus (ESDA)”,⁴³ he did not
23 mention any observations, results, findings, nor conclusions of these several hours of processing in
24 his formal, complete report (Document 329).

25 136. It is a lot of work to pack up and transport the ESDA equipment; to set it up at the on-site
26 location and then perform the ESDA processing. After a document production is completed, all of
27 the equipment then needs to be repacked, taken to the car, transported back to the office location,
28 _____

⁴³ Copy of ASTM Designation E2291-03 Standard Guide for Indentation Examinations attached hereto as EXHIBIT 28.

1 unloaded out of the car and then set back up at the office again. This equipment is heavy, bulky and
2 difficult to pack and stow for each step of transport for the trip out and the return trip. Having gone
3 through all those gyrations, and now having had the chance to discuss his ESDA processing findings
4 in his comprehensive report, Lesnevich did not mention anything at all about his hours of
5 processing, examinations, analysis, findings nor conclusions concerning his ESDA processing.

6 137. Even as can be seen from reviewing the Video of the defendants' experts on July 15 2011,
7 the latent handwriting impression tests using the ESDA machine was a big part of the activity.
8 The ESDA equipment was brought on site for a reason as defendants' experts understand the value
9 of such evidence. That Lesnevich makes absolutely no mention of his ESDA work in his second,
10 apparently "complete report" speaks volumes. Apparently Lesnevich does not dispute the presence
11 of the page 1 hand printed interlineation appearing on page 2 as a latent impression since he made no
12 comment refuting this evidence. In light of the fact that Lesnevich did process the Facebook
13 Contract pages for the presence of latent handwriting impression evidence, it would be expected that
14 he would have made some mention of it had the results been helpful to his client's position.

15 138. I suspect that Lesnevich did find an impression on page 2 of the interlineation from page 1
16 but has failed to report on its presence. It is particularly likely since I found the impression and
17 defense expert LaPorte also found the impression of the interlineation from page 1 on page 2 of the
18 Facebook Contract⁴⁴.

19 139. It unclear whether defendants' expert Lesnevich was instructed to withhold his ESDA
20 findings, or whether he decided on his own not to report on his ESDA findings, despite the standing
21 order from Honorable Leslie G. Foschio (Document 83 page 3) that "Defendants shall complete the
22 examination of the Hard-Copy Documents and Electronic Assets, and by September 9, 2011,
23 Defendants shall provide to the Court and Plaintiff all reports documenting the findings of that
24 examination." (underlining added).

25 ///

26 ///

27 ///

28 _____
⁴⁴ LaPorte Document 326, Page 16 Paragraph 7. Indentation/Impression Examinations.

1 **LaPorte on the Latent handwriting impression evidence:**

2 140. Page 16 of LaPorte's March 26 2012 report (Document 326), Paragraph 7.

3 Indentation/Impression Examinations, LaPorte appears to concede that "An indented entry was
4 observed above Section 11 on page 2 of the *Work for Hire* document." He went on to add that
5 "Although some of the text coincides with the text in the interlineations, it could not be determined
6 definitively if the entire impression originated from the interlineation on page 1."

7 141. LaPorte states that he did process the questioned documents using an ESDA machine⁴⁵, and
8 in addition, he used "side lighting" which "did allow for a portion of the entry to be visualized".
9 Typically these results are enough to "call it". He states that he saw enough elements of the
10 handwritten interlineation from page 1 on page 2, admitting that "some of the text coincides with the
11 text in the interlineations," yet he balks stating that "it could not be determined definitively if the
12 entire impression originated from the interlineation on page 1." This is just unprofessional, if not
13 negligent. Having observed portions of actual handwritings that "coincide" with portions of an entry
14 and "some of the text" which coincides, that provides sufficient evidence to determine that the page
15 bearing evidence of the original actual handwritings was indeed over the top of the document
16 exhibiting the latent writing impression evidence of the handwritings from the top page.

17 142. In fact, this is what LaPorte has already done in this very same report on Page 27 (Doc 326)
18 under Paragraph 14 with his stated findings regarding the Technical Specifications Document.
19 He stated unequivocally that the handwritings from one page were observed as a latent writing
20 impression on another page on the mere basis of "*a portion of the entry*." However, with regard to
21 the Work For Hire document/Facebook Contract, even though he determined that "some of the text
22 coincides", that is, he observed "a portion of the entry", nevertheless, he made no unequivocal
23 statement but instead questioned the source of the entry when the source of the interlineation was
24 readily clear.

25 143. With respect to the Facebook Contract, LaPorte now departs from the accepted authorities in
26 the field with his proclamation that the finding of latent impressions on page 2 of the visible hand
27 printed interlineation from page 1 "does not provide any evidence that pages 1 and 2 were created
28 _____

⁴⁵ LaPorte states that he used the ESDA machine (Document 326) at 7. Indentation/Impression Examinations.

1 contemporaneously or that the Work for Hire document is authentic.”

2 144. Contrary to LaPorte’s assertion, latent writing impression evidence has long been considered
3 as compelling evidence that two or more pages have an association together. Numerous citations
4 from the technical authorities in the field speak to the importance of such evidence. For example,

5 “The discovery of indented impressions can be of great significance.”⁴⁶

6 Also on page 334 of the book titled the Scientific Examination of Questioned Documents, Second
7 Edition, Section 27.6 “Proof of an Unaltered Document” and in the very context of examining
8 documents to see if there has been a substitution, the author states (copy of excerpt attached hereto
9 as EXHIBIT 30):

10 “A further consideration in a multi-page document is whether any pages may have been
11 removed and others substituted, or new pages added into the document after execution. Such
12 examinations, of course, involve consideration of the writing instrument, printer, paper,
13 manner of binding, **and the presence of writing indentations that may have resulted from
preparation of material on the previous page**” (bold and indenting added).

14 145. Having cast doubt upon different independent elements of the actual evidence, LaPorte does
15 not appear to practically understand that an opinion regarding the authenticity of a document is
16 cumulative in nature. The experienced Forensic Document Examiner considers the weight of all of
17 the elements of the evidence in the formulation of their ultimate opinion. That is, each piece of
18 evidence cannot be considered in a vacuum but should be considered as to the sum of all elements of
19 evidence concerning the documents under investigation. As instructed in the technical authority
20 regarding the procedures to establish if a document “has not been altered” (Scientific Examination of
21 Questioned Documents page 333 from Section 27.6 Proof of an Unaltered Document ⁴⁷,
again EXHIBIT 30 hereto):

22 “...it is incumbent upon document examiners to be able to prove genuineness as well as fraud.
23 This proof of genuineness is necessary to support the validity of certain disputed documents.
24 Actually, the procedure involves not the application of any single test, but a consideration of
all the applicable procedures to determine whether there has been an erasure, a substitution,
or any other type of alteration in a document” (underlining added).

25 and also page 334 at the top paragraph,

26 “It is the *cumulative evidence* that establishes that the document is unaltered” (italics added).

27 ⁴⁶ Page 173 Scientific Examination of Documents Methods and Techniques Third Edition, David Ellen CRC Taylor &
28 Francis Group 2006 (copy attached hereto as EXHIBIT 29).

⁴⁷Scientific Examination of Questioned Documents Second Ed. Taylor & Francis.

1 Further insight on this point is given on the next page of this authority (Page 335):

2 “The need to establish that a document has not been altered may involve a complex study.
3 There is no single, simple test. All potential tests for showing that something has been erased,
4 added, or modified in any way must be applied. When the ***combined results*** reveal no
change, it can be stated that there is no evidence to support that this document was altered.”
(bold and italics added)

5 **An example from this case evidence of considering**
6 **“combined results” and “cumulative evidence”:**

7 146. When considered in unison, the staple hole evidence and the latent handwriting impression
8 evidence mutually support one another. EXHIBIT 31 hereto is a three page chart that demonstrates
9 that when you line up the staple holes of page 1 of the Facebook Contract directly over the staple
10 holes of page 2 of the Facebook Contract, the position of the visible handwritten interlineation from
11 page 1 also lines up over the same position on page 2 where the indented impression was present,
12 right where we would expect it to be if the interlineation had been written and initialed with the two
13 same pages stapled in place. Indeed, that is what the evidence demonstrates.

14 147. EXHIBIT 31.1 is a copy of page 1 of the Facebook Contract which has been rendered in red
15 to distinguish it from page 2 which shows the text in black (*it will be important for the reader to*
16 *view the color version rather than a black and white printout of this exhibit*). At the upper left of
17 EXHIBIT 31.1 is a turquoise box highlighting the presence of the staple holes with their secondary
18 impression marks. At the lower part of the text of the left hand column is a turquoise rectangle
19 surrounding the hand printed interlineation along with the “PC” and “MZ” initials.

20 148. EXHIBIT 31.2 is a copy of page 2 of the Facebook Contract which is in black. At the upper
21 left of EXHIBIT 31.2 is a turquoise box highlighting the presence of the staple holes with their
22 secondary impression marks which all match the same staple holes and marks of page 1. These
23 matches have already been demonstrated in paragraphs 10-17 herein. The lower turquoise rectangle
24 on EXHIBIT 31.2 shows the position of where the latent handwriting impressions was observed on
25 page 2 from the visible handwritten interlineation seen on page 1 (EXHIBIT 31.1 panel).

26 149. EXHIBIT 31.3 blends together the staple hole evidence with the discovery of the latent
27 handwriting impression evidence. On EXHIBIT 31.3, page 1 of the Facebook Contract (rendered in
28 red) has been superimposed over the top of page 2 of the Facebook Contract (black image). Note:
only the “WORK FOR HIRE” title and most of the left column of print have been duplicated from

1 page 1 to create a more manageable visible display. This EXHIBIT 31.3 panel demonstrates that
2 when you line up the staple holes from page 1 over the staple holes of page two, you then observe
3 that the visible hand printed interlineation from page 1 also lines up over the area on page 2 where
4 the latent handwriting impression was discovered.

5 150. The insights from the authorities are directly on point in this regard:

6 “When the *combined results* reveal no change, it can be stated that there is no evidence to
7 support that this document was altered.”⁴⁸

8 This is not the only instance of mutually supporting evidence. All of the mutually supporting
9 evidence will be detailed together in this declaration summary beginning in paragraph 232 herein.

10 **The visible hand printed interlineation on the “STREET FAX” page does not match**
11 **the latent handwriting impression from page 2 of the Facebook Contract:**

12 Spacing from the left margins

13 151. I examined the two pages of the Facebook Contract and determined that the position of the
14 interlineation from the left-most margins was approximately fifteen (15) typed characters (give or
15 take 2 characters). That is, on page 1 of the Facebook Contract I noted that the visible “P” in the
16 hand printed word “Providing” is positioned at approximately 15 printed characters from the left
17 most margin. In the upper image of EXHIBIT 32 attached hereto, under bubble #1 are fifteen
18 descending red arrows pointing down to count the printed characters from the left-most margin to
19 the hand printed letter “P” in “Providing.” There are small numbers at the tops of the arrows and
20 immediately under the bracket showing that the count is fifteen (15) characters, keeping in mind that
21 a space also needs to be counted as a character.

