

2011-1366

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

LEADER TECHNOLOGIES, INC.,

Plaintiff-Appellant,

v.

FACEBOOK, INC.,

Defendant-Appellee.

*Appeal from the United States District Court for the District of Delaware in
Case No. 08-CV-862, Judges Joseph J. Farnan and Leonard P. Stark*

**MOTION TO COMPEL EACH MEMBER OF THE FEDERAL CIRCUIT
TO DISCLOSE CONFLICTS OF INTEREST**

Civil Appeal No. 2011-1366

Lakshmi Arunachalam, Ph.D.
222 Stanford Avenue
Menlo Park, CA 94025
(650) 854-3393
for Amicus Curiae
Lakshmi Arunachalam, Ph.D.

Sep. 5, 2012

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Leader Tech v. Facebook, Case No. 2011-1366

CERTIFICATE OF INTEREST

Amicus Curiae Lakshmi Arunachalam, Ph.D. certifies the following:

1. The full names of every party or amicus represented by me is:
Lakshmi Arunachalam
2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is: **NONE**
3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of amicus curiae represented by me are: **NONE**.
4. The names of the law firms and the partners or associates that appeared for the amicus curiae now represented by me in the trial court or agency or that are expected to appear in this Court are: **NONE**

To be clear, *Amicus Curiae* has no financial interest in either party. Rather, her interest in this matter is as a concerned citizen and holder of validly issued United States patents; the property rights therein she believes to be harmed by the conduct of Facebook and the courts in this matter.

Sep. 5, 2012

/s/

Signature

Lakshmi Arunachalam, Ph.D.
for Amicus Curiae Lakshmi Arunachalam, Ph.D.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Leader Tech v. Facebook, Case No. 2011-1366

**CERTIFICATE OF GOOD FAITH PURSUANT TO
FEDERAL RULES OF CIVIL PROCEDURE RULE 37(1)**

Amicus Curiae Lakshmi Arunachalam, Ph.D. certifies the following:

1. That *Amicus Curiae* has attempted in good faith to bring to the attention of the Court its duty to disclose conflicts of interest which are included in the 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* (“Renewed Motion”).
2. That *Amicus Curiae* received a four-page opinion from the Court that wholly excused its conduct and continues to fail to disclose its conflicts of interest.
3. Therefore, That *Amicus Curiae* is compelled to file this motion in both her interest as well as in the interest of the public.

Sep. 5, 2012

/s/

Signature

Lakshmi Arunachalam, Ph.D.
for Amicus Curiae Lakshmi Arunachalam, Ph.D.

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MEMORANDUM

Amicus Curiae Lakshmi Arunachalam, Ph.D. (“Dr. Arunachalam”)

filed a motion for leave to file an *amicus curiae* brief in this matter. The Court denied the motion, as well as a motion for reconsideration and a renewed motion. On Sep. 1, 2012 Dr. Arunachalam sent a “Request For Relief.”¹ Remarkably, to date, while the Court has published its denials of Dr. Arunachalam’s motions, citing elements of these motions, the Court has *refused* to publish the motions to which they refer. These motions may be obtained by the public nonetheless at <http://www.scribd.com/amer4innov>.

This conduct amounts to censorship. [*Southeastern Promotions, Ltd. v. Conrad*](#), 420 US 546 (Supreme Court 1975) at 553 (“Our distaste for censorship—reflecting the natural distaste of a free people—is deep-written in our law.”). Not even a hearing was conducted before the decision to withhold Dr. Arunachalam’s motions from public access. Worse, the Court’s own employee, Valerie White, said

¹Fully captioned as “REQUEST FOR RELIEF FROM JUDGMENT AND ORDER PURSUANT TO RULES 60(a) AND 60(b) FOR NEWLY DISCOVERED EVIDENCE, MISTAKE, FRAUD, SURPRISE, MISREPRESENTATION, MISCONDUCT AND THE JUDGMENT IS VOID.”

on Aug. 7, 2012² that none of Dr. Arunachalam's first three motions were even received even though the United States Post Office Records verify that they were.³

Dr. Arunachalam's briefs cite new, disturbing facts that this Court is choosing to ignore, namely that Facebook *withheld evidence* of its 2004 source code from Leader, investments by members of this Court in Facebook, and other conflicts of interest which reveal the **high likelihood of Court bias toward Facebook**.⁴ e.g., See **Exhibit A**, Deposition of Bryan J. Rose, Facebook forensic expert witness, *Paul D. Ceglia v. Mark Elliot Zuckerberg*, 1:10-cv-00569-RJA (W.D.N.Y. 2010), **July 18, 2012**, [Tr. 137:8-13](#) ("Q. Did your team -- your team evaluated 15 or 20 computers that Mr. Zuckerberg used historically; right? A. ... yes, correct"); *Id.*, [Tr. 41: 22-43:10](#) ("Q. Did they [Harvard] produce forensic copies [of Mark Zuckerberg's 2004-2004 email] from a backup source to you? A. Yes."). **Facebook told Leader that this evidence did not exist.**

It is unconscionable for this Court to overlook this new evidence that Facebook *withheld* from Leader during discovery.

² [Valerie White conversation with Steve Williams](#), Aug. 7, 2012. *Donna Kline Now!*.

³ "Do These Facts Pass The "Ordinary Person In The Streets" Test For Conflicts of Interest and Propriety?" See sidebar containing [USPS Express Mail Proofs of Delivery](#). *Donna Kline Now!*

⁴ See Request for Relief, p. 12, citing Motion For Reconsideration Of Notice Of 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*, p. 4. Available at <http://www.scribd.com/amer4innov>.

This revelation of new information withheld at Harvard becomes even more pertinent when one considers the central role that **Lawrence H. Summers** played then and now in Facebook—then President of Harvard University during Mark Zuckerberg’s matriculation (now CEO of Facebook), long-time professional adviser to Sheryl Sandberg (now Facebook COO), long-time economic adviser to Moscow, Russia-based Juri Milner (now CEO of Facebook’s second largest shareholder), director of the United States Government 2008 financial bailout of Goldman Sachs (now Facebook’s chief underwriter), and now special adviser to Marc Andreessen and Andreessen Horowitz (now a Director of Facebook).

Mr. Summers has returned to Harvard University in recent months. Given his central role in the questions swirling around these conflicts of interest, a reasonable person would consider the evidence at Harvard at risk of spoliation. *See* Ex. A. In the interest of justice, **this Court should act to prevent the spoliation** of the Harvard evidence, and other 2003-2004 Facebook documents, files, instant messages and emails that may be useful to Leader.⁵

Dr. Arunachalam believes that most, if not all, of the members of this Court have and had an ethical duty to disqualify themselves, or at least disclose their

⁵ *See* “Larry Summers Joins Andreessen Horowitz As Special Advisor.” Nicole Perlroth, [Forbes](#), Jun. 29, 2011. Accessed Sep. 4, 2012; *See* also “Larry Summers To Return to Harvard at Year's End.” Elias J. Groll and William N. White, [The Harvard Crimson](#), Sep. 21, 2010. Accessed Sep. 4, 2012.

conflicts of interest. Instead of full disclosure, they were silent, and when challenged, have presented a haughty, dismissive opinion.⁶ **Federal judges are not above the law**, and in this case, the law dictates that the members of this court provide full disclosure of their conflicts of interest. To date they have provided only conclusory, misleading, and in some instances, false statements.⁷ The public interest is best served by the members of this Court accounting for their appearances of impropriety in this case.

Dr. Arunachalam relies on the Federal Rules of Appellate Procedure, including [Rule 27\(d\)\(1\)\(E\)\(2\)](#)(20 page limit). Dr. Arunachalam further requests that the Court interpret the rules liberally⁸ as required by the Rules for *pro se* filers as well as required by the U.S. Supreme Court in [Foman v. Davis](#), 371 U.S. 178, 181-82 (Supreme Court 1962) which directs to assess the motion **on its merits** and not dismiss it for mere procedural technicalities.

⁶ Order, Aug. 10, 2012.

⁷ The Court's Aug. 10, 2012 Opinion stated falsely that Dr. Arunachalam had not provided a certificate of interest in motion for leave to file her amicus curiae brief. That certificate is the *second ("ii") page* of the motion. The Court also stated that Dr. Arunachalam's original motion was moot on **July 11, 2012** citing their **July 16, 2012** denial. This is also false; evidently designed to hide the fact that they jumped the gun and their decision is therefore invalid. *See* Request for Relief, pp. 6, 7. In addition, this Court is acting fraudulently since it lacks jurisdiction over the new unconstitutional claims that it is attempting enforce upon Leader. *See Id.*, pp. 3-5.

⁸ [Rule 27](#). Motions. Federal Circuit. Accessed Sep. 4, 2012.

Pursuant to [FRAP 27\(a\)\(5\)](#) Leader Technologies has said they will not oppose this motion and reserve the right to file a response; Facebook objects to this motion and says “We do not plan to submit a response.” Note that Mr. Thomas G. Hungar’s email at 7:02PM on Sep. 1, 2012 was received *after* the Request for Relief had already been sent to the Court earlier that day. For the record, Facebook indicated that they oppose the Request for Relief motion and “do not plan to submit a response.”

LAW AND ARGUMENT

The Federal Judicial Center begins its treatise on “Judicial Disqualification: An Analysis of Federal Law” with these crystal clear words:⁹

For centuries, impartiality has been a defining feature of the Anglo-American judge’s role in the administration of justice. The reason is clear: in a constitutional order grounded in the rule of law, it is imperative that judges make decisions according to law, unclouded by personal bias or conflicts of interest.

The Code of Conduct for Judicial Employees provides as follows:

Canon 1: A judicial employee should uphold the integrity and independence of the judiciary and of the judicial employee’s office.

Canon 2: A judicial employee should avoid impropriety and the appearance of impropriety in all activities.

⁹ [“Judicial Disqualification: An Analysis of Federal Law.”](#) Federal Judicial Center, 2010, p. 1. Accessed Aug. 29, 2012.

The [Model Rules of Professional Conduct](#), contain twenty-seven (27) instances referencing “conflicts of interest” and fifty-six (56) instances referencing “adverse interests.” Likewise, the [Code of Conduct for United States Judges](#) has four (4) instances discussing “conflict [of interests].” The definition of “conflict of interest” herein shall be as used as generally understood as defined by common law.

Precedent appears to be unclear as to how a judge is compelled by the public to disclose conflicts of interest. Indeed, the public relies on the judges themselves to be diligent in performing their *duty to initiate* such disclosure. Therefore, in one sense this motion is simply asking the members of the Federal Circuit, including the Clerk of Court, to be transparent and do their duties. Laypeople should not have to ask.

Dr. Arunachalam requests procedural latitude pursuant to *Foman, supra* and otherwise relies upon the general guidelines of the Federal Rules of Civil Procedure for a motion to compel, and the Federal Rules of Appellate Procedure Rule 27 for a motion in general. Dr. Arunachalam further relies upon the ethical principles embodied in 28 U.S.C. §455 regarding the public’s interest in the trustworthiness of the judiciary.

1. This motion is in the public interest

Judges have a duty to disclose conflicts of interests so that the public can be assured of his or her impartiality; hence, this motion is in the public interest. *See In re United States*, 666 F. 2d 690 (1st Circuit 1981)(“To ensure that the proceedings appear to the public to be impartial and hence worthy of their confidence, the situation must be viewed through the eyes of the objective person. *See* H.Rep.No. 1453, 93d Cong., 2d Sess., 1974 U.S.Code Cong. & Admin.News 6351, 6355.”).¹⁰

An ordinary person is hard-pressed to see where this Court lifted a finger to comply with these high ethical standards in this case. Instead, they have *masked* their conflicts in procedural gobbledygook¹¹ meant to confuse civilians with jargon and self-serving manipulation of rules that can be interpreted any way a judge, citing “judicial discretion” wishes. These excuses include such things as hiding investments in Facebook,¹² cozy relationships with Facebook’s attorneys,

¹⁰ *See* additional case law at [“Judicial Disqualification: An Analysis of Federal Law.” Federal Judicial Center, 2010, p. 97, fn. 488](#) and [Id. pp. 121-129](#). Accessed Aug. 29, 2012.

¹¹ Corrupt judges are notorious for using alleged procedural missteps to punish their enemies while citing “judicial discretion” to turn a blind eye to their friends. **Such conduct is destroying public confidence in American justice**; *See* also [Foman v. Davis](#), 371 U.S. 178, 181-82 (Supreme Court 1962)(“The Federal Rules of Civil Procedure embody the principle that where possible, cases should be decided on their merits and not on mere procedural technicalities.”).

