

Lakshmi Arunachalam, Ph.D.

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August 15, 2012

**District of Columbia
Board on Professional Responsibility**

Re: Judge Evan J. Wallach

The District of Columbia Bar
1101 K Street NW, Suite 200
Washington DC 20005
202-737-4700

By USPS Express Mail,
Aug. 15, 2012

Dear Members of the Board,

***Re: Disciplinary complaint against Judge Evan J. Wallach re. his conduct in
Leader Tech v. Facebook, Case No. 2011-1366 (Fed. Cir.)***

I regret but feel compelled to bring the conduct of **Judge Evan J. Wallach** to your attention. I believe that his conduct in *Leader Tech v. Facebook*, Case No. 2011-1366 (Fed. Cir.) ("*Leader v. Facebook*") has been unethical and does not instill the confidence of the public in the administration of justice.

Frankly, my general concern is that this complaint will be swept under the carpet and not be fully investigated. Pundits label "self-policing" of white collar misconduct in the legal profession as largely ineffective since attorneys are disciplining each other and feel the natural sympathy of "there but by the grace of God go I." Therefore, I challenge this board to include a majority of laypeople in evaluating Judge Wallach. This will inject a modicum of objectivity and third party accountability into a process that otherwise looks to the average person as nothing more than attorney whitewashing.

My other concern is that if I do not mention a particular matter in this letter, the board will then not investigate additional matters that may arise from its investigation. Therefore, I respectfully ask that you not limit your investigation to only the matters I raise herein, but rather to all matters that arise from the investigation, including the matters I raise below.

The following are my complaints:

1. Judge Wallach ostensibly signed and/or authorized at least two Orders regarding my Motions that he had not even seen or reviewed, according to Federal Court Clerk of Court staffer, Valerie White on Aug. 7, 2012. Worse, the Jul. 11, 2012 Order

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was entered only hours after my time-stamped motion was received by the court. According to Ms. White, the judges would not have had time to receive and consider my motion.ⁱ See Orders, Jul. 11, 2012ⁱⁱ and Jul. 24, 2012,ⁱⁱⁱ *Leader Tech v. Facebook*, Case No. 2011-1366 (Fed. Cir.). Further, Ms. White also said that the court had no record of receiving any of my three motions, which is unconscionable.

2. Judge Wallach did not disclose his prior associations with a person likely be a key Leader witness, Professor James P. Chandler. This association was likely to inject bias into the proceedings and should have been grounds for disqualification or at least a request for waiver. Professor Chandler was a professor of law at George Washington University and likely quite known to the whole court; and certainly well-known at least to Chief Judge Rader who was his student. It is also likely that undisclosed differences exist with various members of the court and Professor Chandler since the professor was instrumental in the passage of the Federal Trade Secrets Act and the Economic Espionage Act in 1996. Indeed, Professor Chandler worked closely with the Senate Judiciary Committee under Chairman Oren Hatch. Judge Rader was employed by Senator Hatch for eight years. The conflict is evident.^{iv}

3. Judge Wallach did not disclose his and the Federal Circuit's prior associations with various Facebook attorneys. These associations were likely to inject bias into the proceedings and should have been grounds for disqualification or at least a request for waiver.^v

4. Judge Wallach did not disclose whether or not he or any of his direct relationships to the third degree held or purchased stock in Facebook during the pendency of the *Leader v. Facebook* proceedings. Since Facebook's highly publicized initial public offering occurred during the pendency of the court's decision, this matter must certainly be material and would inject bias, and the disclosure one way or the other would have satisfied the requirement for judges to avoid even the appearance of impropriety, especially when considering that his two other panelists, Judge Moore and Judge Lourie, had acquired Facebook stock.^{vi}

5. Judge Wallach authorized public disclosure of key court decisions *timed* to Facebook media needs regarding its IPO in what the average person on the street can only consider Facebook bias. The announcement of the decision was *timed* on the same day as the beginning of the Facebook Road Show in New York on May 8, 2012, and the announcement of the denial of Leader petition for rehearing was *timed* and unexpectedly announced first by *Fox Business* by the interviewer Shibani Joshi during a nationally televised interview of Leader's Chairman Michael McKibben on July 16, 2012.^{vii}

6. Judge Wallach violated Leader Technologies' due process rights under The Fifth and Fourteenth Amendments of the U.S. Constitution. Specifically, Judge Wallach unilaterally converted a "clear and convincing evidence" appeal into a different

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“substantial evidence” argument, then sporadically dipped into the cold record for evidence to support his new argument, even digging out evidence not put before the jury, then ruled on his newly-minted argument. These actions were a manifest injustice since (a) the Federal Circuit is not a trial court, and (b) if the Federal Circuit is going to take on the role of a trial court by evaluating *new evidence*, then it is duty-bound to permit a full briefing by the parties. Leader was never permitted to confront its accuser, which in this case was the Federal Circuit itself.