22 152. I then reviewed the latent handwriting impression which I developed from the page 2 original
23 and observed that the latent writing impression also began at approximately 15 printed characters
24 from the left-most margin (give or take 2 characters).⁴⁹

25 153. I then reviewed page 1 of the STREET FAX document to determine how many characters
26 from the left margin the letter “P” was positioned for the STREET FAX interlineation. As stated

27 ⁴⁸ Page 335, Scientific Examination of Questioned Documents Second Ed. Taylor & Francis.

28 ⁴⁹ I did consider the variable that the character spacing of the printed text of the Facebook Contract page being compared is “proportion printing.” However, an average count of the lines above and below confirm the stated character count spacing.

1 previously, both pages of the STREET FAX document are poor quality copies, however, at least a
2 character count can be conducted to determine how many characters from the left hand margin the
3 visible hand printed interlineation begins. In the lower image of EXHIBIT 32, one can see (below
4 bubble #2) that the “P” in “Providing” begins about only four characters to the right of the left-most
5 margin. There is a substantial difference in the spacing from the left hand margin of the hand printed
6 interlineation on the STREET FAX document in comparison to the spacing of the interlineation on
7 page 1 of the Facebook Contract. That substantial difference is about eleven (11) printed characters.

8 154. In summary, the position of the latent impression on page 2 of the Facebook Contract
9 matches the position of the visible hand printed interlineation on page 1 of the Facebook Contract.
10 However, the hand printed interlineation on page 1 of the STREET FAX document does not match
11 the position of the latent impression on page 2 developed from the Facebook Contract.

12 155. Consequently, the hand printed interlineation from the STREET FAX document is not in the
13 proper position to argue that it was the source hand printed interlineation that appears as the latent
14 handwriting impression on page 2 of the Facebook Contract. This provides further evidence that the
15 copy of page 1 of the STREET FAX document does not represent the original that was supposedly
16 the true companion document contemporaneously created with page 2 of the Facebook Contract
17 (“*Work for Hire*” Contract) document.

18 Hand printed interlineation on STREET FAX does not match page 2 of Facebook Contract

19 156. The attached EXHIBIT 33 chart shows three cropped images. At the top of the page is an
20 enlargement of the cropped image of the visible hand printed interlineation from page 1 of the
21 Facebook Contract. This image is rendered in black and white for comparison purposes. One can
22 observe in the top image that the “PC” initials are positioned higher than the line of print to the left.
23 That is, the top of the “PC” is much higher than the tops of the handwritings to the left as indicated
24 by the dashed red line which rises up over the top of the “PC” initials to show the difference in
25 relative position.

26 157. The middle image is a repeat of the latent handwriting impression developed from page 2 of
27 the Facebook Contract which has already been presented in EXHIBIT 27 and discussed herein in
28 paragraphs 132-134. Note in EXHIBIT 33 that the top of the “PC” initials are also high in

1 comparison to the tops of the overall line of print to the left as indicated by the red dashed line than
2 rises up toward the right to show how the “PC” initials are positioned higher than the main body of
3 text. The relative position of the “PC” initials being higher than the main body of text for the ESDA
4 (middle) image (page 2 of Facebook Contract) is the same as the relative position of the “PC” initials
5 for the visible hand printed entry as is plainly visible in the upper image represented by page 1 of the
6 Facebook Contract.

7 158. The bottom image on EXHIBIT 33 is a crop of the interlineation from the STREET FAX
8 document. Note that the print quality is poor, however, one can at least observe the general position
9 of the hand printing in relationship to the surrounding mechanically produced (“typed”) text. In this
10 lowest image on EXHIBIT 33 one can observe that the tops of the “PC” initials are about the same
11 height as the height of the overall printing of the main interlineation.

12 An additional point in this regard is that the verb “is,” which appears as the visibly hand
13 printed verb in the interlineation on page 1 of the Facebook Contract, and which also appears
14 as the latent handwritten verb on page 2 of the Facebook Contract, is not the same verb for the
15 interlineation on the STREET FAX document. The verb used for the STREET FAX hand printed
16 interlineation was the word “has” rather than “is.”

17 159. These additional differences between the position of the handwriting of the STREET FAX
18 document and the use of different words demonstrates again that the interlineation on the STREET
19 FAX document was not the interlineation developed from page 2 of the Facebook Contract (“Work
20 for Hire” Contract) document.

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Examination of the paper of the Facebook Contract pages:

Measurements and visual inspection and comparison of page 1 with page 2 of the original Facebook Contract—

160. When I examined the original two pages of the Facebook Contract I used a micrometer and measured both pages of the Facebook Contract and each page measured at 0.11 mm.⁵⁰ Measuring paper thickness is a standard procedure suggested by ASTM Designation: E2325-05 Standard Guide for Non-destructive Examination of Paper. At paragraph 6.3.1 this standard recommends using a “Micrometer capable of measuring in increments of 0.02mm or 0.001 inch.” I took measurements in at least six positions on each of the two pages. My measurements show that the two pages of the Facebook Contract are the same thickness.

161. I also observed from the Video (at 13:55:20) of the document production July 14th, 2011 that Peter Tytell took paper thickness measurements with a micrometer. However, Tytell makes no mention in his report (Document 330) of his findings regarding his micrometer measurements of the paper of the two pages of the Facebook Contract. That he has not reported his results after an apparently thorough process of measuring the paper thickness can be taken as his acknowledgement that the two pages of the Facebook Contract indeed measure the same further demonstrating the disparity between the defense experts since Tytell apparently does not agree with LaPorte who has stated in his report that he thinks the two pages measure differently.⁵¹

162. I also measured the two pages of the Facebook Contract as to their width and length and discovered that these measurements were precisely the same for both pages.

163. I also examined the opacity and the cockling features of pages 1 and 2 of the Facebook Contract and these features were the same between both pages. “Opacity” refers to the amount of light that can shine through a sheet of paper and to what extent you may see other images printed on another sheet placed immediately behind the sheet being viewed.⁵² “Cockle”⁵³ or “cockling” refers

⁵⁰ In my preliminary declaration (Document 194) at Paragraph 21. d) I inadvertently typed “0.011” when the actual measurement is 0.11 mm. Nevertheless, the measurements were the same for page 1 and page 2 of the Facebook Contract pages.

⁵¹ LaPorte’s opinion- Document 326 page 21 “There was an observable, statistically significant difference in the thickness of pages 1 and 2.”

⁵² Page 370 Paper Knowledge book of The Mead Corporation First Edition 1990.

⁵³ Page 144 Paper Knowledge book of The Mead Corporation First Edition 1990.

1 to a puckered paper surface, the result of uneven, spotty shrinkage of the paper during drying as part
2 of the paper manufacturing process. I use this term “cockling” in reference to the texture and finish
3 of the paper surface which, under magnification, had a textured feature to it which was visually the
4 same between page 1 and page 2 of the Facebook Contract.

5
6 **Paper Fiber Lab Testing—**

7 164. Since my preliminary declaration (Document 194) I have reviewed the TEST REPORT dated
8 December 13, 2011, of Walter J. Rantanen, Technical Leader, Fiber science of IPS Testing Experts
9 (copy of report attached hereto as EXHIBIT 34). Plaintiff’s expert Larry Stewart provided me this
10 report advising me that he (Stewart) submitted samples of the paper fibers from page 1 and page 2 of
11 the Facebook Contract to Mr. Rantanen for analysis. Mr. Rantanen subsequently reported on page 2
12 of his December 13, 2011 TEST REPORT that “The fiber content of the two vials is consistent with
13 coming from the same mill and production run.” What that means is that the actual sheets of paper
14 that were used for page 1 and page 2 of the Facebook Contract pages were created on the same day.
15 This argues against any claim that a new/different sheet of paper would have been purchased years
16 later and then fraudulently inserted as a new page 1 to page 2 of the original Facebook Contract.

17 165. This chemical testing report by Walter J. Rantanen confirms my measurements and visual
18 examinations. That is, I previously reported that the results of my inspection was that “these features
19 were the same between both pages” (Document 194 ¶21.e) and now we have the chemical analysis
20 by IPS Testing Experts that supports my initial measurements and visual observations that the paper
21 of page 1 and page 2 of the Facebook Contract are the same.

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Observations regarding defense experts examinations at the document production in Buffalo NY on July 15, 2011:

166. I was present at the law offices of Harris Beach in Buffalo, NY on Friday July 15, 2011 and observed the entire day of examinations of the original questioned Facebook Contract/“*Work For Hire*” Contract by the Facebook’s document experts Peter Tytell, Gus Lesnevich (and his assistant Khody Detwiler), as well as Michael Zontini of Foster and Freeman who was working closely with the Facebook Defense experts, especially with Peter Tytell who spent much of his time using the VSC machine⁵⁴.

167. I had been informed that the experts for Facebook had already spent the entire previous day examining the Facebook Contract. Having now reviewed the Video of the day of testing on July 14, 2011, I have seen that Peter Tytell, along with Michael Zontini of Foster and Freeman, and Frank Romano were the people present on Thursday July 14, 2011.

168. Over the course of the day while I was present on Friday July 15, 2011 I was not allowed to get close to the examinations in progress by the Facebook Defense experts. Counsel for Facebook, as well as Facebook experts, made it clear that I was to stay on the far side of the room and only watch from a great distance.

Excessive processing of the Facebook Contract pages by defendants’ experts:

169. I observed Facebook’s experts repeatedly exposing the Facebook Contract to UV light as well as other light sources. Even though I was on the other side of the room, I could see the lights of the VSC glowing from around the sides of the unit. I further noted that the documents were repeatedly tested on the “ESDA” machine by Gus Lesnevich and his assistant Khody Detwiler.

170. The ESDA machine tests for the presence of latent handwriting impressions on documents⁵⁵. In preparation to place documents on the ESDA machine, they are first humidified. I noted that the ESDA machine was being used quite a lot over the course of the day. From what I observed, the documents in question were being repeatedly humidified, then subjected to intense lighting.⁵⁶ Numerous cycles of light exposures and humidification for ESDA processing were repeated.

⁵⁴ VSC stands for “Video Spectral Comparator” and is a document imaging system of Foster + Freeman Ltd.

⁵⁵ My ESDA analysis was discussed previously herein in paragraphs 128. through 134.

⁵⁶ Review of the July 14th 2011 Video I noted that the VSC was used during the analysis and additionally that Tytell exposed the Facebook Contract to some very bright/intense lights in addition to the processing in the VSC machine.

1 171. I was so concerned about the excessive processing by Facebook experts that at one point I
2 asked Tytell, who was at the VSC machine, what settings he was using for his UV examinations as
3 there are three possible settings⁵⁷ on the VSC imaging system for UV examinations. My concern
4 was due to my personal experience with the virtually identical VSC imaging system that I use in my
5 own office (the VSC4Plus), where I have observed that even the most benign UV setting of 365
6 nanometers can still have damaging effects to documents if they are subjected too long to Ultra
7 Violet light.

8 172. My concern at that time rose to such a level that I commented to Plaintiff's Counsel.

9 173. Indeed, by the time I was finally allowed to examine the document pages after 5:00 pm on
10 July 15, 2011 I observed deterioration (fading/yellowing) of the Facebook Contract pages and I also
11 noted that the writing pen inks were virtually gone. That is, I observed only traces of writing pen
12 inks for the interlineation on page one and for the signatures and date entries on page two. The
13 extent of ink evaporation and deterioration on both pages of the Facebook Contract sheets was
14 extensive.