¹² “Anything goes with this company.” Jim Cramer Interview re. Facebook’s Peter Thiel dumping his stock. [CNBC](#), Aug. 21, 2012; *See* also Leader blindsided with

professional biases against Leader witnesses and prospective witnesses, ignoring explosive new evidence withheld by Mark Zuckerberg, abuse of due process, a clerk acting like a judge, failure to follow the spirit of justice embodied in the Rules of Civil or Appellate Procedure, and censorship of court records, to name a few.

“We find particularly worrisome [the judge’s] failure to disclose this conflict himself. “ [Moran v. Clarke](#), 296 F.3d 638 (8th Cir. 2002). This principle applies equally to clerks. “When the judge’s current law clerk has a possible conflict of interest, the Eleventh Circuit notes that ‘it is the clerk, not the judge who must be disqualified.’”¹³ Clerk of Court Jan Horbaly’s cozy relationship with Facebook’s attorneys have biased these proceedings. In fact, all evidence suggests that Mr. Horbaly unilaterally wrote and signed the opinions in breach of the law. US citizens do not appoint judges to sit on the bench; only to have those responsibilities shuffled off to unappointed (and therefore *unaccountable*) law clerks and legal assistants. If this is the case, then the public has no need for federal judges.

Court opinion. also Shibani Joshi, F Shibani Joshi. Interview with Michael McKibben, Chairman & Founder of Leader Technologies, Inc. [Fox Business](#), Jul. 16, 2012.

¹³ [Judicial Disqualification: An Analysis of Federal Law. Federal Judicial Center, 2010, pp. 29, 30](#), citing [Byrne v. Nezhad](#), 261 F.3d 1075, 1101–02 (11th Cir. 2001) (quoting [Hunt v. Am. Bank & Trust Co.](#), 783 F.2d 1011, 1016 (11th Cir. 1986)). Accessed Aug. 29, 2012.

Given the fact that the Court denied Dr. Arunachalam's Motion for Leave to File on the *same day* it was received on July 11, 2012, Jan Horbaly's signature stamp on the denial only *hours* later means that no duly-appointed judge even saw the motion. That's is what Clerk employee Valerie White confirmed. *See* fn. 2.

2. This Court is duty-bound to investigate and account to the public for its actions and the allegations of bias

“§455 calls upon judges to evaluate the merits of a movant's allegations and not simply the facial sufficiency of those allegations.”¹⁴ This is especially true in this case since this case is broadly publicized and public confidence in the judicial process is being undermined by the Court's bias. [In re United States](#), 158 F.3d 26, 30 (1st Circuit 2001); *See* also [In re Boston's Children First](#), 244 F.3d 164, 167 (1st Cir. 2001)(where question of judge's partiality was highly publicized, writ of disqualification issued where it may not have under normal circumstances). The Court opinion was nothing more than whitewash. *See* fn. 5.

¹⁴ *Id.*, [“Disqualification Under 28 U.S.C. §455.” Judicial Disqualification: An Analysis of Federal Law. Federal Judicial Center, 2010, p. 84.](#) Accessed Aug. 29, 2012.

3. Judges are responsible to adequately investigate their holdings and disclose possible conflicts

Porter v. Singletary, 49 F. 3d 1483 (11th Circuit 1995) at 1489 (“The Commentary to Canon 3E(1) provides that a judge should disclose on the record information which the judge believes the parties or their lawyers **might consider relevant** to the question of disqualification. We conclude that both litigants and attorneys should be able to rely upon judges to comply with their own Canons of Ethics.”)(emphasis added).

4. Biased rulings must be vacated

In *Chase Manhattan Bank v. Affiliated FM Ins. Co.*, 343 F. 3d 120 (2nd Circuit 2003) **the district judge’s refusal to recuse himself after discovering a holding in Chase resulted in his decisions being vacated.** This fact pattern is not dissimilar to this case since the judges of this Court are known to own mutual funds with substantial, well-publicized holdings in Facebook. The Court’s reference in their Aug. 10, 2012 Opinion to Canon 3 C (3)(c)(i) which allows mutual funds in general **does not hold water in light of the overarching ethical principles and the fact pattern here.**¹⁵

¹⁵ See “Disqualification Under 28 U.S.C. §455.” Judicial Disqualification: An Analysis of Federal Law. [Federal Judicial Center](#), 2010, pp. 73, 74. Accessed Aug. 29, 2012.

In [*United States v. Lauersen*](#), 348 F.3d 329 (2d Cir. 2003) the judge disclosed his shareholding in one of the defendant's insurance companies that would benefit from his ruling in their favor. The Second Circuit held that such a holding *would have been a basis for disqualification* had he not disclosed it. One is hard-pressed to see how this case is different.

5. Judge Lourie's and Judge Moore's holdings stood to benefit greatly from a ruling in favor of Facebook

Judges Lourie and Moore's mutual fund holdings held substantial stakes in Facebook; even heavily publicizing those holdings during the pendency of this case. Given the publicity, no reasonable person could excuse the judges for not disclosing those thinly-veiled Facebook holdings (even though the judge self-excused themselves citing Canon 3 C). Their personal holdings doesn't even account for the benefits that would likely accrue to their **relationships to the third degree**; information that is the judge's ethical duty to police pursuant to their Code of Conduct. Were such conflicts checks performed in this case? No one knows since the judges have remained intransigent.

6. Chief Judge Randall R. Rader issues contradictory rulings on judicial conflicts of interest

In [*Shell Oil Co. v. US*](#), 672 F. 3d 1283 (Federal Circuit 2012) Judge Rader *remanded* a matter and *removed* a district court judge when it was discovered that the judge's *wife* had some stock in Shell Oil. Remarkably, this decision was made just two days after oral arguments in this case. Judge Rader even *vacated* all the judge's rulings. Even though the conflicts of interest in this case are dramatically worse, Judge Rader is tellingly silent. **Apparently the Federal Circuit has a double standard** that applies the law properly in cases involving companies with deep pockets, but ignores the conflict when the deep pockets are the wrong doers. *See* Renewed Motion, pp. 13-15 (e.g., Judge Moore Fidelity holdings); *See* also e.g., Judge Lourie 2010 Financial Disclosure (T. Rowe Price holdings).

7. Federal law requires a judge to “disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” 28 U.S.C. §455(a)

Because section 455(a) is intended to avoid even the appearance of impartiality, it is not actual bias or prejudice, but rather the *appearance of bias and prejudice* that matters. [*Liljeberg v. Health Services Acquisition Corp.*](#), 486 US 847, 860 (Supreme Court 1988); [*Liteky v. United States*](#), 510 US 540 (Supreme Court 1994).

The Federal Judicial Center states:¹⁶

Congress has enacted laws telling judges to withdraw or recuse themselves from any case in which a close relative is a party or in which they have any financial interest, **even one share of stock**. Congress requires judges to file a financial disclosure form annually, so that their stock holdings, board memberships, and other financial interests are on public record. Most judges maintain more frequent lists of their holdings for lawyers to inspect (emphasis added).

This Court appears to have ignored the admonition of the statute as well as those of the Ninth Circuit in [US v. Holland](#), 519 F. 3d 909 (9th Circuit 2008) at 912:

As a “general proposition a judge may *not* sit in cases in which his "impartiality might reasonably be questioned . . . If it is a close case, the balance tips in favor of recusal.”

The admonition to disqualify oneself if one’s impartiality could be reasonably questioned is echoed by the Seventh Circuit in [In re Nettles](#), 394 F.3d 1001, 1002 (7th Cir.2005) at 914:

We must bear in mind that these outside observers are less inclined to credit judges' impartiality and mental discipline than the judiciary itself will be. (internal quotation marks and citation omitted).

Despite these clear admonitions to flee even the appearance of a conflict, this Court clings to misleading reliance on Canon 3 C (3)(c)(i), “coincidence” and

¹⁶ “For judges who are appointed for life, what safeguards ensure that they can do their jobs fairly and capably?” [Federal Judicial Center](#). Accessed Aug. 28, 2012.

Canon 4 A (1) while ignoring other canons and precedent that discredit their flimsy excuses for *maintaining and sustaining* their appearance of impropriety.¹⁷

For these reasons, Dr. Arunachalam is compelled to demand in the public interest that the members of this court fully disclose their conflicts of interest in this matter.

For the purposes of this motion, any reference to “judge” is also a reference to the “clerk” and any other judicial employee. All requests shall be considered requests for reasonably substantive responses.

DISCLOSURE QUESTIONS

Dr. Arunachalam, on behalf of herself as well as the public interest, moves to compel each member of the Federal Circuit to disclose the following:

1. What were the Court’s specific “conflicts of interest checking” procedures used in this case from inception to the present?¹⁸ Responses should include all written documentation and procedures. Please provide written verification as to whether or not each judge complied. Please document and verify verbal instructions.

¹⁷ See Footnote 4.

¹⁸ “Conflict of Interest” shall be used as generally understood by the legal profession and the general public. *Supra*.

2. What are the Court's written procedures for conflicts checking before judges and judicial employees are assigned to a case? Please provide copies of all written procedures and written verification of informal and verbal procedures.

3. What were the procedures used to process and develop opinions among the judges regarding Dr. Arunachalam's motions from March 5, 2012 to the present?

4. Did each and every member of the Federal Circuit receive each and every one of Dr. Arunachalam's motions, then write an opinion denying each motion regarding her amicus curiae brief? Please provide documentation and verification of every representation made in answer to this question.

5. What were the procedures used on July 11, 2012 to receive, process and deny Dr. Arunachalam's Motion for Leave to File in one afternoon? The response should include all written documentation and procedures, and verification as to whether or not each judge complied, and the content of their opinions.

6. What technical problems has the Court's PACER docket experience specifically related to the posting of docket items in this case, from the inception of this case to the present?

7. Why has the Clerk not posted each and every motion filed by Dr. Arunachalam's?

8. Why has the Clerk posted denials of Dr. Arunachalam's motions but not posted the motions themselves for public review?

9. What were the Court's procedures, including times, places and dates, used to notify the parties of the Court's July 16, 2012 denial of Leader's Petition for Rehearing and Rehearing En Banc? Please provide verified records of these notifications to the parties. Please include verified statements for any verbal notices provided.

10. Did the Court notify Facebook and/or *Fox Business* around noon on July 16, 2012 of its denial of Leader's Petition for Rehearing and Rehearing *En Banc*?

11. Which Court officer or employee provided notice to *Fox Business* of the denial of Leader's Petition for Rehearing and Rehearing *En Banc* about noon on July 16, 2012?

12. If *Fox Business* was provided a verbal notice of Leader's Petition for Rehearing and Rehearing *En Banc* about noon on July 16, 2012, then please provide a verified record of a similar notice having also been provided to the parties.

13. Describe each contact between each judge and Professor James P. Chandler, President of The National Intellectual Property Law Institute and former

Professor of the Law, and Director of the Computers in Law Institute at George Washington University National Law Center, from 1986 to the present time.

14. Describe each contact, professional and personal/casual/social, including funds and gifts exchanged, between each judge with any attorney who has represented or currently represents Facebook during the pendency of this matter. Please describe all contacts from 1986 to the present.

15. What are the direct Facebook stock holdings by each judge?

16. What are the Facebook holdings of each mutual fund held by each judge?

17. What are the direct and/or indirect (mutual funds, trust holdings, etc.) Facebook stock holdings by any family member of a judge, to the third degree of relationship? *See* 28 U.S.C. §455(b)(5) for definition of “third degree.”

18. Has any member of this Court been the target of attempts at undue influence in any form during the pendency of this case? If so, what form did this activity take and what was the outcome?¹⁹

¹⁹ For the purposes of this question, undue influence shall be defined as but not limited to bribery, coercion, threat, excessive force, compromise, duress, compulsive act, moral or social pressure, danger, intimidation, extortion, blackmail, physical abuse, psychological abuse, victimization, injury, fraud, excessive pressure, misrepresentation, false pretenses, favors, patrimony, victimization, deception, sexual favors, coercive persuasion, fear, puppeteering, isolation, withholding favors, enticements, playing on loyalties and medication.

19. Has any member of this Court been the target of foreign influence during the pendency of this case? If so, what form did this activity take and what was the outcome?