The Federal Circuit is an appeals court designed to *correct* mistakes of law, not retry cases prejudicially in favor of their friends and well-funded litigants with whom they curry favor. Therefore, the attorneys being overseen by Chief Judge Rader, and ultimately Judge Rader himself, *usurped* the proper administration of justice in their professional actions, in breach of their professional licenses to practice law.

Judge Wallach essentially accused Leader Technologies of things that were not even tried in the lower court, without giving Leader their due process rights to confront, in this case, their *Federal Circuit* accusers. Nothing in Judge Wallach’s professional oath permits such a *usurpation* of the legal process.

7. Judge Wallach ignored the substance of my motions which included firm evidence of matters that required serious review instead of the cursory denials they received. For example, I provided clear proofs of substantial conflicts of interest among the Clerk and judges, substantial new evidence of Facebook’s withholding of key evidence in this case, and egregious oversights of law that cannot possibly pass for judicial discretion.^{viii}

8. Judge Wallach’s court failed to provide timely FOIA information which asked that the court disclose its conflicts checking process in general, and specifically what conflicts checking occurred prior to and during the pendency of *Leader v. Facebook*.

9. Judge Wallach abused his discretion by denying motions without providing a justifying reason. The U.S. Supreme Court in *Foman v. Davis*, 371 US 178 (1962) at 182 states: “outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules.”

10. The public record shows the possibility of undue influence over the proceeding by political and foreign influences. More specifically, at least Judges Lourie and Moore acquired Facebook stock through well-publicized transactions involving the very substantial involvement of investors in Facebook (including the closely related companies Zynga and Groupon) with close ties to the current U.S. administration and to the Russian government (“Facebook investor DST comes with ties to Alisher Usmanov

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and the Kremlin – Three Goldman Sachs bankers, Alexander Tamas, Verdi Israelian and John Lindfors joined DST over the past three years.” *The Guardian*, Jan. 4, 2011).^{ix}

For the sake of economy, I will not attach hard copies of the supporting documents, but will provide links to the downloadable documents online. Should the board wish to have hard copy print outs of the cited documents, I will provide them upon request.

Given the already public nature of this case, and the fact that I am already in contact with members of the U.S. legislature, I will be providing copies of this complaint to members of the House and Senate Judiciary Committees, among others. In this spirit, I would request that you make the results of your investigation publicly available.

Respectfully yours,

/s/

Lakshmi Arunachalam, Ph.D.
CEO
WebXchange, Inc.

Resources:

1. White Brief, *Leader Tech v. Facebook*, Case No. 2011-1366 (Fed. Cir.). Accessed Aug. 14, 2012 <<http://www.leader.com/docs/Leader-v-Facebook-APPEAL-Opening-Brief-25-Jul-2011.pdf>>.
2. Red Brief, *Id.* Accessed Aug. 14, 2012 <<http://www.leader.com/docs/Leader-v-Facebook-FACEBOOK-APPELLEE-BRIEF-24-Oct-2011.pdf>>.
3. Gray Brief, *Id.* Accessed Aug. 14, 2012 <<http://www.leader.com/docs/Leader-v-Facebook-LEADER-REPLY-BRIEF-28-Nov-2011.pdf>>.
4. Green Brief, and Motion for Leave to File of Amicus Curiae Lakshmi Arunachalam, Ph.D.; Motion for Reconsideration; Renewed Motion for Leave to File. Accessed Aug. 14, 2012 <<http://www.scribd.com/amer4innov>>.
5. The *Leader v. Facebook* investigative reports of former *Bloomberg TV* reporter Donna Kline. Accessed Aug. 14, 2012 <<http://www.donnaklinenow.com>>.

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ENDNOTES:

ⁱ Conversation between Federal Circuit Clerk of Court staff member Valerie White and Ohio resident Steve Williams. “Judicial Hyperactivity at the Federal Circuit. Accessed Aug. 14, 2012 <<http://www.donnaklinenow.com/investigation/judicial-hyperactivity-at-the-federal-circuit#comment-3365>>.

ⁱⁱ Order, Jul. 11, 2012. Accessed Aug. 14, 2012 <<http://www.scribd.com/doc/100272477/Delivery-Receipt-and-Order-Re-Amicus-Curiae-Lakshmi-Arunachalam-PhD-Motion-for-Leave-to-File-Jul-11-2012#page=2>>.

ⁱⁱⁱ Order, Jul. 24, 2012. Accessed Aug. 14, 2012 <<http://www.scribd.com/doc/102490453/Order-DENYING-Motion-for-Reconsideration-of-Motion-for-Leave-to-File-Amicus-Curiae-Lakshmi-Arunachalam-P-D-Brief-Re-Leader-v-Facebook-Jul-24-20>>.