15 174. I took high resolution color scans of the Facebook Contract pages to archive a record of the
16 condition of the pages at the time that I received them for examinations. To be clear, my images
17 were taken after the Facebook experts had performed about eighteen hours of testing and analysis. I
18 come to that time estimate since I was advised that the examinations by Facebook Experts went from
19 around 9:00 am the previous day (Thursday July 14, 2011) until about 7:00 pm that same evening,
20 and then adding those ten hours to the eight hours of processing I observed as of Friday July 15,
21 2011 gave me the rough estimate of eighteen hours.

22 175. The images I took at 5:00 pm on July 15, 2011 are consistent with the fading/yellowing
23 appearance of the two-page Facebook Contract at the top of the image of documents revealed in the
24 July 25, 2011 video at 9:28:05. I have been informed that this image is when the documents were
25 unsealed for further investigation in Chicago after the Buffalo production. Note that now the
26 Facebook Contract is yellowed in comparison to the six page *Technical Specification* document,
27 whereas when the documents were first presented for inspection on Thursday morning on July 14,

28 ⁵⁷ The light emission setting for UV are 254 nanometers, 313 nanometers and 365 nanometers.

1 2011 in Buffalo, before the Facebook experts started their examinations, the Facebook Contract is
2 whiter than the *Technical Specification* document.

3 176. The imagery of the scans that I took show the discoloration now evident in the Facebook
4 Contract, and my imagery also shows the writing pen ink damage, the likely causation attributed to
5 extended exposure of the documents to UV and other light sources during the testing by Defense
6 experts as well as, and in conjunction with the other examinations, testing and imaging of the
7 Facebook Contract by the Defense experts.

8 177. I observed Defense experts repeating the same tests on the Facebook Contract repeatedly and
9 performing far more testing than was needed to make proper scientific determinations about the
10 authenticity of the document.

11 178. The VSC imaging system is typically used to analyze and compare writing pen inks and to
12 compare optical brighteners of papers and/or to check overt and covert security features on
13 document pages such as World currencies, Passports and other Identity documents. No such security
14 features were present on the Facebook Contract pages. Consequently only writing pen ink, machine
15 toner and paper UV responses could be tested which precludes the need for excessive processing.

16 **Contrary to the assertions by defendants' experts, excessive exposure**
17 **by various lights, heat & humidity, damages documents:**

18 179. Since mechanical printing and handwriting appeared on the faces (fronts) of each of the
19 document pages, it is likely that Facebook experts did not spend much time exposing the reverse
20 sides to the VSC lights or other lights they were using. The Video for July 14, 2011 and July 15,
21 2011 show the numerous times the document pages were exposed to very strong lighting sources by
22 the defense experts.

23 180. Since the front sides of the Facebook Contract pages are more deteriorated/"yellowed" than
24 the reverse sides, that supports a contention that overexposure and over processing by Facebook
25 experts contributed to the document pages now revealing a more deteriorated condition on their front
26 sides than on their reverse sides.

27 181. Over the course of my attendance at the document inspection I found the repeated
28 examinations of the questioned documents by the Facebook experts to be excessive, especially in
respect to UV and other lighting exposures and ESDA processing.

1 182. Even the least destructive setting of UV (365 nanometers) can still be damaging over
2 surprisingly short periods of time. Sometime after the document production in Buffalo, I performed
3 tests using my own VSC4 unit, the same Foster and Freeman machine used by defense experts on
4 July 14 and 15 2011 and supervised by Michael Zontini. Mr. Zontini confirmed to me at the Buffalo
5 production that the only difference between my VSC unit and the one being used by Tytell was that
6 my unit has additional manual button control features while the one used by Tytell did not.

7 183. For my test, I used just the least damaging of the three UV settings (365 nanometer long
8 wave UV light). EXHIBIT 35.1 hereto is an image showing a sheet of regular 20 pound office paper
9 that I placed inside my VSC4 unit with two wide strips of black heavy stock paper covering two
10 sections of the test page. Even this setting at only one hour gave the test document "tan lines" as can
11 be observed in the EXHIBIT 35.2 image which I photographed under long wave UV to help show
12 those "tan lines." Note the three darker areas indicated by the three red arrows on EXHIBIT 35.2.
13 Those were the areas exposed to the lights over the one hour test period. Note further that the two
14 wide vertical areas in between the three red arrows are lighter, not unlike the "tabbed" areas of the
15 Facebook Contract addressed by defense experts. This exhibit demonstrates, and is evidence that,
16 UV can damage a document even over relatively short periods of time.

17 184. The manufacturer of these machines recognizes the potential danger of UV light exposure
18 since in the manual they provide with this machine it notes that the sides of the light box must be
19 closed all the way before the other, even more damaging UV settings of 254 nanometers and 313
20 nanometers will turn on. That is, the machine has a "lock out" feature to help prevent damage to
21 human skin while the document is being processed (EXHIBIT 36).⁵⁸ On page 4 of the manual,
22 under "Safety interlocks" it states that "The canopy flaps are electrically interlocked to prevent the
23 operation of potentially hazardous UV sources unless they are properly lowered."

24 185. Additionally, on page viii of the VSC manual (EXHIBIT 36) it warns of heat exposure.
25 In addition to the UV lamps, there are other light sources inside the VSC systems and any of the
26 lamps/lights used in the VSC machines generate heat. With the side covers down, particularly over
27 time, a VSC unit can radiate a document if left in the unit for long periods of time even with
28 standard lighting.

⁵⁸ Foster and Freeman manual for the VSC4Plus, excerpt from page 4 attached hereto as EXHIBIT 36.

186. The book Suspect Documents Their Scientific Examination by Wilson R. Harrison is a recognized primer and technical authority in the field of Forensic Document Examination. Harrison's book gives the following warnings⁵⁹ regarding the dangers of over exposure of documents to both UV and infrared lights:

"As ultra-violet light is highly actinic, the exposure of a document to a powerful source should be restricted to the minimum, for the dyestuffs in some coloured inks and in many typewriter ribbons are fugitive and may fade appreciably even during comparatively short exposures. This fading may have serious consequences for there may be no known procedure whereby the colour may be restored...Long continued exposure of the unprotected hands to a powerful source of ultra-violet light will produce a painful skin reaction akin to sunburn, so gloves should be worn **The deep yellowing of the cheaper grades of paper and the rapid fading of coloured inks**, especially those used in typewriter ribbons, when they are exposed to sunlight immediately spring to mind in this connection. Eventual deterioration is experienced by the best qualities of paper and the majority of inks, only the process takes longer"...

"In the course of laboratory examination, documents may have to be exposed to powerful sources of ultra-violet light or infra-red radiation. It should be borne in mind that a short exposure to a powerful source of ultra-violet radiation is likely to do far more harm than months of exposure to ordinary daylight. Infra-red sources will cause a serious rise in the temperature of a document unless suitable precautions are taken with respect to ventilation. *It should be a matter of routine to mask as much of the document as possible and to use all possible means to decrease the time of exposure.*"

Another study revealed that "Thus, every hour of UV irradiation accelerates the aging by approximately 182 days."⁶⁰ Consequently, it should be clear that UV exposure and infrared radiation can cause serious damage to both paper and inks on documents.

187. Hilton also offers a warning on page 351 of his book⁶¹,

"The very faded countersignature on a traveler's check had been written with green ball point pen ink. Some writing inks are not *lightfast*, and even moderate exposure to strong light causes serious fading."

188. Consequently, not only UV lights can cause damage to a document but "even moderate exposure to strong light" can also cause "serious fading." It bears consideration in these discussions about lighting that most types of lights have a potentially damaging UV component, and or, generate heat that can also damage documents. That is to say that you don't have to use a lamp stamped "UV"

⁵⁹SUSPECT DOCUMENTS THEIR SCIENTIFIC EXAMINATION By Wilson R. Harrison, M.S.c., Ph.D. Sweet & Maxwell Limited 1958. Pages 82, 89, 90, 458, 459

⁶⁰ EVALUATION OF LASER DESORPTION MASS SPECTROMETRY AND UV ACCELERATED AGING OF DYES ON PAPER AS TOOLS FOR THE EVALUATION OF A QUESTIONED DOCUMENT. By Donna M. Grim, B.S., Jay Siegel, Ph.D., and John Allison, Ph.D. Journal of Forensic Science November 2002-Vol 47, Number 6, Pgs 1,2,3,5,6,7,8

⁶¹ Scientific Examination Of Questioned Documents Revised Ed. Orway Hilton CRC Press

1 to damage documents since many types of light bulbs project elements of UV and, or infrared
2 emission, which generate radiant levels of heat which is also inherently damaging. The very simple
3 and practical authority for this is each person's own experience. It is likely that everyone reading this
4 declaration has noticed in their offices, homes and garages, certain light covers, lens covers over
5 light bulbs or lamp shades that have yellowed and deteriorated over time. As a result, we go out to
6 the store and buy new light covers, lens covers or other lamp shades to make our light fixtures look
7 new again.

8 189. That such environmental conditions (to include heat) affect printed matter is clear as
9 recognized by yet another technical standard developed by the ASTM to test the ability of printed
10 matter to withstand color changes when exposed to different sources of light. ASTM Designation:
11 D3424—11 Standard Practice for Evaluating the Relative Lightfastness and Weatherability of Printed
12 Matter, states at Section 5.1:

13 "5.1 Since the ability of printed matter to withstand color changes is a function of the
14 spectral-power distribution of the light source to which it is exposed, it is important that
lightfastness be assessed under conditions appropriate to the end-use application."

15
16 "Lightfastness" is an industry term used to express how robust printed materials can be in
17 withstanding the deteriorating influences of various lights, high humidity and heat. This seven page
18 ASTM standard provides guidelines for setting up testing scenarios using different types of lighting
19 conditions to test the "Lightfastness" of printed materials. This ASTM standard also discusses the
20 importance of setting up controlled experiments using 40 percent relative humidity as a constant as
21 part of the test scenario.

22 190. Consequently, changes in humidity and changes in all types of light sources are recognized
23 as having detrimental influences on printed materials such as paper and writing inks. ASTM
24 Designation D3424—11 also acknowledges under Section 9.5 that heat and moisture affect test
25 samples. In regard to the preparation of file specimens for testing this guide also states:

26 "NOTE 4—... Even though shielded from radiation, some materials may undergo color
27 changes due to the heat or moisture present during the test."
28

1 191. Both Tytell and Lesnevich can be observed projecting very strong lighting onto the
2 documents. As an example see EXHIBIT 41 hereto which is a still image from the Video on July 14,
3 2011 at 16:47:02, where Tytell projected a strong light on the documents for extended periods of
4 time.

5 192. In spite of these clear warning statements by Hilton and Harrison in their books, and in light
6 of other warnings from the field, LaPorte's claim is disingenuous that⁶²:

7 "In addition, I am not aware of any reports that this type of standard laboratory equipment
8 resulted in severe degradation of paper or ink on a document during an examination."

9 This claim by LaPorte was made in the context of having read my previous declaration (Document
10 194 ¶ 20) wherein I quoted the warnings regarding light exposures by Harrison. Hilton also warns to
11 "Avoid Excessive Handling" (page 352 ⁶³) stating,

12 "Repeated handling of a document can actually wear it out. In this way a paper becomes
13 dirty, frayed, and stained." ... "Long before the document shows a marked deterioration,
14 microscopic changes have occurred that may influence or interfere with a technical
15 examination." ... "The time in which the deterioration occurs can be surprisingly short, and
16 one must be constantly on guard to prevent it."