20. Describe each contact professional, personal, social, casual and otherwise by each member of this Court and/or relationship to the third degree with any of the following principals, beneficial parties and the self-described business “ecosystem” of Facebook’s Director James W. Breyer,²⁰ including all affiliated and interlocked organizations, from 1986 to the current time:²¹

- a. Mark E. Zuckerberg
- b. Dustin Moskowitz
- c. Christopher C. Hughes
- d. Eduardo L. Saverin
- e. Sean Parker
- f. Lawrence H. Summers and/or Andresseen Horowitz
- g. Sheryl K. Sandberg and/or World Bank, U.S. Dept. of Treasury, Brookings Institution
- h. Juri Milner (a.k.a. Yuri Milner) and/or DST Holdings Ltd., Mail.ru Group Ltd., Digital Sky Technologies, Alisher Asmanov,²² Moscow State University Departments of Physics

²⁰ Use affiliated and interlocked associations disclosed in “Facebook, Inc. Insured Profile Report – Cyber Liability Focus.” [Advisen Insurance Intelligence. pp. 2, 3.](#) Accessed Sep. 2, 2012 (James W. Breyer Interlocked Companies Wal-Mart Stores, Inc.; Dell, Inc.; News Corporation; Accel Partners; Prosper Marketplace, Inc., Maven Networks, Inc.; Brightcove, Inc. (aka: Video Marketplace, Inc.); The Founder’s Fund; Xoom Corporation); See also James W. Breyer, Director, Walmart. [Application number: 1-2064-74519 for Wal-Mart Stores, Inc.](#) Accessed Sep. 2, 2012 (“provide a single, trusted, **ecosystem** experience for Internet users worldwide”)(emphasis added).

²¹ Use [Renewed Motion, pp. 13-16](#) for verification of the party referred to.

²² Use [Renewed Motion, p. 14](#), “\$2,169,376,940 – DST Holdings (. . . Juri Milner, Moscow, Russia).”

and Mathematics, Moscow, Russia Russian Academy of Sciences, Moscow, Russia

- i. James W. Breyer and/or Accel Partners LLP (incl. subsidiaries and related web of holdings);²³ please identify all relationships and holdings in London (United Kingdom), Bangalore (India) and Beijing (China)
- j. Peter A. Thiel and/or Clarium Capital²⁴
- k. Reid G. Hoffman and/or PayPal, LinkedIn
- l. Elon Musk
- m. Matt Cohler and/or Instagram
- n. Marc L. Andreessen and/or Andreessen Horowitz
- o. James Swartz (Accel Partners)
- p. Ping Li (Accel Partners)
- q. Lisa T. Simpson
- r. Theodore Ulyot
- s. Thomas G. Hungar
- t. Fenwick & West LLP
- u. White & Case LLP
- v. Cooley Godward LLP
- w. Orrick Herrington LLP
- x. Gibson Dunn LLP
- y. Nicholas Carlson and/or *Business Insider*, aka *Silicon Alley Insider*
- z. David Kirkpatrick
- aa. Henry Blogget (*Business Insider*)
- bb. Ben Mezrich
- cc. Goldman Sachs and/or subsidiaries
- dd. Morgan Stanley and/or subsidiaries

²³ Use [SEC Insider Trading Table](#) of associated and interlocked Accel Partners and James W. Breyer associations delineated in “James W. Breyer’s tangled web of insider trading – AKA – “You’ve been Breyer-ed--In confusion there is profit? *Donna Kline Now!* Accessed Sep. 2, 2012.

²⁴ [Op.cit.](#), p. 14.

REQUEST FOR RELIEF

For the reasons stated above, Dr. Arunachalam respectfully requests full and complete responses to the aforementioned questions.

Dr. Arunachalam respectfully requests that the Court act to preserve from spoliation the 2003-2004 Facebook evidence that was withheld from Leader Technologies, including email and instant messaging archives at Harvard and other locations identified in the Rose deposition.

Dr. Arunachalam also respectfully requests that the Court sanction the members of this Court who have engaged in undisclosed conflicts of interest, and that those sanctions be levied in a manner that best serves the interests of justice and restores public confidence.

Sep. 5, 2012

/s/

Signature

Lakshmi Arunachalam, Ph.D.
for Amicus Curiae Lakshmi Arunachalam, Ph.D.
222 Stanford Avenue
Menlo Park, CA 94025
(650) 854-3393
laks@webxchange.com

EXHIBIT A

A complete copy of this 293-page deposition is available at:

July 18, 2012 Deposition of Bryan J. Rose, Facebook forensic expert, *Paul D. Ceglia v. Mark Elliot Zuckerberg*, 1:10-cv-00569-RJA (W.D.N.Y. 2010). Accessed Sep. 4, 2012

<<http://www.scribd.com/doc/104724334/Deposition-of-Bryan-J-Rose-Facebook-Forensic-Expert-Paul-D-Ceglia-v-Mark-E-Zuckerberg-1-10-cv-00569-RJA-W-D-N-Y-2010-Jul-18-2012>>.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
No. 1:10-cv-00569-RJA

-----x
PAUL D. CEGLIA,

Plaintiff,

vs.

MARK ELLIOT ZUCKERBERG,
Individually, and
FACEBOOK, INC.,

Defendants.

-----x

July 18, 2012
10:09 a.m.

Videotaped deposition of BRYAN J.
ROSE, held at the offices of Gibson, Dunn
& Crutcher LLP, 200 Park Avenue, New York,
New York, pursuant to notice, before Cary
N. Bigelow, Court Reporter, a Notary Public
of the State of New York.

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A P P E A R A N C E S :

BOLAND LEGAL, LLC
Attorneys for Plaintiff
1475 Warren Road
Unit 770724
Lakewood, Ohio 44107
BY: DEAN BOLAND, ESQ.

GIBSON, DUNN & CRUTCHER LLP
Attorneys for Defendants
200 Park Avenue
New York, New York 10166-0193
BY: ALEXANDER H. SOUTHWELL, ESQ.
THOMAS H. DUPREE JR., ESQ.
MATTHEW BENJAMIN, ESQ.
AMANDA AYCOCK, ESQ.

ALSO PRESENT :

VILAN TRUB, Videographer

1

2 MR. SOUTHWELL: This is Alexander
3 Southwell for the defendants along with
4 Matthew Benjamin and Tom Dupree and Amanda
5 Aycock.

6

MR. BOLAND: I'm Dean Boland for the
7 plaintiff, Paul Ceglia.

8

MR. ROSE: And I am Bryan Rose from
9 Stroz Friedberg.

10

THE VIDEOGRAPHER: This is tape 1.

11

(The witness was sworn in.)

12

MR. SOUTHWELL: Mr. Boland, before we
13 begin, I just want to put on the record our
14 objection to this videographer. We reserve
15 the right to object to the admissibility of
16 this videotaped deposition. The
17 videographer is not a certified legal
18 videographer, he doesn't appear, as I asked
19 him previously, to have any familiarity or
20 training in the Federal Rules of Civil
21 Procedure, the Federal Rules of Evidence,
22 the New York C.P.L.R., he has not used the
23 required statutory language to begin a video
24 deposition and he clearly is not following
25 any of the best practices set out by the

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videographer associations, so obviously it's your choice in what you want to do, but we reserve the right to object to the admissibility of this video deposition.

I don't know if you have something else in mind with respect to the videoing of the deposition, like are you planning to post them on YouTube like you've done in other cases.

MR. BOLAND: I just have plans for him to videotape it, that's all; that's it so far.

MR. SOUTHWELL: So you are not planning to post that on YouTube?

MR. BOLAND: Not today.

MR. SOUTHWELL: Tomorrow?

MR. BOLAND: I have no plans for tomorrow to post anything on YouTube.

MR. SOUTHWELL: At any point in the future?

MR. BOLAND: I have no current plans to post anything on YouTube.

MR. SOUTHWELL: Or otherwise make them publicly available?

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MR. BOLAND: I have no plans to do that, no.

MR. SOUTHWELL: Okay.

MR. BOLAND: Can you just mark that Exhibit 1, please, using a copy of this as the report.

Or do you have one?

MR. SOUTHWELL: We have got our copy, but we will hold on to it right now.

MR. BOLAND: I will also probably end up using some of these exhibits tomorrow again, I'll just use the same ones instead of duplicating them all over again, giving us multiple copies of the same thing.

MR. SOUTHWELL: Just to be clear, you are using the filed version?

MR. BOLAND: I believe so. It has the file stamp at the top. I don't have another version.

MR. SOUTHWELL: Well, you have the unredacted version which was provided to you.

MR. BOLAND: Oh, yes, correct. No, I'm just using the filed version.

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(Exhibit 1, Stroz Friedberg report dated March 26, 2012, marked for identification, as of this date.)

B R Y A N J. R O S E, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY

MR. BOLAND:

Q. Good morning, Mr. Rose.

A. Good morning.

Q. Before we get started here, did you have a conversation with any of the defense counsel before your testimony today in preparation for your testimony today?

A. I did.

Q. And when was that conversation, the most recent one?

A. The most recent one, we had a brief conversation this morning and then we had a meeting yesterday.

Q. And in that conversation did defense counsel alert you to some of the unique rules that the judge in this case has for people sitting for deposition?

1 B. Rose

2 A. What rules are you referring to?

3 Q. Well, let me just go over them.

4 The judge in this case has indicated
5 that anyone being deposed, if they are confused
6 about a question, should direct a request for
7 clarification to the person asking the question,
8 not the lawyers for, you know, the side that you
9 are on.

10 A. Okay.

11 Q. And that also, when we take breaks
12 during the deposition that the witness being
13 deposed can't have any conversations with the
14 lawyers from their side of the case about the
15 deposition.

16 A. I was made aware of that rule, yes.

17 Q. Those are the rules I'm talking about.

18 A. Yes.

19 Q. So I'm going to assume when I ask you
20 questions today that if you answer that question
21 you understood what I was asking, and if you
22 don't understand it -- well, is that a fair
23 approach?

24 A. That's a fair approach, and if I don't
25 understand your question I will ask for

1 B. Rose

2 clarification.

3 Q. Very good.

4 Can you look at what's been handed to
5 you and marked as Rose Exhibit 1 and just
6 identify that for the record.

7 A. This looks like a filed redacted copy
8 of Stroz Friedberg's report dated March 26, 2012.

9 Q. And you signed that report?

10 A. I did.

11 Q. And one other person signed the report
12 as well?

13 A. That's correct, Mike McGowan from Stroz
14 Friedberg also signed the report.

15 Q. And is all of the information you
16 relied on in preparing that report listed in the
17 report?

18 A. Yes.

19 Q. And is your CV that's listed in the
20 report current as of today or are there some new
21 additions that might be on a current version?

22 A. There would be some additional, at
23 least one additional speaking engagement, I
24 believe, but generally it's current.

25 Q. Is there any other training that you've

1 B. Rose

2 received since that CV was produced as part of
3 Exhibit 1 there?

4 A. No.

5 Q. In your preparation for today's
6 deposition were you provided transcripts of any
7 other witnesses' depositions in this case?

8 A. No.

9 Q. Did you discuss the testimony of
10 Mr. Broom with the defense counsel?

11 A. No.

12 Q. Did you discuss the testimony of
13 Mr. Grant with defense counsel?

14 A. No.

15 Q. Can you tell the Court how you were
16 paid for your work in preparing Exhibit 1?

17 A. Stroz Friedberg is compensated on an
18 hourly basis.

19 Q. And do you know what that rate was that
20 was charged to defense counsel for the
21 preparation of that report?

22 A. The rate would vary depending on the
23 person working on the report, so my current
24 billable rate is 650 an hour; Eric Friedberg, who
25 contributed to the report, would be, I believe,

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B. Rose

950 an hour, and then Mike McGowan and Jason Novak, who are two of our digital forensic examiners who contributed significantly to the report, would be -- I'm not sure of their exact current rates, but they'd be somewhere in the range of 400 to 500 dollars an hour.

Q. And do you know the total that was paid to Stroz Friedberg by the defendants for the production, for all the work involved in the production of that report?

A. I do not.

Q. Do you know who at Stroz Friedberg would have the answer to that question?

A. I think the -- I'm not sure anyone would have the answer to that question immediately at hand, you could certainly reconstruct it from a look at the invoices.

Q. And when was the last time you read Exhibit 1, the report that you produced in this case?

A. Last night.

Q. Did you read the entire report last night?

A. I did.

1 B. Rose

2 Q. And do you agree with all the
3 conclusions in the report as of that last reading?

4 A. I do.

5 Q. And can you describe for the Court --
6 let me ask you this question: Were you involved
7 in every page of that, the preparation of every
8 page of that report or just portions?

9 You mentioned there were several people
10 involved.

11 Did you have a division of labor in
12 producing that report?

13 A. It was a collaborative drafting
14 exercise so, you know, at some point in the
15 process I would have, yes, would have read,
16 reviewed and contributed to every section of the
17 report.