^{iv} Renewed Motion of Lakshmi Arunachalam, Ph.D. For Leave To File Brief of Amicus Curiae In Support Of Leader Technologies’ Petition For Rehearing And Rehearing En Banc, *Leader Tech v. Facebook*, Case No. 2011-1366 (Fed. Cir.), July 28, 2012, p. 6-10. Accessed Aug. 15, 2012 <<http://www.scribd.com/doc/101191619/Renewed-Motion-for-Leave-To-File-Amicus-Curiae-Lakshmi-Arunachalam-Ph-D-Brief-Jul-27-2010-Leader-v-Facebook-CLERK-S-COPY-WITH-EXHIBITS#page=15>>.

^v *Id.*, pp. 16-17. <<http://www.scribd.com/doc/101191619/Renewed-Motion-for-Leave-To-File-Amicus-Curiae-Lakshmi-Arunachalam-Ph-D-Brief-Jul-27-2010-Leader-v-Facebook-CLERK-S-COPY-WITH-EXHIBITS#page=25>>.

^{vi} Donna Kline. “Judge Alan D. Lourie Chose Retirement Fund Value Over Justice? [citing Judge Moore’s public financial disclosure showing T. Rowe Price holdings and Facebook’s S-1 disclosure of a 5.2% holding by 158 T. Rowe Price Funds]” *Donna Kline Now!* Accessed Aug. 15, 2012 <<http://www.donnaklinenow.com/investigation/hijinks-at-the-high-court>>. See also T. Rowe Price Associates, Inc. “Principal And Selling Stockholders, fn. 20,” [Facebook S-1 Filing](#), p. 129. Accessed Aug. 1, 2012; See also Judge Kimberly A. Moore Fidelity Contra-Fund Holdings, Renewed Motion of Lakshmi Arunachalam, Ph.D. For Leave To File Brief of Amicus Curiae In Support Of Leader Technologies’ Petition For Rehearing And Rehearing En Banc, *Leader Tech v. Facebook*, Case No. 2011-1366 (Fed. Cir.), July 28, 2012, pp. 13-16 <<http://www.scribd.com/doc/101191619/Renewed-Motion-for-Leave-To-File-Amicus-Curiae-Lakshmi-Arunachalam-Ph-D-Brief-Jul-27-2010-Leader-v-Facebook-CLERK-S-COPY-WITH-EXHIBITS#page=22>>.

^{vii} See Letter Complaint to Mr. William Suter, Clerk of Court, U.S. Supreme Court, written Aug. 11, 2012, submitted Aug. 13, 2012, p. 2. Accessed Aug. 14, 2012 <<http://www.scribd.com/doc/102686250/Lakshmi-Arunachalam-Ph-D-Judicial-Misconduct-COMPLAINT-to-the-U-S-SUPREME-COURT-Aug-11-2012>>; See also See

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also Renewed Motion of Lakshmi Arunachalam, Ph.D. For Leave To File Brief of Amicus Curiae In Support Of Leader Technologies' Petition For Rehearing And Rehearing En Banc, *Leader Tech v. Facebook*, Case No. 2011-1366 (Fed. Cir.), July 28, 2012, p. 11-12 <<http://www.scribd.com/doc/101191619/Renewed-Motion-for-Leave-To-File-Amicus-Curiae-Lakshmi-Arunachalam-Ph-D-Brief-Jul-27-2010-Leader-v-Facebook-CLERK-S-COPY-WITH-EXHIBITS#page=20>>.

^{viii} Renewed Motion of Lakshmi Arunachalam, Ph.D. For Leave To File Brief of Amicus Curiae In Support Of Leader Technologies' Petition For Rehearing And Rehearing En Banc, *Leader Tech v. Facebook*, Case No. 2011-1366 (Fed. Cir.), July 28, 2012 <<http://www.scribd.com/doc/101191619/Renewed-Motion-for-Leave-To-File-Amicus-Curiae-Lakshmi-Arunachalam-Ph-D-Brief-Jul-27-2010-Leader-v-Facebook-CLERK-S-COPY-WITH-EXHIBITS>>.

^{ix} *Id.*, pp. 14-15 <<http://www.scribd.com/doc/101191619/Renewed-Motion-for-Leave-To-File-Amicus-Curiae-Lakshmi-Arunachalam-Ph-D-Brief-Jul-27-2010-Leader-v-Facebook-CLERK-S-COPY-WITH-EXHIBITS#page=23>>.



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FROM: (PLEASE PRINT) PHONE () Lakshmi Arunachalam 222 Stanford Avenue Menlo Park, CA 94025	TO: (PLEASE PRINT) PHONE () District of Columbia Board on Professional Responsibility The District of Columbia Bar 1101 K Street NW, Suite 200 Washington, DC 20005
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