17 Consequently, before penning his disingenuous statement in his report, there should be no dispute
18 that LaPorte had been well advised of the dangers of light exposures to writing inks and to papers
19 since even a casual reading of my first declaration by LaPorte should have pointed him to these very
20 scientific citations to review them for himself. While it is obvious that LaPorte read my previous
21 declaration (Document 194) since he provided criticisms of my opinions in his report (Document
22 326), on the other hand, he turned a blind eye to the actual authorities on point that I cited in that
23 very same declaration.

24 193. Lyter also disavows any knowledge of an authority on this point with his statement
25 (Document 328 Page 3),

26 "I am also unaware of any published scientific literature that purports to document visible
27 deterioration caused by the examination of questioned documents with ultraviolet light."

28 ⁶² Document 326 Pages 10-11.

⁶³ Hilton, Scientific Examination of Questioned Documents page 352.

1 Following in the footsteps of LaPorte, defendants' expert Lyter did not read the portion of my first
 2 declaration (Document 194 ¶ 20) where I gave the warnings from the technical authorities in the
 3 field such as:⁶⁴

4 "As ultra-violet light is highly actinic, the exposure of a document to a powerful source
 5 should be restricted to the minimum, for the dyestuffs in some coloured inks and in many
 6 typewriter ribbons are fugitive and may fade appreciably even during comparatively short
 7 exposures. This fading may have serious consequences for there may be no known procedure
 8 whereby the colour may be restored...Long continued exposure of the unprotected hands to a
 9 powerful source of ultra-violet light will produce a painful skin reaction akin to sunburn, so
 10 gloves should be worn **The deep yellowing of the cheaper grades of paper and the**
rapid fading of coloured inks, especially those used in typewriter ribbons, when they are
 11 exposed to sunlight immediately spring to mind in this connection. Eventual deterioration is
 12 experienced by the best qualities of paper and the majority of inks, only the process takes
 13 longer"... (bold and underlining added)

14 "In the course of laboratory examination, documents may have to be exposed to powerful
 15 sources of ultra-violet light or infra-red radiation. It should be borne in mind that a short
 16 exposure to a powerful source of ultra-violet radiation is likely to do far more harm than
 17 months of exposure to ordinary daylight. Infra-red sources will cause a serious rise in the
 18 temperature of a document unless suitable precautions are taken with respect to ventilation. It
 19 should be a matter of routine to mask as much of the document as possible and to use all
 20 possible means to decrease the time of exposure."

21 194. Peter Tytell states in his report on page 4 (Document 330) that,

22 "The nature of my examination was non-destructive"... "I also used various light sources
 23 for side-light illumination grazing the surface; hand-help ultraviolet lamps;"...

24 In spite of Tytell's claim that the light sources that he uses do not cause harm ("was non-
 25 destructive"), he is observed on the Video at 18:10:22⁶⁵ wearing UV protective goggles (over his
 26 regular glasses which likely already have UV protection) as he projects a very powerful intense light
 27 on the documents (this Video image at 18:10:22 attached hereto as EXHIBIT 42⁶⁶). The male
 28 attorney at the left side of this Video image can be seen shielding his eyes from the very strong light
 that Tytell was using while the female attorney's eyes were exposed. Tytell's protective goggles can
 be observed on the table (see red arrow on second page of EXHIBIT 42).

195. Since Tytell was so concerned about the possible damaging effects of the light that he

⁶⁴ SUSPECT DOCUMENTS THEIR SCIENTIFIC EXAMINATION By Wilson R. Harrison, M.S.c., Ph.D. Sweet & Maxwell Limited 1958. Pages 82, 89, 90, 458, 459.

⁶⁵ Video for Thursday July 14, 2011. See EXHIBIT 42.

⁶⁶ In the last picture of EXHIBIT 42 defense expert Gus Lesnevich can also be seen using a very strong light on the documents.

1 donned UV protective goggles himself, he should have also provided UV protective goggles to the
2 others in the room or at least warned them to leave the room, or else if they chose to stay, it would be
3 at the potential peril of their own vision.

4 196. In addition to the other lights projected onto the documents by Peter Tytell, he also took 165
5 flash photographs of the documents on Friday July 15, 2011.⁶⁷ In every instance, Tytell's flash was
6 positioned very close to the documents. EXHIBIT 44 hereto is a still image from the document
7 production of just one of the 165 observed flashes.⁶⁸

8 197. Tytell claims that "The nature of my examination was non-destructive". Tytell makes this
9 claim in spite of such warnings as published in a Press Release on January 26, 2010 by the National
10 Archives titled, "National Archives Announces New Ban on Photography" (copy attached hereto as
11 EXHIBIT 43). This Press release warns:

12 "The primary impetus for the new regulation was concern that the Charters of Freedom (the
13 Declaration, the Constitution and the Bill of Rights) and other original documents on display
14 in the National Archives Experience were at risk from exposure to flash photography."

14 and,

15 "The original documents displayed in the National Archives Experience are fragile and
16 subject to fading from light."

16 finally,

17 "After close examination of the policy and consultation with National Archives preservation
18 experts, the Archives determined that barring photography in the exhibition areas would help
19 protect our nation's heritage for future generations."

19 198. To shed a little more light on the subject, Mr. Carl Grimm, who was (now retired) the head
20 conservator for the De Young Museum in San Francisco, gave warnings about flash photography
21 causing deterioration. Mr. Grimm reported:

22 "In general, a 10-degree F increase in temperature doubles the speed of chemical reactions,
23 so any increase in heat--even brief--speeds up deterioration. Heat is produced just beyond the
24 red end of the visible light spectrum in the invisible, longer wavelengths known as infrared.
25 The short, high-energy wavelengths of visible light at the other (blue) end of the spectrum,
26 and especially the invisible ultraviolet radiation that is just beyond visible light, are very
effective at breaking chemical bonds, which also produces deterioration. You can see this
effect very quickly in newsprint that has been lying in the sun--it begins to turn yellow and

27 ⁶⁷ Although Tytell spent the full previous day processing the documents, I did not count how many pictures he took on
Thursday July 14, 2011.

28 ⁶⁸ I can be seen at the right in this EXHIBIT 44 image. My glasses have UV protection, nevertheless, I was not a happy
recipient of Tytell's excessive flash photography.

1 brittle, eventually turning to dust. Flash photography produces a burst of light that contains
2 both long and short wavelength radiation that injures the artwork. That's why we request that
3 photography be done using existing light (underlining added).

4 In reference to what type of chemical reaction occurs when an artwork deteriorates; and in reference
5 to an example of a watercolor piece of art, Mr. Grimm stated:

6 “Light hitting the paper--and there's often very much exposed paper in a watercolor--causes
7 breakage in the paper fibers. These fibers are made up of cellulose, in the form of long chains
8 of cellulose molecules. High energy radiation, such as ultraviolet light, causes a long chain of
9 cellulose to break into two parts. At the point of breakage there is produced a molecule of
10 sulfuric acid, which in turn can react with other cellulose to cause another break, and so on,
11 in a chain reaction. As the cellulose breaks into smaller and smaller particles, the paper
becomes yellow-brown and brittle; often it smells sour (from the acids) and can be powdered
into dust with your fingertips when the deterioration is advanced. Light also can cause fading
in the colors. Pigments come from many different sources, and some are not completely light
stable--that is, they change their chemical structure with the absorption of high energy light
into chemical structures that are not colored or are of a different color.”

12 199. In summary on this point, Tytell took 165 flash photographs of the Facebook documents; he
13 had the documents in the VSC machine for many hours on end, he also used several other light
14 sources as can be observed from review of his two days of processing of the Facebook Contract
15 pages.

16 200. Consequently, specific UV and other lighting exposures do cause damage as demonstrated by
17 Tytell's use of UV protective goggles, and as demonstrated by the Foster and Freeman operation
18 manual for the equipment he was using, and has been demonstrated from the technical authorities in
19 the field, as referenced by the Press Release by the National Archives and other public admonitions,
20 and as have also been demonstrated by my test sample using the very same Foster and Freeman
21 imaging equipment used by Tytell during the document production in Buffalo New York .

22 In addition to these influences of light and heat was the influence of repeated humidification
23 of the Facebook Contract pages due to humidification as part of the ESDA processing, followed by
24 additional exposures to light and heat. Defendants' experts did not take into consideration the
25 debilitating effects of higher water content in the document as the result of excessive humidification
26 by repeating the ESDA processing of the document pages along with the high summer humidity in
27 Buffalo New York on the days of processing, July 14 and July 15, 2011. EXHIBIT 49, hereto, are
28 data sheets showing that humidity for those two days. On July 14, 2011 the humidity was high at

1 86% followed by the low for the day at 33%, and on July 15, 2011 the high for the humidity was
2 72% followed by the low of 32%. These highs fluxuated with significant drops in the relatively
3 humidity which all contribute to the environmental conditions which should have been considered
4 by the defendants' experts during the examinations on those two days (as well as the following
5 examination days).

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12 page break to accommodate imagery on next page

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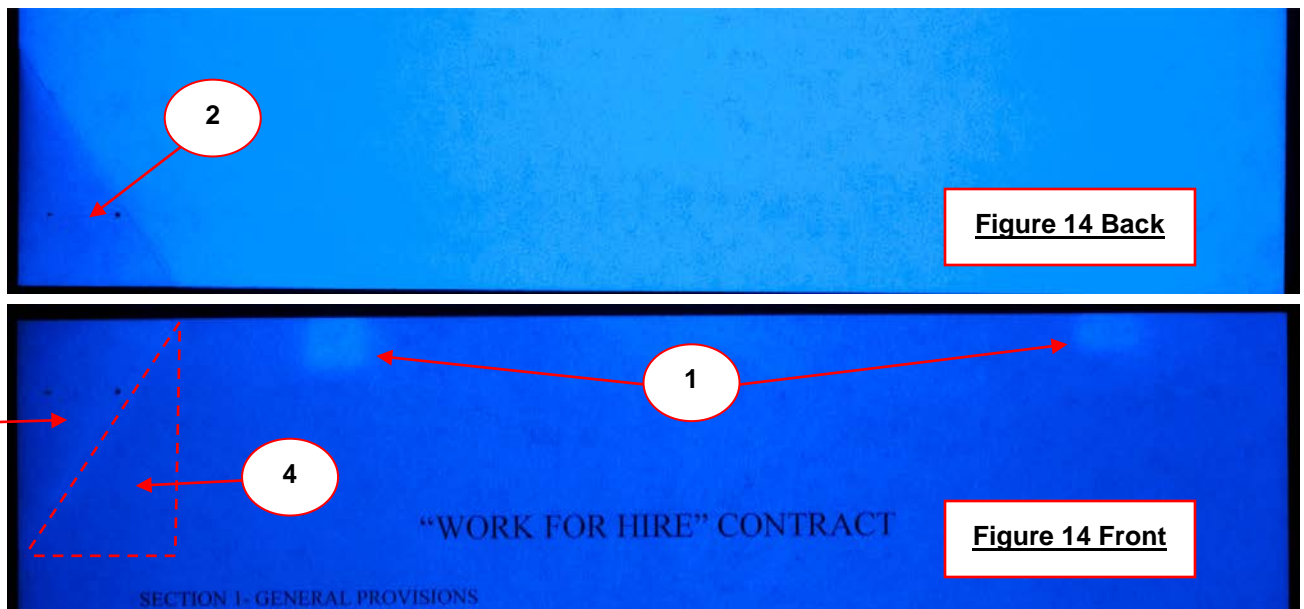
What are those “void” or “tab” marks at the tops of the Facebook Contract pages?:

201. At the tops of page 1 and page 2 of the Facebook Contract pages are marks described by Tytell as (Document 330 Page 7-8):

“anomalous brightly fluorescing areas (‘tabs’) were all roughly rectangular in shape, although no two were exactly the same size; furthermore, the two tabs on each page were not evenly placed relative to the center or edges of the paper, and the tabs were in different locations on the two different pages. Under normal ambient lighting these tab areas were observed to be as white at the reverse of the page, in contrast to the yellowish cast of the rest of the front.”