18 Q. So are there any portions of the report
19 that you would feel uncomfortable answering
20 questions about based on that division of labor
21 that you had?

22 A. No.

23 Q. Okay.

24 Is there any section of the report that
25 you would identify yourself as sort of the

1 B. Rose

2 20 computers?

3 MR. SOUTHWELL: Can you just specify
4 what you mean by report?

5 Q. Anything from an e-mail to a formal
6 report like as in Exhibit 1, any communication
7 whatsoever regarding the results of that
8 analysis, did you report that to the defendants?

9 A. I don't know.

10 Q. Would there be records at the office
11 that would reflect that if it happened?

12 A. Yes.

13 Q. And who would be the person at Stroz
14 Friedberg who would know where those records are?

15 A. It would be whoever made the report.

16 Q. Now, is there any other electronic
17 evidence that you or your team reviewed after
18 issuing the report that's Exhibit 1?

19 A. Related to this case?

20 Q. Yes.

21 A. No.

22 Q. Did you or anyone -- well, first of
23 all, people from Stroz Friedberg have written
24 various articles in professional publications
25 about computer forensics; fair to say?

1 B. Rose

2 A. That's fair to say, yes.

3 Q. Have you written articles that have
4 been published in computer forensics publications?

5 A. No.

6 Q. Okay.

7 Would you agree with this general
8 statement that it's important for a computer
9 forensics expert to review all the available
10 evidence before producing a report?

11 A. I would agree that it's important for a
12 digital forensic expert to have examined all of
13 the relevant data and certainly, you know, you
14 are sometimes dealing with accessibility issues
15 here, so I think there are times when, you know,
16 I don't know what available means, there are
17 certainly things which might, you know, if you
18 move mountains, be available, but are not
19 certainly worth it in every case, but as a
20 general matter all of the reasonably accessible
21 data should be reviewed.

22 Q. And early on in -- well, I don't know
23 if it was early on, I shouldn't say that, but
24 your team at least twice either obtained or
25 received copies of Mr. Zuckerberg's Harvard

1 B. Rose
2 e-mail account; fair to say?

3 A. We have at various times either
4 collected or received copies of Mr. Zuckerberg's
5 Harvard e-mail account, yes.

6 Q. And the record reflects at least two
7 times that occurred; true?

8 A. Yes.

9 Q. Are there more than two?

10 A. I believe that we received three
11 separate deliveries, so -- and let me just go
12 through them so I can be clear.

13 We collected Mr. Zuckerberg's Harvard
14 e-mail on April 15th of 2011. We also received a
15 copy of Mr. Zuckerberg's e-mail from Harvard that
16 was made in or that was from October of 2010, I
17 believe that was the second delivery received,
18 and then we received a third delivery from
19 Harvard which included a November 2003 copy of
20 his data, a February 12, 2012 copy of his data,
21 and an additional copy of the October 2010 data,
22 and by additional copy I mean it's a duplicate.

23 Q. And you're aware that the defendants
24 had a duty under expedited discovery to produce
25 e-mails from Mark Zuckerberg's Harvard e-mail

1 B. Rose

2 account; correct?

3 MR. SOUTHWELL: Objection.

4 A. I don't know what their obligations
5 were.

6 Q. Were you or your team involved in
7 helping the defendants produce a set of
8 Mr. Zuckerberg's e-mails as part of expedited
9 discovery?

10 A. Yes.

11 Q. And do you know from which one of these
12 three separate deliveries that production came?

13 A. I do not.

14 Q. Now, Stroz Friedberg, you or no one
15 from your team analyzed the backup copies of
16 Harvard's e-mail servers; is that true?

17 A. What do you mean by analyze their
18 backup copies?

19 Q. Let me ask you a question.

20 Do most large organizations like a
21 university maintain backup copies of e-mail,
22 their e-mail servers, is that --

23 A. Most large institutions make backup
24 copies for disaster recovery purposes. Whether
25 they maintain them or not or how long they

1 B. Rose

2 maintain them varies greatly from organization to
3 organization.

4 Q. Do you know if Harvard in 2003-2004
5 made backup copies of their e-mail server?

6 A. I believe they did, yes.

7 Q. Did you obtain a forensic image of any
8 backup copies of Mr. Zuckerberg's e-mail account
9 from 2003 or 2004?

10 MR. SOUTHWELL: Object to the form,
11 just being clear about what backup copies of
12 Mr. Zuckerberg's e-mail account means.

13 Q. I just asked you and you confirmed that
14 Harvard made backup copies of their e-mail server
15 in 2003 and 2004; correct?

16 A. I said I believe they did.

17 Q. Do you have any reason to believe that
18 that excluded Mr. Zuckerberg's e-mail account?

19 A. No.

20 Q. I'm asking about those backup copies.

21 Do you know if those were on tape or on
22 disc or what form those backups were in?

23 A. I don't know whether they would retain
24 them from then.

25 Q. Did you ask Harvard about whether they

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B. Rose

had backup copies from 2003 and 2004 that were accessible?

A. We asked Harvard to identify all historical copies of Mr. Zuckerberg's e-mail, whether that's on a backup or anywhere else.

Q. Did they produce forensic copies from a backup source to you?

A. Yes. I've just delineated, I think, the copies they produced for us, so we collected the April 15, 2011 e-mail, they produced data from October 2010, February 2012, and November 2003; they said that and they indicated that after a thorough search that was all the copies of this historical e-mail they could identify.

Q. Let me just clarify that for my understanding.

The first collection -- I'll use your term -- of April 15, 2011, was that from their actual e-mail server or --

A. Correct.

Q. So it was not from a backup copy?

A. That's correct.

Q. The copy that they -- that you received from them which was you received in October 2010,

1 B. Rose

2 was that from their server or from a backup?

3 A. I don't know the source of that.

4 Q. Very well.

5 And then the third delivery from
6 Harvard, was that from their actual server, their
7 live server is the term I'm going to use, their
8 live server, e-mail server, or from a backup
9 copy?

10 A. Well, from November 2003 it would
11 necessarily not be from their live server, and
12 this is a copy of the e-mail box as it existed in
13 November 2003.

14 Q. So from a backup you would assume?

15 A. I don't know whether it was a backup,
16 whether they made a copy for some other reason.
17 I know they had a historical copy of his e-mail,
18 I don't know why it was made or from what the
19 source of it was.

20 Obviously, once you get past the
21 collection of a server on April 15th everything
22 else they provide us historically is a historical
23 copy, I don't know the source.

24 Q. Now, since we are on that topic, those,
25 at least between two of those copies, you

1 B. Rose

2 offered -- well, you've offered many declarations
3 in this case about different topics?

4 A. Correct.

5 Q. And one of them, if you recall, that
6 you offered a declaration about was some
7 differences that arose between the October 2010
8 e-mail collection and the April 2011.

9 Do you recall that declaration?

10 A. I do.

11 Q. And correct me if I'm wrong, but there
12 were two main explanations you provided in that
13 declaration as to why what appeared to be missing
14 e-mails actually weren't missing e-mails at all.

15 Do you remember providing explanation
16 for that?

17 MR. SOUTHWELL: Object to the form.

18 Q. Do you remember providing an
19 explanation for that?

20 A. I do.

21 Q. And you indicated in that declaration
22 that the cause of that apparent deleted e-mails,
23 which wasn't deleted e-mails at all, were minor
24 formatting differences; do you remember saying
25 that?

1 B. Rose

2 A. Do you have a copy of the declaration?

3 Q. Hold on a second. I may have a copy
4 here.

5 You know what, I don't have it handy,
6 Mr. Rose, so if your memory doesn't serve you, we
7 will go from there.

8 A. I do remember there being minor
9 formatting differences which were part of the
10 discrepancy.

11 Q. And do you recall using the term, and
12 in addition to minor formatting differences
13 technical issues arose, if you remember using
14 that in your declaration?

15 A. I don't recall that specific language.

16 Q. And is it your opinion that some --
17 that Stroz Friedberg somehow was engaged in some
18 fraud which caused the minor formatting
19 differences in those e-mails?

20 A. Absolutely not.

21 What caused the differences was for
22 some in the collection process, as I recall,
23 there were two issues, one, some minor formatting
24 inconsistencies, for instance, and not even
25 apparent on the surface of the document, if you

1 B. Rose

2 look at it, for instance, it's an extra white
3 space in the subject line, when we compare the
4 two e-mails they were identical except for that
5 minor formatting difference.

6 I believe the technical issue was one
7 e-mail that got split into two different e-mails,
8 so of course it doesn't dedupe out, but I can't
9 imagine how you could equate that to fraud.

10 Q. How did those minor formatting
11 differences occur?

12 A. I don't know.

13 Q. Was it done manually by anyone at Stroz
14 Friedberg?

15 A. No.

16 Q. Was it done even in an automated
17 fashion, intentionally by someone at Stroz
18 Friedberg inserting those formatting differences?

19 A. Why would anyone at Stroz Friedberg
20 insert formatting differences into an e-mail?

21 Q. Well, the rules here are that I get to
22 ask the questions.

23 Was it done automatically by someone at
24 Stroz Friedberg intentionally trying to create
25 formatting differences?

1 B. Rose

2 A. Absolutely not.

3 Q. So those formatting differences do not
4 indicate fraud by Stroz Friedberg; fair to say?

5 A. Mr. Boland, that's an outrageous
6 accusation, that anyone at Stroz Friedberg would
7 insert a white space in an e-mail so that it
8 would not dedupe out against a prior collection
9 of e-mail.

10 Q. I'm just asking you if you agree with
11 the statement it's not fair to accuse Stroz
12 Friedberg of committing fraud because minor
13 formatting differences appear in these e-mails.

14 Is that fair to say?

15 A. I think Stroz Friedberg would have
16 absolutely no motivation to insert an extra white
17 space into a subject line.

18 Q. Well, my question is not about
19 motivation, my question is, is it fair to say
20 that it is not proof of Stroz Friedberg
21 committing fraud because minor formatting
22 differences occurred in these e-mails.

23 A. I think given the circumstances you're
24 considering, which is that Stroz Friedberg is
25 engaged in a process of collecting e-mail and

1 B. Rose

2 deduping out against a prior set, so having an
3 aggregate set of data for review, if you're
4 talking about those circumstances, the idea that
5 an extra white space would be inserted so that
6 those documents in fact don't dedupe out, the
7 only effect of that being that there are
8 additional documents which Gibson, Dunn or Stroz
9 Friedberg then has to review, the idea that that,
10 there's any motivation for fraud there, the idea,
11 given those circumstances, that that would be
12 fraudulent conduct, is outrageous.

13 Q. So is the answer to my question yes,
14 that it is not evidence -- I'll ask it again.
15 It's not -- because the paragraph you just gave
16 me did not answer the question, sir.

17 Would you agree with me that it is not
18 evidence of fraud by Stroz Friedberg merely
19 because in your possession somehow, we don't know
20 how, minor formatting differences appeared in
21 these e-mails?

22 MR. SOUTHWELL: Objection, asked and
23 answered, he answered the question.

24 A. What I'm saying is given the
25 circumstances it's clearly not fraud.

1 B. Rose

2 Q. Did you or anyone on your team review
3 any electronic evidence related to any prior
4 cases that Mr. Zuckerberg has been involved in as
5 a defendant or as a party?

6 A. Again, we reviewed the assets,
7 Mr. Zuckerberg's assets, I believe those did
8 include some forensic images that have been made
9 in prior litigations.

10 Q. And what prior litigation were those
11 images involved in?

12 A. I don't recall.

13 Q. Are you familiar with the case against
14 Mr. Zuckerberg involving an organization called
15 ConnectU?

16 A. I recognize the name, yes.

17 Q. Are you familiar with litigation
18 involving two twins from Harvard named the
19 Winklevoss twins?

20 A. I am familiar with it, yes.

21 Q. Do you know if you or anyone on your
22 team reviewed evidence from the ConnectU
23 Winklevoss case?

24 A. It is my recollection that some of the
25 assets were related to the ConnectU case.

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B. Rose

Q. Do you know if you reviewed all of the electronic assets related to the ConnectU case?

A. I don't.

Q. Did you ask to see all those assets?

A. We asked to see all of the historical Mark Zuckerberg assets.

Q. And who did you ask that question to?

A. Well, I mean, we were in consultation with Gibson, Dunn and attorneys from McManis Faulkner, Mr. Zuckerberg's personal attorneys.