I have cropped Defense expert Tytell’s Figures 10 and 11 (from page 9 of his Document 330 report) and have copied them below as “Figure 14 Front” and “Figure 14 Back”. *Figure 14 Front* below is Tytell’s ultraviolet image of the front side of page 1 of the Facebook Contract/”WORK FOR HIRE” CONTRACT.

Figure 14 Back below is Tytell’s ultraviolet image of the back side of the same page 1 of the Facebook Contract although it is positioned upside down so that the dog-ear paper fold at the upper left corner from the front side and the dog-ear on the back of the document can be seen next to each other. These images are best viewed in color rather than as black and white images.



202. The general look of the front side of the document is darker with the exception of the brighter areas in the two locations at the top indicated by arrows number 1. While the general look of the reverse side of the document is brighter overall, there is the darker triangle dog-ear indicated by arrow number 2 at the left of *Figure 14 Back*.

1 **Tytell's, Lyter's and LaPorte's clip, clothespin, spring binders, clasp-like items theory:**

2 203. This theory by defendant's experts promotes the concept that the front sides of page 1 and
3 page 2 of the Facebook Contract were suspended with clips or clothespins apparently to deliberately
4 create damage to the document. Tytell explains that his (Document 330 pages 9-10):

5 "best explanation that accounts for these observations is that the tabs are from clips
6 (such as clothespins) that suspended the pages when they were exposed to abnormally
7 extreme environmental conditions that discolored (yellowed) the paper not covered by
8 the clips and faded the ink."

9 204. This, in Tytell's view, explains the lighter areas at the front top of page 1 indicated by arrows
10 number 1. That is, the brighter areas (arrows 1) at the top of the front sides of the documents were, in
11 his theory, the results of clips or clothespins suspending the documents as they were exposed to
12 some type of "abnormally extreme environmental conditions", although Tytell does not tell us what
13 these "abnormally extreme environmental conditions" were, but I address this further later in this
14 declaration. The reason the lighter "tabbed" areas are there, in Tytell's theory, is because the alleged
15 clips/clothespins covered and thereby protected the paper in those areas from the damaging
16 exposure. Lyter refers to these areas as (Document 328 Page 5)

17 "Unusually, the front of each page also contained two small square areas in both the right and
18 left upper portions of the pages that exhibited brighter fluorescence, comparable to the
19 fluorescence of the back of the document."

20 And Lyter goes on to agree with Tytell that⁶⁹,

21 "These square areas were about the size of a small clip or the tip of a clothespin."

22 Lyter further remarks that the possible source of "deterioration" could have been,

23 "(e.g., sunlight, heat, or chemical)"⁷⁰.

24 LaPorte's statement is that⁷¹

25 "Although the exact item cannot be identified, a clothespin or clasp-like item attached to a
26 document during prolonged exposure to sunlight or another intense energy source would
27 create the same characteristics as those noted on the Work for Hire document."

28 205. However, this theory offered by Tytell, Lyter and LaPorte does not explain why the dog-ear
from the back side of the document (arrow #2, Figure 14 back) is dull/darker, while the front side of

⁶⁹ Document 328 Page 5

⁷⁰ Document 328 Page 5

⁷¹ Document 326 Page 13

1 the same area indicated by arrow 3 also has a darker look. The discrepancy is that if the whole of the
2 front side of page one had been exposed to a damaging source so that the entire page would appear
3 the same tone to include the front of the open dog-ear, then the back side of the dog-ear (arrow 2)
4 should not be dark as well but should be consistently brighter along with the rest of the back of the
5 page. But if the dog-ear had been folded over forward, (according to defendants supposed exposure
6 theory), then the folded dog-ear would be as exposed as the rest of the front side of page 1, however,
7 the folded dog-ear would have protected the underlying covered area on the front side (arrow 4
8 inside the dashed red triangle) which would then show a triangle of brightness on the face of page 1
9 similar to the areas indicated by arrows 1 after the folded dog-ear had been opened back up.

10 However, the actual evidence does not support the defendants' experts *clip, clothespin, spring*
11 *binders, clasp-like items* theory.

12 206. That is to say, that the presence of the darkened dog-eared triangle appearing on the back
13 side of the page (arrow 2) should either be brighter to match the rest of the entire backside of page 1,
14 or in the alternative, if the dog-ear had been folded forward, then it would have protected the front of
15 the page from exposure (inside the number 4 triangle) which would then had yielded a brighter
16 appearance when the dog-ear had been opened back up revealing a brighter look to both the open
17 triangle dog-ear and also a brighter look to the area that would had been protected (all of the areas
18 indicated by both arrows number 3 and 4). However, that is not what defendants (nor plaintiffs)
19 imagery shows.

20 207. In other words, why are both the front and back sides of the page 1 dog-ear darker?
21 Defendants theory is not consistent with their own evidence and in conjunction with their additional
22 theories on this matter, should be dismissed as contradictory and inconsistent with the evidence.

23 ///

24 ///

25 ///

26 page break to accommodate imagery on next page

27 ///

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Other Inconsistencies with the Tytell, Lyter, LaPorte clip, clothespin, spring binders & clasp-like items theory:

208. The brighter “tabbed” areas, by Tytell’s own admission, are not consistent in their shapes (Document 330 Page 7):

“These anomalous brightly fluorescing areas (‘tabs’) were all roughly rectangular in shape, although no two were exactly the same size”

Indeed, plaintiff’s imagery reveals these inconsistent shapes:

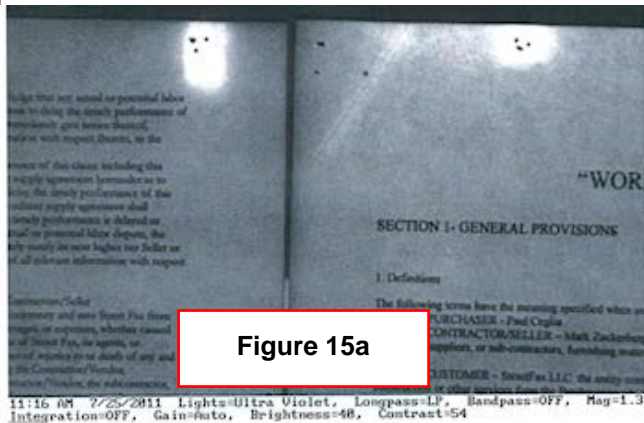


Figure 15a

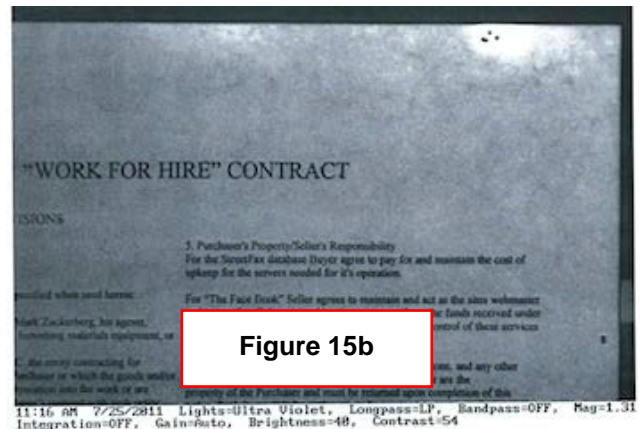


Figure 15b

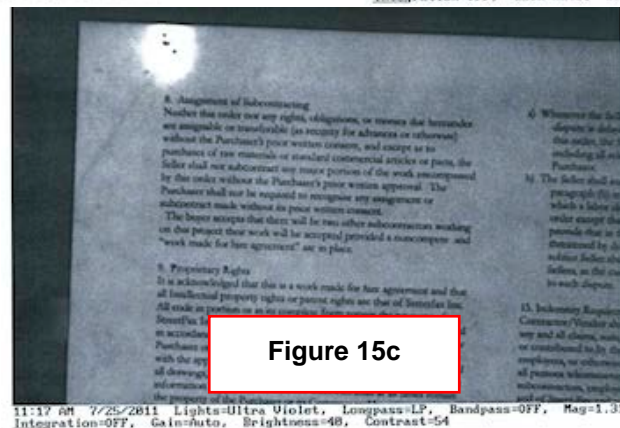


Figure 15c

209. Figures 15 a, b and c were taken using a Foster and Freeman VSC 2000 (images taken by Stewart) . These images are also ultraviolet images but rendered in black and white rather than in color. The lighter areas at the tops of the pages are more rounded overall than angular, as would be expected had clamps or clothespins been used. Note also that the sizes and shapes are different between them. If clips or clothespins were used, then there would be an expectation of defined squared edges rather than the sloppy non-defined edges of white voided areas which are what actually appear on the paper.

210. Defendants’ experts have offered their theories and have virtually accepted them as true for lack of other possible explanations. Indeed, other explanations for the cause of the “tab” marks were

1 not considered by the defendants' experts. For example, these brighter "tab" areas also fit a profile of
2 marks created by some type of paper weight(s) having been used in these areas, having been moved
3 around as the document was repositioned for analysis. Another explanation is that since these "tab"
4 marks are in the shape of fingerprints rather than clips or clothespins, these brighter areas are the
5 result of finger or thumb imprints that had lotion (or other chemicals or substances) on the hand, the
6 result of gloved or ungloved hands touching the face/exposed arms then inadvertently leaving a
7 protective coating on the document pages thus protecting those areas from exposure. That is, either
8 gloved or ungloved fingers, having touched/rubbed the skin thus being contaminated with a cream or
9 suntan lotion (the examinations were performed in the summer, July 14 and July 15 2011) after
10 which those contaminated fingers transferred a substance onto the documents thus creating a
11 protective barrier against light, heat and humidity exposures. This would be akin to how suntan
12 lotion protects the skin from a sunburn.

13 211. These lighter "tab" marks cited by Tytell, Lyter and LaPorte could have been caused by any
14 number of items used as paper weights to hold the documents in position while being examined
15 under the VSC equipment. Inasmuch as Plaintiff's experts were deliberately kept far away from the
16 area where the VSC was in use, it could not be determined by Plaintiff's experts what paper weights
17 were being used by the defense experts. For this reason, defense experts need to be deposed and the
18 Foster and Freeman technician, Michael Zontini ⁷² also needs to be deposed so that Plaintiff's
19 experts can discover the representations of defendants' experts as to what paper weights were being
20 used by them during the examinations of the Facebook Contract document pages.

21 212. Apparently, defense experts did not consider these alternate possibilities that better fit the
22 profile of the imagery than defendants *clip, clothespin, spring binders & clasp-like items theory*.
23 On the basis of the present evidence, neither defense nor plaintiff's experts can say dispositively the
24 cause of the marks ("tabs") or the divot/impression marks in the paper.

25
26 ⁷² Michal Zontini, is listed on the Foster and Freeman Website as having the position of an "Applications Engineer."
27 Although not a trained forensic document examiner, he was present during much of the examinations by Peter Tytell
28 when he was using the Foster and Freeman VSC equipment. Michael Zontini was giving Peter Tytell instructions on the
use of the VSC machine and was directing portions of the analysis even though he himself, according to my
understanding, is not a trained Forensic Document Expert. The scene was reminiscent of a training exercise for Peter
Tytell at the expense of the Facebook Contract documents.

213. Based upon the present evidence, it is more probable that the origin of the “void” or “tab” areas at the top of the two pages of the Facebook Contract were caused by the collective examinations of the defendants’ experts.

Lack of alleged corresponding impression marks in support of the Tytell, Lyter & LaPorte’s clip, clothespin, spring binders, clasp-like items theory:

214. On page 8 of Tytell’s report (Document 330) he claimed that:

“Examination with side lighting under the stereoscopic microscope revealed an indentation or embossed deformation of the paper in these tab areas.”

Lyter states that (Document 328 page 5),

“I observed indentations in the surface of the paper around the smaller areas of brighter fluorescence at the top of each page of the ‘Work for Hire’ document. The size and shape of those indentations are similar to those formed when a sheet of paper is clamped with a clip or spring binder. I did not observe those indentations anywhere else on the edge of either page of the ‘Work for Hire’ document or of the ‘Specifications’ document.”

215. However, the very faint impression marks cited by Tytell and by Lyter do not correspond to the shape of the reported “tabs.” The EXHIBIT 37 attachment, hereto, is a page I prepared demonstrating that there are buckles, gouges and divots in many places on the Facebook Contract. My image adjustments account for the golden appearance of the EXHIBIT 37 example. I cropped the upper portion of page 1 of the Facebook Contract document and adjusted the levels to show the lighter areas at the tops of the page (which are in red boxes) while at the same time showing numerous “indentation or embossed” areas all over the page indicated by the red arrows (this exhibit should be viewed in color rather than black and white to best see the details of the imagery).

216. The dashed arrows number 1 and 2 point to the very faint impressions inside the red boxes just below the lighter “tab” areas. Note that these divots do not correspond to the whole width or shape of the lighter areas but are more the shape of crescent moons observed in many other places on the document as indicated by the solid red arrows.

217. Rather than being indicators of clips, clothespins, spring binders or clasp-like items, these faint marks appear like fingernail or thumbnail impressions which likely account for the other

1 crescent moon shapes noted elsewhere on the page. EXHIBIT 37 hereto reveals that Lyter's
2 statement is incorrect⁷³:

3 "I did not observe those indentations anywhere else on the edge of either page of the 'Work
4 for Hire' document..."

5 That is to say, if it is correct that Lyter himself did not observe them, clearly numerous additional
6 marks are present on the document.

7 218. Even a casual review of the attached EXHIBIT 37 page reveals the presence of similar
8 markings in many other places on the page. It is remarkable that Lyter would observe the more faint
9 partial marks in the presence of the "tab" but then would not observe the other more prominent
10 marks elsewhere on the same page.

11 219. There is yet another probable reason to account for many of the divot/gouge marks depicted
12 on EXHIBIT 37. On July 14, 2011 the Video shows (13:55:19 through 13:56:20) Peter Tytell taking
13 many micrometer readings. The measuring device he used was a very large micrometer such as are
14 used in industrial machine shops. The video shows Tytell taking many readings all over the paper.
15 Smaller, more delicate micrometers are much more fitting to measure paper thickness. Such larger
16 micrometers, as used by Tytell, are more difficult to control as far as keeping the measuring pads of
17 the device evenly applied to the paper. The large micrometer used by Tytell is a more probable
18 explanation for the presence of many of the divot/gouge marks appearing on the Facebook Contract
19 pages.

20 220. Neither Lyter, LaPorte nor Lesnevich were present on July 14, 2011 during Tytell's
21 examinations. Consequently, they did not observe Peter Tytell using the unusually large micrometer
22 and unless the other defense experts watched the Video of Tytell's July 14, 2011 examinations, they
23 are still unaware that Tytell used the oversized micrometer device. As a result, the other defense
24 experts did not take into consideration that Tytell himself likely caused many of the markings on the
25 paper upon which, at least Lyter, has offered opinions in his report.

26 221. Rather than jumping to a conclusion as Lyter did (Document 328 Page 6) that,

27 "The presence of these brighter areas of fluorescence supports my ultimate conclusion that
28 this exposure was intentional" (underline added)

⁷³ Document 328 Page 5, last Paragraph.

and his conclusion statement at Page 9,

“The ‘Work for Hire’ document was intentionally exposed to excessive environmental conditions, probably sunlight for an extended period of time,”...

defense experts have apparently not even considered the other probable causes in their analysis of the “tabbed” areas and the “indentation or embossed” features.

222. Further, Lyter’s support for his opinion is a non sequitur since it is based in part on his 1. a. reference (Document 328 Page 9 under IV. CONCLUSION) that:

...“coupled with Plaintiff’s demonstratively incorrect assertion that Defendants’ experts discolored the paper “Work for Hire’ document, are evidence that the treatment to which the ‘Work for Hire’ document was subjected was intentional.”

Plaintiff’s assertions about the evidence have no causation in actually changing the evidence.

Perhaps Lyter meant something else but his opinion as stated under 1. a. is confusing, vague, unintelligible and a non sequitur.

Defense experts gave opinions on “intent” when such opinions by experts are expressly discouraged in the professional literature and forbidden by legal precedence:

223. Five times in his report⁷⁴ Lyter makes statements that the damage to the document was “intentional.” Likewise, four times in his report⁷⁵, LaPorte makes statements that the damage to the document was “intentional” or “deliberate.” For example, in his report, LaPorte states that⁷⁶

“the Work for Hire document was deliberately exposed to sunlight or another intense energy source for a prolonged period. This intentional exposure occurred”... (underlines added)

Contrary to Lyter’s and LaPorte’s statements, it is considered inappropriate for an expert to express an opinion concerning *intention*. On page 76 of the Scientific Examination of Questioned Documents⁷⁷, the author states,

“The intent of the writer and his ability to understand (i.e., capacity) are determined by the trier of fact—a judge or jury—based on testimony from witnesses other than the document examiner”...

and again on the next page (page 77),

“It is not within the purview of the document examiner to determine intent.”

⁷⁴ Document 328 at pages 4, 6, 9, 10 (two times).

⁷⁵ Document 326 at pages 3 and 24 (two times on each page).

⁷⁶ Document 326 Executive Summary Item 3, pages 3-4

⁷⁷ Second Edition by Kelly and Lindblom.

1 The Scientific Examination of Questioned Documents is a standard primer in the field and
 2 undoubtedly well known to both Lyter and LaPorte.

3 224. Additionally, Federal Case law is on point such as in U.S. v Hanna (9th Cir 2002) 293 F.3d
 4 1080⁷⁸ where expert testimony was erroneously admitted regarding the *intent* of the defendant. This
 5 case involved Secret Service Agents testifying as experts as to the intent of the defendant handing
 6 out threatening literature against President Clinton. The “intent” was left up to the trier of fact
 7 (LaPorte was also formerly employed as an expert witness by the Secret Service at the time of the
 8 above cited case).

9 225. Clearly Lyter and LaPorte have both violated the technical authorities in the field with their
 10 opinion statements on “intent” and “deliberate.” Their representations as to “intent” or “deliberate”
 11 are clearly not permissible, are inflammatory and represent bias against the plaintiff in favor of their
 12 client, the defendants.

13 **Extreme and unusual environmental storage conditions of the Facebook Contract**
 14 **pages as documented by the certified Wellsville weather data:**

15 226. Defense experts have not considered the effects of unusual environmental storage conditions
 16 upon the Facebook Contract pages. I had previously been informed, and I have subsequently
 17 reviewed the declaration⁷⁹ of Plaintiff Paul Ceglia, in which he advises that during the Winters of
 18 2003 through 2008 he closed down his house in Wellsville New York. He states in his declaration
 19 that he “shut off the electricity” (§ 7.) and left his home from four to six months per season over the
 20 Winter months of 2003-2004, 2004-2005, 2005-2006, 2006-2007 and 2007-2008. He further
 21 declares that his efforts to winterize his home in anticipation of the “freezing and subfreezing
 22 temperatures” (§ 8.) during his long periods away would include, “draining the water lines and pipes
 23 to prevent ruptures from frozen water” (§ 12). Mr. Ceglia notes that “Almost every year that effort
 24 was still unsuccessful and I would regularly have to replace lengths of copper piping each spring
 25 from ruptures caused by frozen pipes” (§ 13.). Finally, Mr. Ceglia states, “I did not heat my home

78 Also see Re: expert witness testimony on “intent”- Smith v. Wyeth-Ayerst Laboratories Co. (W.D.N.C. 2003) 278 F.Supp.2d 684, 700; Figueroa v. Boston Scientific Corp., (S.D.N.Y. 2003) 2003 WL 21488012 at 4; In Re Diet Drugs Product Liability Litigation, (E.D. Pa. 2001) 2001 WL 454586 at 2; In Re Diet Drugs Products Liability Litigation, (E.D. Pa. 2000) 2000 WL 876900 at 9; In Re Rezulin Products Liability Litigation, (S.D.N.Y. 2004) 209 F.Supp.2d 531, Id. 546-547; In Re Trasylol Products Liability Litigation, (S.D. Fla. 2010) 709 F. Supp.2d 1323, 1347; Lopez v. I-Flow Inc., C.A. No. 08-1063, slip opinion at 19-20, 2011 WL
 79 Declaration of Paul Ceglia dated June 2, 2012.

1 while absent at the times listed above” (§ 14.). While Paul Ceglia was away, the Facebook Contract
 2 hibernated in a wooden “Hope Chest” on the North wall of his spare room.

3 227. To assist in my understanding of the storage conditions, I have reviewed every page of the
 4 weather reports of the Wellsville Municipal Airport for the dates April 1, 2003 through June 30,
 5 2010. These reports provide a very accurate record of the high and low daily temperatures at Paul
 6 Ceglia’s Wellsville home over these seven years. In support of this assertion I offer the following.

7 228. As a practicing instrument rated pilot I maintain, through various subscription services,
 8 current FAA charts of all of the airports of the Americas. I have checked the official FAA
 9 Aeronautical charts and have determined that the elevation of the Wellsville Tarantine airport
 10 (KELZ) is 2,124 feet. I have also researched the elevation of Paul Ceglia’s home and have
 11 determined that it is 2,100 feet (give or take 100 feet). I have also learned that the Wellsville
 12 Tarantine airport is approximately 4.3 miles from Paul Ceglia’s Wellsville home. Consequently,
 13 Paul Ceglia’s Wellsville home is very close to the Wellsville airport and is well within 100 feet of
 14 elevation as the Wellsville Terantine airport. Given that under normal atmospheric conditions the
 15 average atmospheric adiabatic lapse rate results in a temperature change of 3.5°F (1.98°C) per 1,000
 16 feet increase of higher altitude, it stands to reason that the official weather report of the Wellsville
 17 Tarantine airport provides a reliable baseline to determine the temperatures at Paul Ceglia’s home
 18 over the time periods of interest within only a few degrees of error.