Q. Did you or anyone from your team review any electronic evidence from a case involving Eduardo Saverin?

A. I don't know.

Q. Does that name ring a bell?

A. It does.

Q. Are you aware that he and Mr. Zuckerberg were involved in litigation years ago regarding Facebook?

A. I've seen "The Social Network," but beyond that --

Q. Did you ask to see any evidence from that case, any electronic evidence from that case?

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B. Rose

A. We didn't have discussions about electronic assets for specific cases. What we were provided was our understanding was the existing historical assets for Mr. Zuckerberg.

Q. You know who Orin Snyder is; right?

A. I do.

Q. Have you met with him before?

A. I have.

Q. Pardon me?

A. I have, yes.

Q. Have you met with him about this, in preparation for your deposition today?

A. No.

Q. Would you agree with the statement that Mr. Snyder made about this issue of the minor formatting differences we were talking about with the Harvard e-mails, can you tell me if you agree with this statement?

MR. SOUTHWELL: Can you just be clear what you are referring to?

MR. BOLAND: A statement from Mr. Snyder December 13, 2011, during the oral argument we had that day.

Q. Mr. Snyder said "It's possible the

1 B. Rose

2 differences in storage format or the conversion
3 process can create minor format discrepancies
4 between two copies of the same e-mail."

5 Do you agree with that statement?

6 A. Can I read that, do you mind?

7 Q. Sure. Page 163 of that, and I started
8 reading "It's possible."

9 Do you see where I am pointing there,
10 line 17?

11 MR. SOUTHWELL: Can we see the page
12 before? This relates to the issue you are
13 asking about?

14 MR. BOLAND: It does, I'll represent to
15 you that it does.

16 You can see the page before, that's
17 fine. It relates to an argument -- well, I
18 will let the witness read that.

19 Q. Just tell me if you agree with that
20 statement he makes about minor formatting
21 differences.

22 A. I mean, as a general matter, I would
23 agree with that.

24 Q. Very well.

25 So the accidental or unintentional

1 B. Rose

2 insertion of a formatting difference into a
3 document, you would agree with me, is not by
4 itself proof of fraud?

5 A. Accidental -- so accidental and
6 unintentional insertion?

7 Q. Correct.

8 A. I would say since fraud involves
9 intent, I would say by definition that would not
10 be fraud.

11 Q. And we just went over that such
12 formatting differences can be caused
13 unintentionally as Stroz Friedberg unintentionally
14 caused them somehow?

15 MR. SOUTHWELL: Objection to the form.
16 What are you referring to as such
17 formatting differences?

18 Q. Formatting differences between the sets
19 of Harvard e-mails that we talked about were
20 caused unintentionally; right?

21 A. If you are doing forensic collection
22 and you're collecting e-mail, it is possible in
23 the conversion process or based on storage
24 formats for there to be formatting differences
25 introduced.

1 B. Rose

2 Q. Now, is that the only way in the whole
3 world of computers is just forensics where these
4 formatting differences can occur?

5 A. I don't understand that question.

6 Q. People trading files on CDs or
7 e-mailing files to each other, can formatting
8 differences occur in that process?

9 A. Can you be specific? That seems very
10 hypothetical.

11 Q. You have a Microsoft Word document and
12 you send it to me and I open it in Microsoft
13 Word, can formatting differences occur depending
14 on how you have Microsoft Word set and how I have
15 it set on my computer?

16 A. I think in general that should not
17 occur.

18 Q. My question is not whether it should
19 not occur.

20 Does that occur for people, do they
21 get --

22 A. I am not aware of that occurring.

23 Q. You have never received a document that
24 somehow the formatting got altered from what the
25 recipient created?

1 B. Rose

2 MR. SOUTHWELL: Objection to form.

3 Q. Has that ever happened?

4 A. I don't know, Mr. Boland.

5 Q. Fair enough.

6 Can you look at Exhibit 1, page 24, we
7 are in the upper -- I think we are in the upper
8 corner still of those page numbers.

9 A. Okay.

10 Q. So fair to say this page is generally
11 some discussion about the Sidley Austin server
12 and there's some header information in the middle
13 of the page; correct?

14 A. I would say it's a discussion of the
15 StreetFax e-mails found at Sidley & Austin and
16 particularly the Internet header information
17 appended to those e-mails.

18 Q. And your report notes in footnote 9 --
19 I mean, there's a whole paragraph there, but
20 there is a note there that the server --

21 MR. BOLAND: Scratch that.

22 Q. Right at the bottom, the last sentence
23 of that footnote, the time zone setting was
24 incorrectly set to Eastern time.

25 Do you see that sentence, the last half

1 B. Rose

2 of the last sentence of footnote 9?

3 A. I do see that sentence.

4 Q. And that's referring to the Sidley
5 Austin e-mail server; correct?

6 A. It is referring to one of the
7 intermediary Sidley & Austin e-mail servers,
8 specifically Mail 02.

9 Q. Did your computer forensic analysis
10 reveal any fraud regarding Sidley Austin and
11 e-mails?

12 A. No.

13 Q. And did your forensic analysis reveal
14 any fraud by Mr. Zuckerberg in relation to
15 e-mails from his Harvard e-mail account?

16 A. No.

17 Q. Now, on that same page, the time stamps
18 regarding the sent items from Mr. Ceglia's
19 parents' computer, this Kole e-mail, and the
20 received time of that e-mail on the Sidley Austin
21 server, this is my calculation, but they differ
22 by more than 144 seconds; is that a fair bit of
23 math?

24 MR. SOUTHWELL: What are you referring
25 to? I'm sorry.

1 B. Rose

2 Q. The time stamps on the sent item from
3 Mr. Ceglia's parents' computer of the Kole e-mail
4 and the time it was received by Sidley Austin,
5 they differ by about a little over two minutes.

6 A. There are two e-mails, so can we
7 clarify which one we're talking about?

8 Q. Let's start with the first one.

9 A. Okay.

10 MR. SOUTHWELL: By the first one, are
11 you referring to page 24 of the report?

12 A. Or page 23.

13 Q. Let's look at where you have detailed
14 when those e-mails were sent.

15 Do you see on page -- yes, go back to
16 page 23 under the number 1.

17 There's an e-mail sent at 10:37 a.m.

18 Do you see that reference?

19 A. Yes.

20 Q. So there were two StreetFax e-mails
21 that you talk about being sent here on this page?

22 A. Yes.

23 Q. The first one sent at 10:37 a.m.
24 Eastern Standard Time.

25 A. Yes.

1 B. Rose

2 Q. And then you talk about it being
3 received on the top of page 24, it's received by
4 the Sidley Austin server at 9:38 Central time.

5 A. Correct.

6 Q. That's a difference of a minute,
7 roughly, or a little under a minute; is that fair
8 to say?

9 A. That is a difference of 51 seconds.

10 Q. And in the second e-mail is in the
11 middle of page 24, it's sent at 10:39; right?

12 A. Correct.

13 Q. And it's received, at the bottom of 24
14 it's received by the Sidley Austin server at 9:41.

15 A. Correct.

16 Q. So that's a little more than a minute,
17 a minute and a half, roughly; correct?

18 A. Let me just do the math.

19 Yeah, that's roughly correct.

20 Q. Now, on the computer where the Kole
21 e-mail was found your report identifies it as
22 part of the Ceglia media; fair to say?

23 A. Right.

24 Q. And do you know who was the actual
25 owner and user of that computer? Was it Paul

1 B. Rose

2 Ceglia?

3 A. I don't know.

4 Q. Do you know if he ever used that
5 computer?

6 A. I don't know one way or the other.

7 Q. And these e-mails, these two TIFF
8 images that were sent by these two e-mails, you
9 would agree with the notion that from a computer
10 forensic standpoint you can't -- no one can say
11 whose butt was actually in the seat at that
12 computer?

13 A. So -- and let me maybe amend my last
14 answer a little bit.

15 From a forensic standpoint it is
16 difficult from the forensics to tell who's
17 actually sitting in the seat, so what you have to
18 look for is other contextual evidence.

19 So given the fact that what we have in
20 this case is two e-mails from a computer
21 belonging to -- used by someone at the Ceglias',
22 assuming that, you have one of the e-mails that's
23 signed by Paul that sets forth a phone number
24 that is sent to his attorney at Sidley & Austin,
25 Jim Kole.

1 B. Rose

2 From those circumstances I would say
3 that, yes, at least for the purpose of sending
4 those StreetFax e-mails, Mr. Ceglia, Paul Ceglia
5 specifically, did use that computer.

6 Q. Now, in sending that e-mail -- so it's
7 your position that the forensic evidence -- and
8 if I'm using the wrong word correct me -- proves
9 that Paul Ceglia was sitting at the computer that
10 sent those e-mails?

11 A. I think the forensic evidence is yes,
12 that Mr. -- that the evidence, the forensic
13 evidence and I would say the other evidence, for
14 instance, I don't know whether I would
15 characterize the fact that Paul signed the e-mail
16 as forensic evidence, but it's certainly evidence
17 obtained in a forensic analysis, yes. I would
18 say that it shows that Paul Ceglia sent those
19 e-mails to Mr. Kole.

20 Q. Now, when you say the word "signed the
21 e-mail" you're talking about his name was typed
22 at the bottom of the e-mail?

23 A. Correct.

24 Q. Not a handwritten signature?

25 A. Correct.

1 B. Rose

2 Q. And not even a scanned image of a
3 handwritten signature?

4 A. That's correct.

5 Q. And anyone can type those four letters
6 that are his name; right?

7 A. Anyone could, yes.

8 Q. Isn't it true that a person could be
9 sitting at the computer, as you are positing
10 here, and send that e-mail; true?

11 A. Could you repeat that?

12 Q. As you said, a person, one of the ways
13 this e-mail could have been sent is Paul Ceglia
14 sitting at the computer typing?

15 A. Correct.

16 Q. It could also have been sent by another
17 person sitting at the computer typing everything
18 that was in that e-mail; true?

19 A. Hypothetically true. I don't think in
20 the case the evidence supports that, no.

21 Q. And are there ways -- there are ways
22 for people to get, for example, GoToMyPC is a
23 program you are familiar with, a service you are
24 familiar with?

25 A. Yes.

1 B. Rose

2 Q. So a person could be in one state and
3 use GoToMyPC and get remote access to their
4 computer; right?

5 A. You can get remote access, yes.

6 Q. And using that remote access you can
7 operate that computer as if you're sitting in
8 front of it; true?

9 A. If you -- yes, that's true.

10 Q. Including you can send an e-mail from
11 the e-mail program on that computer while you are
12 in another state?

13 A. Correct.

14 Q. Did your forensic evidence indicate
15 whether remote access to this computer by
16 GoToMyPC happened with Mr. Ceglia?

17 A. I think remote access is unlikely given
18 the fact that the scanned documents were copied
19 to the actual physical hard drive, so I think
20 what we are looking at is physical access to the
21 machine, that would be our conclusion from the
22 forensics.

23 Q. Well, let's talk about that.

24 You testified just earlier that there's
25 a variety of ways that those TIFF images could

1 B. Rose

2 have been created on that hard drive.

3 Do you remember testifying about that?

4 MR. SOUTHWELL: Objection,
5 mischaracterizes the testimony.

6 Q. Do you remember testifying that there
7 are a variety of ways that those TIFF images
8 could have been created on to that hard drive?

9 A. I believe your question was a general
10 question about the way in which documents can in
11 fact be created on hard drive, if I'm recalling
12 that correctly.

13 Q. Well, let me clarify that, then.

14 You agree with me that there's multiple
15 ways that a file in a general sense can be
16 created on a hard drive; right?

17 A. Correct.

18 Q. And I asked you this before, they can
19 be copied from a CD?

20 You have to --

21 A. Yes.

22 Q. Floppy disk in the old days?

23 A. Yes.

24 Q. USB drive?

25 A. Yes.

1 B. Rose

2 Q. Another hard drive?

3 A. Yes.

4 Q. And the Internet?

5 A. Yes.

6 Q. Which one of those ways -- I asked you
7 before, I'm pretty clear on this, but I will do
8 it again.

9 Which one of those ways was the way
10 these two TIFF images got on to that hard drive
11 where you found them?

12 A. I don't know.

13 Q. You don't know.

14 So that necessarily means, then, it's
15 correct that a person, Paul Ceglia or whoever
16 using GoToMyPC, for example, can remotely access
17 this computer where you found these TIFF images
18 and put them there; true?

19 A. I don't know specifically how
20 GoToMeeting operates. I mean, for instance,
21 there are remote access clients where I can go on
22 and get documents, for instance, on a desktop,
23 but I can't actually save things to my physical
24 hard drive, so I think it would depend on how
25 that actually operated.

1 B. Rose

2 Q. Do you know if -- and just to correct
3 you, I think you just misspoke, I'm not talking
4 about GoToMeeting, I'm talking about GoToMyPC.

5 A. Oh, I'm sorry, yes.

6 Q. Do you know if GoToMyPC does or does
7 not have that function?

8 A. I don't.

9 Q. If the product like GoToMyPC allows
10 remote access and has that function allowing you
11 to save files to that remotely accessed computer,
12 that's one way Mr. Ceglia or whoever could have
13 put those TIFF images on that computer; would you
14 agree with me?

15 A. It's possible that's a way Mr. Ceglia
16 could have saved those to that computer, yes.

17 Q. Is GoToMyPC the only way to get remote
18 access to a computer?

19 A. No.

20 Q. What are the other ways, if you could
21 list them, please?

22 A. I couldn't list all of them.

23 Q. List as many as you can, if you would.

24 A. I mean, there are various clients like
25 that that allow remote access, there is, you

1 B. Rose

2 know, VPN access to a computer, there -- you
3 know, there are certainly other ways, I mean,
4 there are really innumerable ways to gain remote
5 access.

6 Q. Now, the ways you just went through,
7 VPN and other clients like that, those aren't
8 hacking tools, are they?

9 A. They're not, they're generally software
10 actually installed on the computer.

11 Q. In your experience as a computer
12 forensics expert, you know that individuals
13 around the world have the ability to remotely
14 access other people's computers without their
15 authorization?

16 A. There are people who do that. I mean,
17 obviously that would require -- you know, that
18 would require the installation of some kind of
19 software, you know, malware program, depending on
20 how you want to characterize it, that would allow
21 for both that remote access and also the kind of
22 control over the computer itself that you would
23 need to perform those functions, but assuming
24 that that software, malware is installed on the
25 computer, sure, that's a possibility.

1 B. Rose

2 Q. And your report doesn't discuss any
3 malware on any of the media?

4 A. No.

5 Frankly, I regard the malware
6 explanation as completely implausible in this
7 case.

8 Q. Well, my question is your report
9 doesn't indicate -- well, let me ask you that
10 question.

11 Before you produced that report did you
12 scan any of the media for malware?

13 A. We did not.

14 Q. Is that standard practice for your firm
15 to not scan media for malware?

16 A. That is not a standard practice, no.

17 Q. Have you had a chance to read
18 plaintiff's expert's report in this case?

19 A. I have.

20 MR. SOUTHWELL: Can you just clarify
21 which one?

22 MR. BOLAND: I'm sorry, Mr. Broom.

23 Q. And you are aware, then, from reviewing
24 that, that he did scan the media in this case for
25 malware?

1 B. Rose

2 THE VIDEOGRAPHER: The tape is rolling.

3 BY MR. BOLAND:

4 Q. Mr. Rose, we are back on the record.

5 I want to go back over a couple of
6 things that, just a couple of questions on a
7 topic or two that we already discussed.

8 Did your team -- your team evaluated 15
9 or 20 computers that Mr. Zuckerberg used
10 historically; right?

11 A. I don't know that I would it call my
12 team; Stroz Friedberg personnel did, yes,
13 correct.

14 Q. I'll be clear, Stroz Friedberg
15 personnel, right.

16 I am not going to ask you again, but we
17 already determined you don't know who actually
18 did the analysis or who supervised; true?

19 A. Correct.

20 Q. Did Stroz Friedberg rely on the
21 analysis of those computers in coming to the
22 conclusions in your report that you filed in this
23 case?

24 A. Well, we -- I mean, we didn't find
25 anything relevant on those devices so no, the

1 B. Rose

2 answer is no.

3 Q. If you had found something relevant on
4 those devices would you have inserted it into
5 this report?

6 A. I don't know. I mean, you know, we
7 were -- we were asked to look at the authenticity
8 or inauthenticity of the document and to examine
9 Ceglia media, so we had to consider how that fit
10 into what the Court had asked us to do, but in
11 general, if we had found something in there that
12 I think, you know, was, it was relevant, I think
13 we would have considered including it, certainly.

14 Q. The Kole e-mail that we had some
15 discussion about, is it possible that someone
16 other than Paul Ceglia, physically possible that
17 someone else other than Paul Ceglia could have
18 sent that e-mail?

19 A. Is it physically possible?

20 I suppose anything's possible.

21 Q. So the answer is yes, it's possible?

22 A. Yes.

23 Q. I know you've concluded otherwise;
24 true?

25 A. I think it's implausible, but it's

1 B. Rose

2 certainly theoretically possible.

3 Q. Have you ever in either your personal
4 or professional work used the copy-and-paste
5 function on some content on the Internet and then
6 pasted into a document?

7 A. Yes.

8 Q. And are you familiar with one of the
9 common programming file formats for the Internet
10 is HTML?

11 A. Yes.

12 Q. And when you've copied and pasted
13 stuff from the Internet to a document has that
14 process ever resulted in that content's
15 formatting being different in the document from
16 what it looked like on the Internet?

17 A. Yes.

18 Q. In the conversation we had about the
19 Hex editor, I need to be a little more precise in
20 my question about one of the areas there.

21 Can you detail for me, list for me the
22 computer forensics evidence that supports your
23 conclusion that the person who used the Hex
24 editor was Paul Ceglia?

25 A. Can you repeat that question? I'm

1 B. Rose

2 sorry.

3 Q. Yes. Let me clarify.

4 A. Sure.

5 Q. I am aware from your report that you
6 believe, at the very least, a Hex editor was used
7 to manipulate some metadata.

8 Is that a fair statement?

9 A. Yes.

10 Q. It was used?

11 A. Yes.

12 Q. And you detailed the forensic evidence
13 that you believe supports that opinion.

14 Now what I'm asking you is not the
15 forensic evidence that supports that it was used,
16 but what, if any, computer forensics evidence
17 supports the conclusion that Paul Ceglia used the
18 Hex editor?

19 And I'm saying forensic evidence.

20 A. Sure.

21 So the six documents that were created,
22 their names, for instance, document created to
23 copy out of test doc, that I think is very
24 clearly a pattern to try to create a merged
25 forged document. Whether that was done by -- I

1 B. Rose

2 think that was clearly done by someone with
3 motivation to create a fake document. In this
4 case the person with the motivation to create a
5 fake document, the person with the greatest
6 motivation is obviously Mr. Ceglia, who is
7 attempting to rely on it to support a claim worth
8 a tremendous amount of money, and whether it was
9 actually Mr. Ceglia did that or somebody working
10 in concert with Mr. Ceglia, I don't know, but I
11 think it's somebody clearly with motivations to
12 create a false document and in this case I think
13 the person with the greatest motivation is
14 Mr. Ceglia.

15 Q. And how do you know what his motivation
16 is?

17 A. How do I know what his motivation is?

18 Q. How did you determine what his
19 motivation is?

20 You just talked about his motivation.
21 How did you determine that?

22 A. My understanding is he claims to, based
23 on a contract, own half of Facebook. That seems
24 like clear motivation to me, but --

25 Q. Clear motivation to do what?

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B. Rose

A. He's made a claim for half of Facebook, and clearly your motivation there is money, right? Facebook's a tremendously valuable organization. I think the motivation is money.

The motivation, then how do you get a claim?

Well, he can't base it on the real document, the StreetFax contract, because that doesn't mention Facebook, so I think the motivation to create a false document is to try to create something which is not real and didn't exist in 2003 and is not a contract between Mark Zuckerberg, but which appears to be a contract on which you can support a claim.

I mean, your motivation, your ultimate motivation is money. The actions taken are, you know, all of this, it's not just the Hex editor, but all of this evidence of manipulation of documents and fraud in an attempt to support that claim.

Q. But you don't have any opinion -- you're not challenging any of the plaintiff's experts' opinions that the paper, two-page paper document is real?

1 B. Rose

2 A. I'm limiting to digital forensics, I
3 haven't considered the paper at all, I have no
4 opinion about that.

5 Q. You are not challenging any of their
6 claims?

7 A. I have no opinion about it whatsoever.

8 Q. Are you challenging any of their claims?

9 A. I have no opinion about it.

10 Q. The question is not whether you have an
11 opinion.

12 Do you have any evidence to challenge
13 their claims?

14 A. I'm not challenging or not challenging
15 their claims, I have no opinion about their
16 claims.

17 Q. Now, you talk about my client's
18 motivation sort of is outside the realm of
19 computer forensics, it seems to me, wouldn't you
20 agree?

21 His motivation doesn't come out of
22 metadata or applications or whatever, that
23 doesn't communicate someone's motivation?

24 A. I think that's correct, yes.

25 Q. And you are speculating about his

1 B. Rose

2 motive?

3 A. Well, I'm not sure I understand that
4 question.

5 I mean, I think -- I think it is a
6 clear motive. Whether that's actually what's
7 motivating him, I mean, I think it's a fairly
8 clear motive, but I'm not inside his head, if
9 that's your question.

10 Q. If his paper contract, which you have
11 no opinion about -- let's have a hypothetical --
12 if the paper contract's authentic, then you'd
13 agree with me he doesn't have a motive to fake
14 electronic documents because he's got a real
15 contract.

16 Again, it's a hypothetical. If the
17 paper contract is authentic, he has no motive to
18 create electronic documents?

19 A. So hypothetically, if his paper
20 contract is authentic, I would say that's
21 correct, given the forensic evidence that in fact
22 all of this fraud was attempted, I would say, you
23 know, that the corollary to that is it seems
24 clear that the paper contract is not the genuine
25 contract.

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B. Rose

Q. But my question is if you assume it is, so we're not going to talk about it not being authentic, we are assuming it is authentic, then he has no motivation to manipulate electronic files; right?

A. I would say that no one has the motivation to manipulate the files and we wouldn't see it on here, but we do, so, I mean, that tells me the contract's not real.

Q. Let's talk about motivation.

If the paper contract is real you then would agree with me Mark Zuckerberg has a motivation to do something to call into question the authenticity of that paper document. Don't you think he -- he would lose a lot of money too if the paper contract is authentic, wouldn't he?

MR. SOUTHWELL: Object to the form.

A. I certainly -- I mean, I guess I don't know personally what he would lose versus, you know, Facebook, who owns what in terms of their -- but I assume it would have a very detrimental financial impact on him where he would have to give up half of Facebook.

Q. So my point is about the motivation

1 B. Rose

2 comment. If the paper contract's authentic then
3 Mr. Zuckerberg, just like Mr. Ceglia in the
4 opposite conclusion, has a motivation to try and
5 fake evidence to prevent that contract from being
6 enforced; correct?

7 A. True. And I do think if we had seen
8 fraud going the other way, right, that the
9 motivation might play in. If we'd seen, you
10 know, that evidence that the StreetFax contract
11 was in fact apparently a fraudulent document, I
12 would agree with you that, you know, maybe we
13 would factor in the motivation and that my
14 conclusion would be that if the StreetFax
15 contract that we found, if the forensics
16 indicated it was a fake document, I think a
17 logical conclusion would be Mr. Zuckerberg faked
18 it.

19 That's not what the forensics shows.
20 The forensics clearly shows that the StreetFax
21 contract is authentic, there is overwhelming
22 evidence that there's been fraud perpetrated here
23 both in the creation of purported e-mails and the
24 Work For Hire contract relied on by your client.

25 The same holds true there. Our

1 B. Rose

2 conclusion is that the likely person who would
3 engage in that kind of fraud is Mr. Ceglia.

4 Now, whether any specific action was
5 actually taken by Mr. Ceglia or was done by
6 someone, you know, sharing the same motivation or
7 working in concert with him such as use of the
8 Hex editor, again, I can't pinpoint an individual
9 for you, but I can say that, you know, I think,
10 again, Mr. Ceglia is a likely candidate just as
11 if the forensics had cut the other way,
12 Mr. Zuckerberg would be a logical candidate, but,
13 you know, it didn't.

14 Q. Are you aware that Mr. Zuckerberg was
15 provided a signed copy of the agreement he
16 entered into with Mr. Ceglia at the time it was
17 signed?

18 A. I am not.

19 Q. Okay.

20 Are you aware that there are e-mails
21 missing from Mr. Zuckerberg's Harvard e-mail
22 account from periods of time where he was in
23 communication with Mr. Ceglia?

24 A. I am not.

25 Q. And the two TIFF images that make up

1 B. Rose

2 the StreetFax contract are digital images.

3 We've already talked about that; right?

4 A. Yes.

5 Q. And you don't know where they -- what
6 device they originated from for sure; correct?

7 A. Again, not beyond saying they appear to
8 be scanned documents which were then created on
9 the hard drive, you know, on the morning of March
10 3rd, yes.