19 229. I have attached hereto, as EXHIBIT 38, the certified weather reports of the highs and lows of
 20 the temperatures of the Wellsville Terantine Airport, every day, for April 1, 2003 through June 30,
 21 2010.⁸⁰ Even a casual review of these attached records reveals long periods of persistent subzero
 22 temperatures over the Winter months. Given the testimony by Paul Ceglia of how his house was
 23 “shut down” over long periods over the Winters during persistent freezing temperatures, it is clear
 24 that the Facebook Contract pages had undergone long periods of environmental freezing
 25 temperatures followed by summer months of higher temperatures and associated higher humidity,
 26 particularly over the time periods in the spring and summer months where higher levels of
 27 precipitation occurred in conjunction with the higher temperatures. Clearly, the Facebook Contract

28 ⁸⁰ **Station Name:** WELLSVILLE MUNICIPAL AIRPORT **Station Id:** GHCND:USW00054757 **State:** New York
County: Allegany County, NY.

1 pages had unwittingly endured extreme variations in temperatures and changes in humidity over the
2 years.

3 230. In the basic primer of the field of Forensic Document Examination, Scientific Examination
4 Of Questioned Documents by Ordway Hilton, the author informs us at pages 351-352:

5 “Very moist or humid atmosphere, excessive heat, and strong light accelerate the normal
6 effects of aging, bringing about changes in a relatively short time. Under these conditions it
7 is entirely possible that even though there is no apparent effect from exposure to moisture,
heat, or light, the document has undergone microscopic changes.”

8 Although the author of this book, Ordway Hilton, did not apparently anticipate actual freezing
9 conditions, it stands to reason that any document going through extended cycles of freezing followed
10 by high temperatures and higher humidity would suffer some ill effects.

11 231. It is doubtful that any of the defense experts have given any consideration whatsoever to
12 these drastic changes in the documents’ environmental storage conditions over the years nor have
13 defendants’ experts considered what effects those storage conditions had on their testing results.
14 It is further unlikely that the defense experts have consulted any scientific literature on the effects of
15 drastic changes in storage conditions of documents now being tested for ink and paper analysis. It is
16 also doubtful that the defense experts have considered whether or not any of the anomalies⁸¹ they
17 have observed had any contributing causation from these unusual storage conditions; and it is further
18 doubtful that defense experts can offer any scientific authorities on point in defense of their opinions
19 that these unusual storage conditions would have had no effects on their findings and opinions which
20 they have already offered in their March 2012 filed expert reports and declarations.

21 I have been advised by counsel that none of the defendants' experts expressed any interest in
22 knowing the storage conditions of the document. I was further advised that defense counsel rejected
23 an apparent offer by the court to depose Paul Ceglia on issues such as these. No qualified forensic
24 document examiner reaches such conclusions (such as those offered by defendants’ experts on this
25 point) without at least attempting to learn the storage conditions of the documents in question.

26 Thus, defendants’ experts were remiss in not requesting, and subsequently considering,
27 information regarding the environmental storage conditions of the Facebook Contract documents.

28 ⁸¹ Page 13 Document 330 Tytell report under VI. Conclusions (2) “examination of the Work for Hire document, which revealed anomalous features.”

Findings and Opinion Summary:

232. General opinion Statement:

The original Facebook Contract (“Work For Hire” Contract) examined by all of the document experts is an authentic, unaltered document. The sum of the evidence reveals that page 1 of the Facebook Contract was originally executed together with page 2 as a companion document. Based on the detailed forensic analysis of this two-page document, there is no justification or support for the defendant’s theory of a page 1 substitution, forgery or fraud. The sum of the evidence shows that page 1 was not a later inserted page to the original two-page document set.

233. The following additional opinions are in support of this general opinion statement:

- 1) The “Mark Zuckerberg” signature on page 2 of the Facebook Contract was written by Mark Zuckerberg.
- 2) The “Mark Zuckerberg” signature on page 2 of the Facebook Contract was not written by Paul Ceglia.
- 3) The “MZ” initials on page 1 of the Facebook Contract were written by Mark Zuckerberg.
- 4) The “MZ” initials on page 1 of the Facebook Contract were not written by Paul Ceglia.
- 5) Paul Ceglia wrote the hand printed interlineation on page 1 of the Facebook Contract.
- 6) Mark Zuckerberg did not write the hand printed interlineation on page 1 of the Facebook Contract.
- 7) There is no forensic basis, in practice or from the literature in the field, that supports the novel “two physical documents” theory by defendants’ expert Gus Lesnevich. This theory at its root, does not make logical sense as no explanation has been offered as to why a person would craft “two physical documents” that contain the same precise typewritten and handwritten information with absolutely no changes in any terms or conditions. Nor has an explanation been offered as to why, even if this had occurred, it would constitute a fraud.

— (continued) —

- 1 8) The staple holes and secondary staple hole impressions/detent marks of page 1
2 of the Facebook Contract match the staple holes and secondary staple hole
3 impressions/detent marks of page 2 of the Facebook Contract. That is, the staple holes
4 on both pages align demonstrating that these two pages of the Facebook Contract
5 have only been stapled one time wherein they were actually stapled together.
- 6 9) On this regard, the evidence does not support any theory that page 1 was attached to
7 page 2 by hand using a staple (that is, not using an actual stapler but connecting the
8 two pages together with a staple by hand).
- 9 10) The impression from the hand printed interlineation from page 1 of the Facebook
10 Contract was discovered on page 2 of the Facebook Contract demonstrating that
11 page 1 was over the top of page 2 of the Facebook Contract when the hand printed
12 interlineation was written on page 1 of the Facebook Contract.
- 13 11) When the staple holes and detent marks of page 1 of the Facebook Contract are
14 positioned directly over the staple holes and detent marks of page 2 of the Facebook
15 Contract, the position of the visible hand printed interlineation from page 1 also lines
16 up over the same position on page 2 where the indented impression was discovered.
- 17 12) Both sheets of paper of page 1 and page 2 of the Facebook Contract pages measured
18 at 0.11 mm and visual inspection revealed that the opacity and cockling features of
19 both pages were the same. The report of Mr. Rantanen that “The fiber content of the
20 two vials is consistent with coming from the same mill and production run” confirms
21 my paper thickness measurements and visual findings that the two sheets of paper are
22 the same.
- 23 13) The front sides of page 1 and page 2 of the Facebook Contract were
24 deteriorated/ “yellowed”, the probable cause having been the result of defendants’
25 experts excessive document processing and mishandling of the documents. Their
26 denials in their reports on these issues demonstrate their unwillingness to
27 acknowledge the danger of damaging documents due to excessive exposures to
28 various lighting sources, humidity and heat. In tandem with their mishandling of the

important case documents was their apparent lack of interest to gain information about the unusual environmental storage conditions that were part of the documents history (see pages 173, 176, 177 herein). As such, inquiries of “provenance” information is important to art collectors, it should equally be important to the Forensic Document Examiner.

- 14) With regard to this deterioration, there are two lighter areas at the tops of each of the front sides of the contract pages, the origin of which cannot be definitively determined; however the patterns more accurately fit the profile of the shapes of fingers which transferred suntan lotion, oil or other products or substances off of the fingers (whether gloved or not) onto the documents, offering those void/“tab” areas of the documents protection while the document pages were being processed by defendants’ experts.

Consequently,

- 15) Defendants’ experts *clip, clothespin, spring binders & clasp-like items* theory does not explain the lighter areas at the top pages as alleged. The sizes and shapes of these “tab” areas are admittedly different. Further, the edges are not squared, therefore, this theory by defendants’ experts does not explain the evidence. Neither did defendants’ experts consider alternate possibilities that better fit the profile of the “tab” imagery. Based upon the present evidence, it is more probable that the origin of the “void” or “tab” areas at the top of the two pages of the Facebook Contract were caused by the collective examinations of defendants’ experts.

- 16) The divot and gouge marks and buckles in the paper of the Facebook Contract do not fit the explanations offered by defendants’ experts. These marks are better explained as having been created by fingernail gouge marks in the paper and the result of aggressive handling and movement of the Facebook Contract pages during examinations by defendants’ experts.

- 17) The font (typestyle) of page 1 of the Facebook Contract is obviously different than the font of page 2 of the Facebook Contract. However the different fonts are

indicative of laypersons creating a contract, which on its own, does not provide indicia of a forged document.

18) Regarding any question about the use of the same or different writing instruments for the entries on page 1 and page 2 of the two Facebook Contract pages, since in everyday commerce it is customary that two parties to a contract would sign and write on a document with one pen, and since in other situations it is also customary that different pens are used for the various signatures, initials and for other handwritten information such as an interlineation; consequently, it is insignificant in the context of this document problem whether a same or else different writing implements were used to prepare the document. Neither situation provides grounds to argue for fraud (page 64 Declaration of Larry Stewart dated June 4, 2012).

Page 1 of the STREET FAX “smoking gun” document was not the original companion page attached to page 2 of the Facebook Contract:

234. The STREET FAX “smoking gun” document exists only as two computer image (“tiff”) files; no original has been produced for analysis. Although these two image files offer extremely poor legibility, it was determined that the STREET FAX page 1 does not represent a supposed original to page 2 of the Facebook Contract for the following reasons:

- 1) The presence of the actual staple in the STREET FAX image file argues that had page 1 of the STREET FAX document really been the original companion page to page 2 of the Facebook Contract, then page 2 of the Facebook Contract should reveal an extra set of staple holes, *which it does not*.
- 2) The visible hand printed interlineation as observed on page 1 of the STREET FAX tiff image was not the source of the hand printed latent image on page 2 of the Facebook Contract since it does not match the proper position of where the latent impression was discovered on page 2 of the original of the Facebook Contract examined by the document experts.

- 1 3) The “PC” initials discovered as a latent writing impression on page 2 of the original
2 Facebook Contract match the position of the visible “PC” initials on page 1 of the
3 original of the Facebook Contract and do not match the position of the “PC” initials
4 observed on the poor quality tiff image of page 1 of the STREET FAX document
5 (reference EXHIBIT 33 hereto).
- 6 4) In support of item 2 above, the verb “is,” which appears as the visibly hand printed
7 verb in the interlineation on page 1 of the Facebook Contract, and which also appears
8 as the latent handwritten verb on page 2 of the Facebook Contract, is not the same
9 verb for the interlineation on the STREET FAX document. The verb used for the
10 STREET FAX hand printed interlineation was the word “has” rather than “is.”
- 11 5) The column measurements between the two pages of the STREET FAX document are
12 substantially different from one another

13
14
15 **These Combined Results are “Mutually Supportive”**

16 235. These *combined results* are mutually supportive with the exception of the presence of a
17 different font on page 2 than the font that appears on page 1. In light of all of the many other points
18 of mutually supporting evidence between page 1 and page 2 of the Facebook Contract, the difference
19 in font between page 1 and page 2 is readily explained by the common occurrence that when
20 documents are pieced together by means of “cutting and pasting” sections from other source
21 documents, the fonts of those other sections that were cropped from other documents come along in
22 the transposition and when inserted into sections of the new document being created, may or may
23 not match the other fonts of the document being typed. The technical authorities are relevant on this
24 point:

Page 198 of Scientific Examination of Questioned Documents:

“Evidence that pages in a multi-page document have been created differently may or may not be evidence of tampering. There are some perfectly logical reasons why pages in a long text are formatted differently....”⁸²

and the next paragraph on page 198 of Scientific Examination of Questioned Documents:

“Another consideration involves the use of boilerplate language. If certain long phrases (such as disclaimers) are used in the creation of, say, new contracts, it is possible that these passages are being electronically cut and pasted from an older document into the one being created. It is not unusual for the original formatting and fonts used in the boilerplate to remain intact after they have been pasted into the new document—the point being that a sudden change in the typeface or spacing characteristics of a page may not necessarily be evidence of alteration or addition” (also footnote 82).