11 Q. And so they could have been scanned at
12 any point prior to March 3rd?

13 A. They could have been.

14 Q. And what computer forensics evidence,
15 specifically computer forensics evidence about
16 those TIFF images tells you they are the
17 authentic contract between the parties?

18 Not all the other stuff, because I know
19 you've gone into that multiple times, just those
20 two TIFF images, what is all the computer
21 forensics data about those images which tells you
22 that's the authentic contract?

23 A. So, I mean, as an initial matter, let
24 me just say that I think in terms of analysis of
25 the authenticity of the StreetFax contract it is

1 B. Rose

2 impossible from our standpoint to divorce that
3 from the other evidence that's on the computer,
4 including evidence that the purported e-mails
5 were fake, that there was manipulation of
6 documents, there's backdating of the system clock
7 on multiple occasions.

8 Having said that, if you just analyze
9 that alone, and it's not what we do, right, we do
10 everything in context, but if you just look at
11 the TIFF images alone I think you have the fact
12 that it was found on a computer belonging to
13 Mr. Ceglia, it was e-mailed to his attorney, it
14 was e-mailed on March 3rd of 2004, it was
15 e-mailed through intermediary servers at Adelphia
16 and Sidley & Austin before residing at Sidley &
17 Austin.

18 The fact that Sidley & Austin
19 maintained a copy of the e-mail, so you have both
20 the sending side and the receiving side of a
21 contract, the fact that it was sent via e-mail
22 that says -- again, typed, but says Paul to his
23 attorney saying this is the contract with Mark,
24 the fact that you have the March 4th and 5th
25 e-mail chain where, again consistent with the

1 B. Rose

2 small images you've talked about, Mr. Kole says,
3 I can't read this, there's a handwritten note,
4 all of that evidence shows me that this is a
5 genuine contract.

6 I mean, frankly, to me, having the
7 plaintiff produce a piece of media that contains
8 a contract that does not support his claim and
9 having the same e-mail that based on a forensic
10 analysis was purportedly sent to Sidley & Austin,
11 to have that be produced by Sidley & Austin, I
12 mean, even if you put all the other evidence
13 aside, that ends this case, I mean, that is clear
14 smoking-gun evidence that the StreetFax contract
15 is the authentic contract e-mailed from your
16 client to his lawyer at Sidley & Austin and
17 you've got both sides of the conversation
18 producing the same identical e-mail chain.

19 Q. Let me try this way, because you are
20 not answering my question.

21 MR. SOUTHWELL: Objection.

22 Q. Here's a hypothetical, trying to make
23 this more precise.

24 If you found an e-mail between Paul
25 Ceglia and Jim Kole that had a photograph

1 B. Rose

2 attached to it that showed Paul Ceglia's mother
3 walking on a wire between two buildings in
4 downtown New York, okay, like a wire walker,
5 would it be -- and you found all of the server
6 information that you just detailed that went from
7 here to here to here, all the servers, and Sidley
8 Austin had a copy of that e-mail on their server,
9 everything you've just said about that, would it
10 be your position that that image of his mother
11 walking on a wire 400 feet in the air is an
12 authentic picture of an event that actually
13 happened? Would that be your position?

14 A. Forgive me if I pause for a minute,
15 this is an awfully strange hypothetical.

16 So let's assume -- I mean, if I have an
17 e-mail and the e-mail says, Hey, Jim, this is my
18 mom tightrope walking, Paul --

19 Q. There you go.

20 A. -- I mean, I guess the question in my
21 mind would be is there any evidence she is
22 actually a tightrope walker; right?

23 I mean, it's sort of an odd
24 hypothetical because you have posited a photograph
25 of a woman doing something that very few people

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B. Rose

2 in the world could actually do, so the fact that
3 the image itself is fairly unrealistic, again,
4 you know, these are all fairly contextual
5 analyses, then I think it would lead me to
6 question whether -- I mean, it wouldn't lead --
7 it would clearly be an e-mail sent from, you
8 know, from, I think -- it wouldn't lead me to
9 question it was sent from Paul to Jim Kole, it
10 would lead me to question whether it was actually
11 a true image, but just because of the
12 strangeness, in this case, you know, it's a
13 hypothetical which is completely off point to the
14 actual case, which is you have a standard
15 contract being e-mailed from, you know, Paul to
16 his lawyer at Sidley & Austin and a subsequent
17 conversation about it.

18 Q. Well, to be clear, the e-mail was
19 actually e-mailed from an account owned by Vera
20 and Carmine Ceglia; true?

21 A. Well, let's be careful.

22 It is an account that is registered to
23 Carmine Ceglia. The user name resolves to Vera
24 Ceglia and the e-mail is signed -- again, as you
25 pointed out, not a signature, but typed, is Paul.

1 B. Rose

2 Q. So do you feel you're qualified to
3 testify about the authenticity of images
4 generally when you see them attached to e-mails,
5 you can declare which images are authentic and
6 which images are not?

7 MR. SOUTHWELL: Objection to form.

8 Q. Just yes or no, are you qualified to
9 testify about it?

10 A. It is not a yes-or-no question, it
11 would depend on the circumstances.

12 I mean, in a case like this where I
13 think you have obvious evidence of authenticity
14 and obvious evidence of fraud, it's a fairly
15 straightforward case.

16 In other cases I could see, you know,
17 you depending again on what the image was and
18 what the question was, in some cases I would say
19 yes and in some cases no, but it would depend on
20 what analysis was needed.

21 Q. If I sent an e-mail to Mr. Southwell
22 and typed the message, Hey, check out this
23 contract, Alex, signed, and then typed in Bryan
24 Rose, is it your position that you sent that
25 e-mail?

1 B. Rose

2 I would assume not.

3 A. So you're -- if you sent an e-mail to
4 Alex and typed Bryan Rose, is it my position that
5 I sent that?

6 No.

7 Q. No. I sent a message saying, Alex,
8 this is Bryan Rose sending you a contract, and I
9 typed Bryan Rose, that's not from Bryan Rose is
10 it?

11 A. Not if you sent it, no.

12 Q. Correct.

13 Just because your name is typed at the
14 bottom doesn't mean it's sent from you; true?

15 A. That's true.

16 Again, if you isolate -- if you isolate
17 any individual piece, it's possible to say there
18 are other possibilities, but, again, that's not
19 what we do. We analyze the forensic evidence in
20 the entire context of the case, and so that is
21 one piece of evidence, the fact that it went to
22 Jim Kole is another piece of evidence, the fact
23 that Jim Kole had a handwritten note where he
24 responds is another piece of evidence, the
25 evidence of backdating is another piece of

1 B. Rose

2 evidence.

3 This is all part of building a picture
4 of what happened, and so, I mean, if you pull out
5 any piece of evidence and say what's possible,
6 that's one thing.

7 That's not what we do. We consider it
8 in the context of the entire case and we say what
9 are the reasonable explanations for this, and
10 given the forensic evidence in this case, the
11 only reasonable explanation is that the StreetFax
12 contract is authentic and that your client was
13 engaged in a massive fraud to attempt to generate
14 a fraudulent contract, that's the only reasonable
15 explanation for the digital forensics taken as a
16 whole.

17 Q. You've made that clear.

18 Can we go to page 21 of your report,
19 which is Exhibit 11 --

20 A. You mean the top level?

21 Q. Yes.

22 You just mentioned a response from Jim
23 Kole.

24 This is the document you were referring
25 to; right?

1 B. Rose

2 A. Correct.

3 Q. And can you -- I'm going to be real
4 specific.

5 Can you read the date and time of that
6 e-mail being sent allegedly from Jim Kole?

7 A. Friday, March 5th, 2004, 11:44 a.m.

8 Q. So that's a day later than the alleged
9 Kole e-mail was sent to him; true?

10 A. I believe it's two days later, correct.
11 The Kole e-mails were sent by Mr. Ceglia on March
12 3rd, 2004. This response appears to be on March
13 5th, 2004, so that's two days.

14 Q. Even better.

15 Whose handwriting is on the document?

16 What computer forensics evidence tells
17 you who wrote that handwritten note?

18 A. Based on the context the fact that it's
19 on an e-mail printed out by Jim Kole and the fact
20 that it is giving legal advice about a contract
21 that was put in front of him by Mr. Ceglia, the
22 context indicates to me that it's Mr. Kole's
23 handwriting, but we haven't -- we are not
24 forensic -- we are not handwriting experts and,
25 you know, I couldn't tell you ultimately who

1 B. Rose

2 wrote that.

3 Q. And this is a reply to Paul's -- I'm
4 sorry, this is an e-mail from paulceglia@msn.com
5 at the top; right?

6 MR. SOUTHWELL: Objection.

7 Can you just be specific? You're
8 referring to the top from Ceglia to Kole on
9 March 5th or the ones below?

10 Q. The very top of the e-mail where it
11 says from paulceglia@msn; isn't that correct?

12 A. Which one, again, the top level e-mail?

13 Q. The most top level --

14 A. Yes, that is from paulceglia@msn.com.

15 Q. Right.

16 Then let's go down into the body of the
17 e-mail, there's another e-mail referenced there
18 and there's the next word "from" and a colon and
19 "to" and a colon.

20 Do you see that?

21 A. Are we talking about the e-mail
22 immediately below towards the top level, the
23 reply to, yes.

24 Q. Yes.

25 And that's paulceglia@msn as well?

1 B. Rose

2 A. Correct.

3 Q. Let's go a little farther down
4 underneath a little portion that says "original
5 message" and under there it says "from," and you
6 see that says paulceglia@msn again?

7 MR. SOUTHWELL: The one on March 4th?

8 A. March 4th, 2004 at 9:49 a.m., yes,
9 that's correct.

10 Q. So this, you would agree with me,
11 appears to be an exchange between, if it's
12 authentic, Mr. Kole and Mr. Ceglia who is
13 communicating using his msn account?

14 A. Correct.

15 Q. Okay.

16 And as you pointed out, the
17 communication that is the Kole e-mail came from
18 an account registered to Carmine Ceglia with the
19 user name Vera Ceglia?

20 A. Correct.

21 Q. And it's your position that this
22 represents a reply by Mr. Kole two days later to
23 the e-mail that came from the Adelpia account?

24 MR. SOUTHWELL: Objection,
25 mischaracterizes.

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A. That's not my position.

That is clearly a separate e-mail chain, so the Kole e-mails -- the Kole e-mails that were sent on March 3rd are not part of this chain, so, you know, what it looks like, Mr. Ceglia sends the March 3rd e-mails to Mr. Kole, then opens up a new e-mail chain using his msn account and they go back and forth based on that, and so this is -- so it's not a direct reply.

What I'm saying is based on the content, right, it appears to be discussing the contract that was provided on March 3rd, 2004, including a reference to the fact that it can't be read.

Q. Do you know if it was actually discussing that blurry TIFF image or another blurry TIFF image? Do you know?

Did your forensics analysis tell you what blurry image they're talking about?

A. We only have evidence of one blurry TIFF image, so we have one blurry TIFF image or two blurry TIFF images sent on March 3rd, 2004, and a response here indicating that he's received

1 B. Rose

2 blurry TIFF images, which we know he received,
3 right, because we know, A, Sidley & Austin still
4 has them and we know he forwarded them on, so,
5 yes, I'm basing that on the context here that
6 when he's referring to blurry TIFF images he's
7 referring to the blurry TIFF images we know he
8 received two days before.

9 Q. And he is referring to the blurry TIFF
10 images he received from the Adelphia account is
11 your position about when you read this e-mail
12 here?

13 A. That seems to me to be a reasonable
14 inference based on what we know, yes.

15 Q. And how did you rule out someone
16 scanning --

17 A. Again, I'm talking about what --

18 Q. Let me finish the question, sir.

19 A. Yes.

20 Q. How did you rule out additional e-mails
21 with blurry TIFF images sent from Paul Ceglia's
22 msn account to Jim Kole and he's replying
23 regarding that, how did you rule that out?

24 A. I haven't ruled that out. What I'm
25 saying is what is the likely and reasonable

1 B. Rose

2 explanation.

3 Q. How likely is it that an e-mail was
4 sent by Paul Ceglia from his msn account with
5 blurry attachments that he's responding to here,
6 how likely is that?

7 A. Well, I think given the fact that we
8 know he sent blurry TIFF images two days before,
9 it's unlikely.

10 I don't know how to --

11 Q. Why is it unlikely? What do you know
12 about Mr. Ceglia's personal habits that make it
13 unlikely in that two-day period he did not send
14 blurry TIFF images to his lawyer by his msn
15 account?

16 A. I think it's probably unlikely he's
17 sending multiple copies of blurry TIFF images,
18 but --

19 Q. Why is it unlikely? How did you
20 determine that?

21 A. It seems to me people don't generally
22 do that, but, you're right, he could have sent a
23 thousand blurry TIFF images, it seems exceedingly
24 unlikely to me, but I have not ruled it out.

25 Q. Why is it unlikely?

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A. Again, I think I've answered that question. It seems to me that if you have a reference to an attorney having been sent blurry TIFF images and we know that two days before he was sent blurry TIFF images that we know he received, the likely explanation is that he's referring to those TIFF images. I have not ruled out the fact that he's referring to other TIFF images.

Q. And there's an intervening two-day period between the Kole e-mail and this one; right?

A. Correct.

Q. And the Kole e-mail and this one were sent with two different e-mail accounts?

I'm sorry, the Kole e-mail is sent with an Adelphia account; true?

A. The Kole e-mail was sent from -- yes.

Q. And these exchanges with Mr. Kole are sent by Mr. -- are with Mr. Ceglia at his msn account; correct?

A. Correct.

Q. Okay.

So for two days some number of

1 B. Rose

2 e-mails we will never know, right, went back and
3 forth between Mr. Kole and Paul Ceglia from his
4 msn account.

5 You don't know how many they sent back
6 and forth during those two days, do you?

7 A. Well, I know -- I mean, based on the
8 evidence we have, it would appear to be as if the
9 e-mail chain here is four e-mails.

10 Whether, you know, how many more than
11 that, that puts a lower limit on it. I can't
12 tell you how many e-mails would be in the entire
13 chain.

14 Q. And they could have simultaneous
15 different threads going back and forth that
16 aren't even included here; right?

17 A. They could.

18 Q. So you don't know?

19 A. I don't.

20 Q. Now, your report also challenges
21 generally the authenticity -- let me back up.

22 Are you aware that there have been two
23 documents -- two categories of documents
24 submitted to the Court thus far as attachments to
25 pleadings that Mr. Ceglia is claiming are

1 B. Rose

2 authentic, one of which is the two-page paper
3 contract -- you're aware he's claiming that's
4 authentic; right?

5 A. Yes. You are referring to the Work For
6 Hire, what we call the Work For Hire document?

7 Q. Yes.

8 A. Yes.

9 Q. And he's also attached to an amended
10 complaint copies of e-mails that he exchanged
11 with Mr. Zuckerberg which he's claiming are
12 authentic e-mails exchanged with Mr. Zuckerberg.

13 MR. SOUTHWELL: Objection. That's not
14 in evidence, he didn't attach any e-mails.

15 Q. He attached documents to an amended
16 complaint purporting to be copied and pasted
17 e-mails between him and Mr. Zuckerberg.

18 MR. SOUTHWELL: Take a look at the
19 complaint, there's nothing attached.

20 Q. It's attached -- well, let's just
21 assume you've evaluated e-mails that he claims to
22 have exchanged with Mr. Zuckerberg; true? You
23 took a look at them?

24 A. We have evaluated Word documents
25 containing what appear to be cut and paste --

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Q. Well, my client admits they are copied and pasted into the Word document, does he not?

A. Well, I should say that are claimed to be cut and pasted.

I mean, I am aware that Mr. Ceglia claims to have Word documents containing e-mails that purportedly support his claim. We identified in our forensic analysis three Word documents that we believe to be those e-mails.

Q. And you analyzed them?

A. Correct.

Q. And there's at least two areas of that analysis which support -- and maybe there's more, you can correct me -- your claim and your report that those e-mails are fakes, so let's go over them.

One of the areas is the Coordinated Universal Time as it appears in those e-mails is incorrect based on the fact that it was Daylight Savings Time at the time they were sent; right?

A. So, yes --

Q. Is that the e-mails --

A. There is a group of e-mails, I believe it is sent between October 2003 and April 2004 at

1 B. Rose

2 which point Eastern Standard Time would have been
3 in effect and the offset that's in the e-mails
4 appear to be Eastern Daylight Time which is an
5 anomaly which shouldn't occur.

6 Q. Right, that's one area.

7 And the second area you indicate in
8 your report is formatting and differences between
9 these e-mails, for example -- and I think you
10 might remember this one, in one of the e-mails
11 the word "Tuesday" is spelled out and in the
12 other one it's abbreviated, things like this is
13 one of the other areas that you indicate supporting
14 your belief that those are fraudulent; true?

15 A. Yes, and that's inconsistencies that
16 they both between the way those should appear,
17 for instance, the way, you know, Microsoft
18 Hotmail would abbreviate Tuesday and the way it's
19 actually abbreviated in the e-mails themselves,
20 so Microsoft, you know, abbreviates it T-u-e, if
21 you cut and paste it out it should not say
22 T-u-e-s, and I know you asked questions earlier
23 about whether formatting differences can be
24 introduced during cut and paste; that's true,
25 but, for instance, the addition of an "s" is not

1 B. Rose

2 a formatting difference that would occur, so I
3 think that's clear evidence of fraud.

4 There's also inconsistencies among the
5 documents themselves, so after the "from," colon,
6 sometimes there's one space, sometimes there's
7 two, after the "to" there are an inconsistent
8 number of spaces, there are various formatting
9 inconsistencies like that and, again, going back
10 to your point about copy and paste, to the extent
11 I copy and paste out Hotmail documents and the
12 formatting change, I would expect it to change in
13 a consistent way, I wouldn't expect the copy-and-
14 paste operation to, for instance, insert two
15 spaces after "to" sometimes and three in another
16 and one in another.

17 Q. Why would you expect it to do it in a
18 uniform way?

19 A. Generally -- because, again, when you
20 are cutting and pasting, if you are cutting from
21 the same source to the same source, what you
22 would expect to see is a consistent change.

23 Q. Did Mr. Ceglia cut from the same source
24 to the same source?

25 A. My understanding is he's cutting from

1 B. Rose

2 his Hotmail account, yes.

3 Q. On what computer was he copying that
4 from?

5 A. He is copying it from his account, it
6 wouldn't matter what computer he's copying it
7 from, you're copying from an Internet Webmail
8 account, the data is residing on Hotmail servers,
9 it wouldn't matter what computer he's using.

10 Q. Would it matter what browser he's
11 using?

12 All browsers format Web mail the same;
13 is that your position?

14 A. Well, so for the T-u-e-s, right, that
15 difference and --

16 Q. No. I'm asking you do all browsers --

17 A. You asked me a question, I'm trying to
18 answer the question.

19 MR. BOLAND: He is rephrasing the
20 question.

21 MR. SOUTHWELL: He is answering your
22 question.

23 Q. Do all browsers format Webmail accounts
24 the same?

25 A. No.

1 B. Rose

2 Q. What browser was Mr. Ceglia using when
3 he copied and pasted each one of these e-mails?

4 A. I don't know.

5 Q. How did Hotmail function when it came
6 to abbreviations of things like Tuesday in 2004?

7 A. It abbreviated it T-u-e.

8 Q. How do you know that?

9 A. I think we've tested, we've seen the
10 way it format, Hotmail formulates Tuesday and it
11 is T-u-e.

12 Q. In 2004 you ran tests to confirm that?

13 A. My understanding is that we confirmed
14 that in fact that's the way Hotmail abbreviates
15 T-u-e.

16 Q. Where do you get that understanding?

17 A. So that understanding was passed --
18 that information comes from, I believe, directly
19 from Mike McGowan.

20 Q. So it's your testimony that Mike
21 McGowan in 2004 tested the Hotmail server?

22 A. No, that's not my testimony.

23 Q. Okay.

24 How did he determine in 2004 that's how
25 Hotmail worked?

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A. I don't know how he determined that.

Q. To the best of your recollection he's the person who told you that that's how it worked in 2004?

A. Yes.

Q. Okay.

Did anyone else from Stroz Friedberg conduct any testing on how Hotmail might have worked in 2004?

A. I don't know the answer to that, I don't know if the information came directly from him.

I would also just note that how that works in 2004 is one question.

I would also note that you would expect it to work the same way in 2004 each time; in other words, you wouldn't expect Hotmail in 2004 to sometimes abbreviate T-u-e, sometimes abbreviate T-u-e-s.

Q. Why would you not expect that?

Do you know how Hotmail operates?

A. Because they don't configure themselves back and forth like that, right, there's a uniform configuration that they don't just run

CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 31(b) I do hereby certify that twelve (12) copies of the foregoing MOTION TO COMPEL EACH MEMBER OF THE FEDERAL CIRCUIT TO DISCLOSE CONFLICTS OF INTEREST will be sent to the Clerk of the Federal Circuit, and three (3) copies to the Clerk of the U.S. Supreme Court at:

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United States Court of Appeals for the
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717 Madison Place, N.W.. Room 401
Washington D.C. 20439

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Pursuant to Fed. R. App. P. 31(b), copies of the foregoing were served on the following recipients by regular mail:

Two (2) copies to:
Paul Andre, Esq.
KRAMER LEVIN LLP
990 Marsh Road
Menlo Park, CA 94025
Tel.: (650) 752-1700
Fax: (650) 752-1800
Attorney for Plaintiff-Appellant

Two (2) copies to:
Thomas G. Hungar, Esq.
GIBSON DUNN LLP
1050 Connecticut Avenue, N.W.
Washington D.C. 20036-5306
Tel.: (202) 955-8558
Fax: (202) 530-9580
Attorney for Defendant-Appellee

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Sep. 5, 2012

/s/

Lakshmi Arunachalam, Ph.D.
222 Stanford Avenue
Menlo Park, CA 94025
(650) 854-3393
laks@webxchange.com
for Amicus Curiae
Lakshmi Arunachalam, Ph.D.

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222 Stanford Avenue
Menlo Park, CA 94025
(650) 854-3393
laks@webxchange.com

September 5, 2012

Mr. William Suter
Clerk of Court
Supreme Court of the United States

1 First Street, NE
Washington, DC 20543
(202) 479-3000
(202) 479-3472

Dear Mr. Suter,

*Re: Complaint about the Federal Circuit Judges and Clerk of Court in
Leader Tech v. Facebook, Case No. 2011-1366 (Fed. Cir.); Supplemental
information re. Motion to Compel Disclosure of Conflicts of Interest*

Please kindly accept the attached **Motion To Compel Each Member Of
The Federal Circuit To Disclose Conflicts Of Interest** as a supplement to my
complaint.

As I have explained in my complaint and Aug. 31, 2012 supplement to my
complaint (60(b) motion), since the Clerk of Court and the Chief Judge are
implicated in the misconduct, I have no confidence that they will oversee the
information justly. To date, they have only obfuscated and avoided the underlying
evidence.

I will make myself available to you for your investigation. Please feel free to
contact me at any time.

Respectfully yours,

/s/

Lakshmi Arunachalam, Ph.D.

Mr. William Suter, Clerk of Court, U.S. Supreme Court
Lakshmi Arunachalam, Ph.D. Complaint
September 5, 2012

Enclosure:

**MOTION TO COMPEL EACH MEMBER OF THE FEDERAL CIRCUIT
TO DISCLOSE CONFLICTS OF INTEREST** in *Leader Tech v. Facebook*,
Case No. 2011-1366 (Fed. Cir.).

cc.

House Committee on the Judiciary

- Lamar Smith, Chairman
- John Conyers, Ranking Member
- Darrell Issa
- Steve Chabot
- Jim Jordan
- Howard Berman

Senate Committee on the Judiciary

- Patrick Leahy, Chairman
- Chuck Grassley, Ranking Member
- Dianne Feinstein
- Al Franken
- Mike Lee
- Tom Coburn

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Mo. Day Year 2 15 12	Scheduled Time of Delivery AM <input checked="" type="checkbox"/> Noon <input type="checkbox"/> 9 PM <input type="checkbox"/>	COD Fee \$	Insurance Fee \$
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Lakshmi Arunachalam
222 Stanford Avenue
Menlo Park, CA 94025

TO: (PLEASE PRINT) PHONE ()

Clerk of Court
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Federal Circuit
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		Arrival at Unit	September 06, 2012, 10:28 am	WASHINGTON, DC 20018	
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Day Year	Scheduled Time of Delivery	COD Fee	Insurance Fee	
1499	<input checked="" type="checkbox"/> Noon <input type="checkbox"/> 3 PM	\$	\$	
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PHONE (501) 854 3393

Akshmi Arunachalam
22 Stanford Avenue
Menlo Park, CA 94025

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