(This point was further developed in paragraph 50 herein).

236. The opinions are given herein by balancing the weight of all of the combined evidence. As instructed in the professional literature on this very point:

“The need to establish that a document has not been altered may involve a complex study. There is no single, simple test. All potential tests for showing that something has been erased, added, or modified in any way must be applied. When the ***combined results*** reveal no change, it can be stated that there is no evidence to support that this document was altered”⁸³ (italics and bold added).

Blanco-Stewart Administrative and Technical Review:

237. I have reviewed the declaration and supporting exhibits of Plaintiff’s expert Larry Stewart and I have considered his analysis and opinions. Such a review by a different expert is commonly referred to as an “administrative/technical review.” In my previous full time government positions as a Forensic Document Expert/Analyst with the Federal Bureau of Alcohol Tobacco and Firearms and also with the California Department of Justice (both ASCLD certified Laboratories), I regularly participated in such inter-expert checks and balances which we called “peer reviews” and also “administrative” and “technical reviews.”

⁸² Page 198, Scientific Examination of Questioned Documents, Second Ed. CRC Press 2006.

⁸³ Page 335, Scientific Examination of Questioned Documents, Second Ed. Taylor & Francis.

238. As a result of my review of the declaration and supporting materials by Larry Stewart, I concur with the findings and opinions as stated in Mr. Stewart's declaration dated June 4, 2012, with the exception that I do not claim expertise in ink chemistry issues and consequently, my technical review did not consider the issues of "PE" or other ink chemistry matters since I am not qualified to speak to those issues.

The Elephants in the living room: What defense experts are not disclosing:

239. On July 1, 2011 Honorable Leslie G. Foschio ordered (Document 83 page 3):

"Defendants shall complete the examination of the Hard-Copy Documents and Electronic Assets, and by September 9, 2011, Defendants shall provide to the Court and Plaintiff all reports documenting the findings of that examination."

But now that plaintiff's document experts have reviewed the defendants' document expert reports in response to the above order, we find that the defendants' experts have remained silent and *have not reported* on many important points in spite of the court's order for them to do so. Specifically, the defendants' document experts have not offered findings or opinions on relevant issues that include, but are not limited to, the following:

240. Forensic Document Examiner Peter Tytell

Even though Tytell advertises his services in "handwriting analysis"⁸⁴ he did not offer any opinions regarding any of the following relevant issues:

- 1) The authenticity of the "Mark Zuckerberg" signature on page 2 of the Facebook Contract.
- 2) The authenticity of the "MZ" initials for the interlineation on page 1 of the Facebook Contract.
- 3) The authorship of the interlineation itself on page 1 of the Facebook Contract.
- 4) While Tytell states on page 1 of his report (Document 330) that:

"This report presents my findings and conclusions to date," he failed to report on his findings regarding the paper thickness measurements he took of page 1 and page 2 of

⁸⁴ See Peter Tytell's ALM advertisement attached hereto as EXHIBIT 39.

the Facebook Contract pages using a micrometer even though the Video (at 13:55:20) from the July 14, 2011 document inspection reveals Tytell taking numerous measurements of the paper thickness of the Facebook Contract pages.

5) Although Tytell took well over 165 photographs⁸⁵ of the Facebook Contract document pages, he provided no pictures of the staple hole or staple hole impression evidence in his report submitted to the court. On this point, it is remarkable that given all of the photographs taken by Tytell using his table top digital camera, he did not submit *even one* of his own digital photographs in evidence either embedded into his report proper, or as Exhibit attachments to his report in support of any of his observations or ultimate opinions. Consequently, there is much evidence that exists which Tytell has withheld.

6) While Tytell referenced an image of a staple from an earlier scan of the Facebook Contract, he failed to disclose any evidence, observations or opinions regarding his analysis of the actual staple holes clearly observed from inspection of the original Facebook Contract.

7) Tytell did not offer any comments or opinions at all in support of Lesnevich's "two physical documents" theory. It is likely that Tytell actually disagrees with this Lesnevich theory, but failed to report his disagreement.

241. **Forensic Document Examiner Gus Lesnevich**

Even though Gus Lesnevich advertises on his internet home page his services⁸⁶ "specializing in the examination of signatures, writings, and documents," Lesnevich, in his report (Document 329) did not offer any opinions regarding the following relevant issues in this case:

- 1) The authenticity of the "Mark Zuckerberg" signature on page 2 of the Facebook Contract.
- 2) The authenticity of the "MZ" initials for the interlineation on Page 1 of the Facebook

⁸⁵ Although I counted 165 flashes from Tytell's flash photography work (by viewing the Video of the document production for Friday only July 15, 2011, I could not determine how many additional photographs Tytell took without a flash.

⁸⁶ Printout of Lesnevich Website attached hereto as EXHIBIT 40.

Contract.

- 3) The authorship of the interlineation itself on page 1 of the Facebook Contract.
- 4) The significance of the staple hole evidence.
- 5) His findings regarding any micrometer readings to determine whether or not the two pages of the Facebook Contract were, or were not the same thickness.
- 6) Other comparable features of the two pages of paper in question.
- 7) Although I personally observed Lesnevich and his assistant spending hours doing latent writing impression tests (“ESDA”) tests, Lesnevich did not state a word about his findings in his formal document report submitted to the court (Document 329).

It is apparent that Lesnevich agrees with Plaintiff’s experts on the latent writing impression evidence, otherwise, it would be anticipated that he would have reported adverse findings to Plaintiff’s experts position .

242. **Ink Specialist Gerald LaPorte**

- 1) LaPorte did not offer any comments or opinions at all in support of Lesnevich’s “two physical documents” theory;
- 2) Furthermore, with regard to the Lesnevich “two physical documents” theory, LaPorte has not offered any reasonable explanation as to why a person would “forge” a document that is exactly the same as to all the machine printed data as well as all of the handwritten data.

243. **Ink Specialist Albert Lyter**

- 1) Lyter determined that the Facebook Contract document was unsuitable for ink dating, but LaPorte claimed to have reliably dated the ink.
- 2) Lyter did not offer any comments or opinions at all in support of Lesnevich’s “two physical documents” theory.

1 3) Furthermore, with regard to the Lesnevich “two physical documents” theory, Lyter
2 has not offered any reasonable explanation as to why a person would “forge” a
3 document that is exactly the same as to all the machine printed data as well as all of
4 the handwritten data.

5
6 244. **Frank Romano**

7 Frank Romano appeared with defendants’ expert Peter Tytell on the full day of the document
8 production on Thursday July 14, 2011. It is clear from his report (Document 327) that Romano did
9 not offer any opinions regarding:

- 10 1) The significance of the staple hole evidence.
- 11 2) His findings regarding any micrometer readings to determine whether or not the two pages
12 of the Facebook Contract were, or were not the same thickness.
- 13 3) Other comparable features of the two pages of paper in question.
- 14 4) Any findings regarding latent handwriting impression tests.
- 15 5) Romano did not offer any comments or opinions at all in support of Lesnevich’s
16 “two physical documents” theory.
- 17 6) Furthermore, with regard to the Lesnevich “two physical documents” theory, Romano has
18 not offered any reasonable explanation as to why a person would “forge” a document
19 that is exactly the same as to all the machine printed data as well as all of the
20 handwritten data.

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The Discontinuity of the defendants' (Facebook) experts:

245. It is telling that none of the other defense experts have made any statements or even a single comment in support of Lesnevich's "two different physical documents" theory. It is anticipated that Plaintiff will learn from deposition testimony that the other Facebook experts will actually disagree with the "two physical documents" theory by Gus Lesnevich. Tytell, Lyter, LaPorte and Romano speak of a singular document while Lesnevich speaks of "two physical documents."

246. Tytell and LaPorte seemingly disagree with one another as to whether or not page 1 and page 2 of the Facebook contract are the same measurement in paper thickness. See paragraph 161 herein for this disparity between these Facebook experts.

247. There is further discontinuity between Tytell and LaPorte as to the imagery developed by these two experts (reference paragraph 38-39 herein). On the one hand, Tytell's imagery of his scan of pages 1 and 2 of the Facebook Contract reveal consistency as to color and condition. On the other hand, the two images of the scans by LaPorte show images that appear different from one another. So at this point it is unclear as to whether LaPorte and Tytell agree with each other as to whether the two images of the Facebook Contract are the same as to their own imagery. Their scanned imagery attached to their respective reports demonstrates that they are at odds with one another.

248. Although Tytell, Lyter and LaPorte apparently joined together in a "clip-clothespins" theory, Lesnevich made no reference to this theory causing Plaintiff's experts to wonder if Lesnevich had developed evidence to the contrary and therefore decided to withhold his findings from the court.

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1 **Important information that the defense experts have not taken into consideration:**

2 249. Defense experts have not considered the effects of how the extreme storage conditions
3 related to their procedures in processing the Facebook Contract. Neither did they consider the
4 ambient relative humidity during the days of testing of the Facebook Contract pages. Nor did they
5 consider the authorities in the field pertaining to the dangers of over handling of the documents. Nor
6 did they consider the warnings from the technical authorities in the field regarding excessive
7 processing by UV and other lighting sources. Nor did they consider the debilitating effects on a
8 document when exposed to humidity and heat. Nor did they consider the negative effects of over
9 processing by using electrostatic detection devices such as the ESDA. Nor did they show concern
10 for the documents condition by their rough handling of the document pages as is evidenced from
11 portions of the Video.


12 Since they were not present for the first day of testing (July 14, 2011) the other defendants' experts
13 (other than Romano) would not have been aware that Tytell used an oversized micrometer to
14 measure the paper thickness of the pages of the Facebook Contract. Consequently, these other
15 defendants' experts would not have considered in formulating their respective opinions that the
16 gouge/divot marks they observed on the documents had been caused by their fellow defense expert,
17 Peter Tytell. Nor have any of the defense experts considers other explanations for the lighter "tab"
18 areas (as described by Tytell) which other attributable cause is suntan lotion, or other lotion or
19 substance transferred to the document pages by hand either with, or without gloves. Consequently,
20 the defendants' experts have not considered the alternative explanations for the "tabbed" lighter
21 areas.
22

23 **Production by Plaintiff's experts to Defendants:**

24 250. In late October 2011, Plaintiff's experts produced copies of their "native format" imagery to
25 defendants for review and examinations. While defendants' experts have now had the benefit of that
26 discovery, Plaintiff's experts have had *no* official discovery of the work product of defendants'
27 experts.
28

1 I hereby declare under penalty of perjury and pursuant to 28 U.S.C. 1746 that the following
2 is true and correct:

3 DATED: June 4, 2012

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6 JAMES A. BLANCO
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